

## NOTICES OF CONNECTICUT STATE AGENCIES

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### STATE ELECTIONS ENFORCEMENT COMMISSION

*State Elections Enforcement Commission advisory opinions are published herein pursuant to General Statutes Section 9-7b (14) and are printed exactly as submitted to the Commission on Official Legal Publications.*

#### ADVISORY OPINION 2018-01:

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#### CEP Candidates in Primaries Applying only for General Election Grant Funds

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At a regular meeting on August 22, 2018, the State Elections Enforcement Commission (the “Commission”) voted to issue this Advisory Opinion to provide clarification regarding the conditions under which a primary candidate participating in the Citizens’ Election Program (“CEP” or the “Program”) who did not apply for primary grant funds may apply for general election grant funds if successful in the primary.

The CEP provides for qualified candidates to receive public grants for primaries, if applicable, and general elections. In the ten-year history of the Program, which includes five regular election cycles, many CEP candidates facing a primary and seeking public funds have applied for primary campaign grants.<sup>1</sup> For the first time, however, several candidates facing primaries in this election cycle have asked whether they may forgo applying for primary grants and apply for a general election grant if successful in the primary.

The law does not squarely address this situation, but does not expressly preclude a candidate facing a primary from joining the CEP before the primary campaign deadline and only applying for a general elections grant.

Section 9-703 of the General Statutes establishes the deadlines for candidates to opt in or out of the Program by filing an affidavit of intent to abide by the CEP expenditure limits (SEEC Form CEP 10) or an affidavit of intent not to abide (SEEC Form CEP 11). General Statutes § 9-703 (a). If a candidate is in a primary, the deadline to join the Program is twenty-five days before the primary.<sup>2</sup> For candidates not involved in a primary, the deadline to join the Program is forty days before the general election. A candidate who does not join the CEP by filing an affidavit of intent to abide for the primary campaign deadline is *not* eligible to later join the CEP and apply for a general election grant. A candidate who has joined the Program may withdraw at any time before filing a grant application. General Statutes § 9-703 (b).

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<sup>1</sup> There are also candidates who join the CEP who never intend to apply for a grant but choose to follow the CEP rules, including only accepting small-dollar contributions from individuals and abiding by the voluntary spending limits.

<sup>2</sup> Candidates must declare their party status on the SEEC Form CEP 10 and a candidate who changes his or her party status or becomes a candidate for a different party or a petitioning candidate after filing this form will not be eligible to apply for a Program grant. General Statutes § 9-706 (a) (4).

Section 9-702 of the General Statutes sets forth the general requirements for CEP grant eligibility, and subsection (a) of that section provides as follows:

(1) [T]he candidate committee of a major party 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 receive a grant from the Citizens' Election Fund for the candidate's primary campaign* for said nomination, and (2) the candidate committee of a candidate nominated by a major party, or the candidate committee of an eligible minor party candidate or an eligible petitioning party candidate, for election to the office of state senator or state representative at a special election held on or after December 31, 2006, or at a regular election held in 2008, or thereafter, or for election to the office of Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, *may receive a grant from the fund for the candidate's general election campaign for said office.*

(Emphasis added.)

Section 9-706 (g) (1) provides for separate deadlines for candidates seeking nomination in a primary or election in a general election, and does not foreclose a candidate in a primary from forgoing a primary campaign grant and later applying for a general election grant:

Any application submitted pursuant to this section for a primary or general election shall be submitted in accordance with the following schedule: (A) By five o'clock p.m. on the third Wednesday in May of the year that the primary or election will be held at which such participating candidate will seek nomination or election, or (B) by five o'clock p.m. on any subsequent Wednesday of such year, provided no application shall be accepted by the commission after five o'clock p.m. on or after the fourth to last Friday prior to the primary or election at which such participating candidate will seek nomination or election. line

Section 9-702 (b) sets forth five general criteria for grant eligibility and provides that:

*(b) Any such candidate committee is eligible to receive such grants for a primary campaign, if applicable, and a general election campaign if*

- (1) the candidate certifies as a participating candidate under section 9-703,
- (2) the candidate's candidate committee receives the required amount of qualifying contributions under section 9-704,
- (3) the candidate's candidate committee returns all contributions that do not meet the criteria for qualifying contributions under section 9-704,
- (4) the candidate agrees to limit the campaign expenditures of the candidate's candidate committee in accordance with the provisions of subsection (c) of this section, and
- (5) the candidate submits an application and the commission approves the application in accordance with the provisions of section 9-706.

(Emphasis added.)

Subsection (c) sets forth the spending limits, as follows, in relevant part:

A candidate participating in the Citizens' Election Program shall limit the expenditures of the candidate's candidate committee

- (A) before a primary campaign and a general election campaign, to the amount of qualifying contributions permitted in section 9-704 and any personal funds provided by the candidate under subsection (c) of section 9-710,
- (B) *for a primary campaign*,<sup>3</sup> to the sum of (i) the amount of such qualifying contributions and personal funds that have not been spent before the primary campaign, and (ii) the amount of the grant for the primary campaign authorized under section 9-705, and
- (C) for a general election campaign,<sup>4</sup> to the sum of (i) the amount of such qualifying contributions and personal funds that have not been spent before the general election campaign, (ii) any unexpended funds from any grant for a primary campaign authorized under section 9-705, and (iii) the amount of the grant for the general election campaign authorized under section 9-705 . . . .

General Statutes § 9-702 (c) (emphasis added).

Generally, CEP candidates in a primary and intending to apply for a primary campaign grant may incur up to the primary campaign expenditure limit during the primary campaign period, and, upon receipt of the primary campaign grant, pay off the incurred primary campaign expenditures. However, a CEP candidate who does not apply for and receive a primary campaign grant is in a different situation because that campaign will not be able to pay off any incurred primary campaign expenditures that exceed the required threshold amount of qualifying contributions, plus any

<sup>3</sup> The "primary campaign" period is defined as follows:

"Primary campaign" means the period beginning on the day following the close of (A) a convention held pursuant to section 9-382 for the purpose of endorsing a candidate for nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, or (B) a caucus, convention or town committee meeting held pursuant to section 9-390 for the purpose of endorsing a candidate for the municipal office of state senator or state representative, whichever is applicable, and ending on the day of a primary held for the purpose of nominating a candidate for such office.

General Statutes § 9-700 (11).

<sup>4</sup> "General election campaign" is defined as follows:

"General election campaign" means (A) in the case of a candidate nominated at a primary, the period beginning on the day following the primary and ending on the date the treasurer files the final statement for such campaign pursuant to section 9-608, or (B) in the case of a candidate nominated without a primary, the period beginning on the day following the day on which the candidate is nominated and ending on the date the treasurer files the final statement for such campaign pursuant to section 9-608.

General Statutes § 9-700 (7).

personal funds provided within the personal funds provision,<sup>5</sup> since such campaign will not receive primary campaign funds.

The law provides that primary campaign grant funds are to be spent for primary campaign expenditures, and general election grant funds are to be spent for general election campaign expenditures. If a CEP candidate receives a primary campaign grant and does not expend the entire grant amount on primary campaign expenditures, “the amount of the grant for the general election campaign shall be reduced by the total amount of any such unexpended primary campaign grant and moneys . . . .” General Statutes § 9-705 (i) (2). In other words, a CEP candidate in a primary is not permitted to stockpile a war chest of unspent primary campaign grant funds to have additional monies to spend during the general election campaign period. Conversely, a CEP candidate in a primary is not permitted to prepay for general election campaign expenditures with primary campaign funds and then receive the full general election campaign grant amount. *See* Regs. Conn. State Agencies § 9-702-1. Although a CEP candidate whose committee received a primary campaign grant does not need to reapply for a general election campaign grant, the committee is required to file a disclosure statement and submit a primary-to-general election “carry forward form” in which the committee identifies campaign goods or services purchased or pre-paid during the primary campaign period that will be used for the general election. *See* General Statutes §§ 9-705 (j) (2) & 9-708; Regs. Conn. State Agencies § 9-702-1.

It follows that a participating candidate in a primary who does not reach the thresholds to apply for a primary campaign grant may only spend or incur during the primary campaign period an aggregate amount not to exceed the required threshold amount of qualifying contributions, plus any personal funds by the candidate within the prescribed limits. If a committee exceeds these thresholds it may be ineligible to receive a general election campaign grant.

In addition, a grant application must include a certification that the committee has transmitted to the CEF contributions that exceed the required qualifying contribution amount (these excess contributions are also referred as the “buffer” amount), and release of any grant funds requires submission of such buffer. General Statutes § 9-706 (b) (4). Accordingly, a committee will not be eligible to receive a grant if it does not have enough funds in its bank account to write the “buffer” check.

With these considerations in mind, the Commission concludes that a candidate in a primary who joins the CEP on or before the primary deadline to join, and who does not apply for a primary campaign grant and spends only the amount of qualifying contributions permitted in section 9-704 and any personal funds provided by the candidate under subsection (c) of section 9-710, may apply for a general election campaign grant.

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<sup>5</sup> General Statutes § 9-710 (c) provides that:

A candidate who intends to participate in the Citizens’ Election Program may provide personal funds for such candidate’s campaign for nomination or election in an amount not exceeding: (1) For a candidate for the office of Governor, twenty thousand dollars; (2) for a candidate for the office of Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, ten thousand dollars; (3) for a candidate for the office of state senator, two thousand dollars; or (4) for a candidate for the office of state representative, one thousand dollars. Such personal funds shall not constitute a qualifying contribution under section 9-704.

This constitutes an Advisory Opinion pursuant to General Statutes § 9-7b (a) (14). This Advisory Opinion is only meant to provide general guidance and addresses only the issues raised.

Adopted this 22nd day of August, 2018 at Hartford, Connecticut by a vote of the Commission.

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Anthony J. Castagno, *Chair*

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## DECLARATORY RULING 2018-01:

### Political Activity of Organized Groups

At its special meeting on April 18, 2018, the State Elections Enforcement Commission (the “Commission”) voted to initiate this Declaratory Ruling proceeding regarding how campaign finance law applies to the political activities of certain groups of people acting together that have not formed Connecticut political committees.<sup>1</sup> This Ruling provides general advice on the difference between independent and coordinated expenditures, the issuance of scorecards, endorsements, the use of social media and other communications and supportive activities on behalf of Connecticut candidates. The advice provided is prospective and does not address whether past activities undertaken were or were not in compliance with Connecticut’s campaign finance laws.

#### *Executive Summary*

The organized groups who have requested this Ruling, and those who have commented on its drafts or made comments at the public hearing, span a wide range. Some groups like unions and formally organized professional associations have historically spent large amounts on elections while others are newly formed, loosely organized groups of citizens communicating through social media who plan on spending very little money, instead mostly working with candidates as volunteers. These groups come in many shapes and sizes. Part I of this Declaratory Ruling reviews some background concepts that both types of groups will find useful in understanding Connecticut’s campaign finance law.

Many groups that have commented on this Ruling have described themselves as “grassroots” organizations.<sup>2</sup> Although we have no definition for “grassroots” in

<sup>1</sup> This opinion revisits questions addressed in Advisory Opinion 2008-01, which was withdrawn following the *Citizens United v. FEC*, 558 U.S. 310 (2010) decision, and also addresses questions raised in the March 12, 2018 petition from counsel Arnold F. Skretta, on behalf of Connecticut Compliance and Law Services LLC, concerning the subjects addressed herein. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter. General Statutes § 4-176 (c). At the request of the regulated community, the comment period was extended and a public hearing was held on July 31, 2018.

<sup>2</sup> Another distinction is helpful at this point. Campaign finance law exempts from disclosure requirements communication between members of certain types of organized groups. A detailed discussion of this exemption can be found in Part II (B) (6) (a) of this Ruling. When the term “member” is used in this Ruling, it is meant to indicate members of such groups covered by the exemption, not members of less formalized groups, such as many grassroots groups tend to be. For the sake of clarity in this Ruling, people associated with grassroots groups will be referred to as *supporters*. That is not to say that grassroots groups can never qualify for the exemption by meeting the membership criteria, or conversely that all formally-established groups spending in excess of \$1,000 are necessarily “membership organizations”—in every case the determination as to whether a group qualifies for the membership exception will be based on a factual analysis of the specific actor. But because grassroots groups tend to be informally organized and larger groups, like trade association or unions, tend to be formally organized, this Ruling will use the term “supporters” when discussing the group that has identifies as “grassroots” and the term “members” when referring to the higher spending more formally organized groups such as unions and trade associations, with the hope that the distinction is helpful.

campaign finance law, we can understand that term to mean those groups that choose to raise and spend less than \$1000, and thus have no campaign finance reporting requirements with this agency. But having no reporting requirements does not mean that no rules apply. In particular, attribution rules (e.g. listing who produced the communication) and rules about coordinating with candidates, even if spending relatively small amounts of money, generally apply to these groups, as they do with all others. However, much if not all of what the grassroots groups who have sought advice through this Declaratory Ruling want to do in coordination with candidates is allowable because the activity falls within existing exemptions in the law. In Part II (A), this Ruling explains how the law applies to those situations and which requirements, such as for attribution, apply.

When groups such as unions or trade associations that plan on making, or want to preserve the ability to make, independent expenditures in the race, they must be careful to structure their activity to ensure that they are acting totally and wholly independently from the candidates with respect to those expenditures. In Part II (B), this Ruling explains how to avoid making expenditures that are coordinated with candidates' campaigns.

### ***I. Background***

#### ***A. Groups Not Required to Register Committees***

Such spenders might include for-profit corporations, labor unions, business and industry associations, PTAs, civic organizations, federal SuperPACs, as well as corporations exempt from taxation pursuant to Section 501(c) (4) of the Internal Revenue Code and 527 organizations formed for political activities ***but not raising money specifically for Connecticut elections***. These groups are also known as "incidental spenders" because the money they are spending was raised for purposes other than Connecticut elections and the election spending the group ultimately does from its preexisting treasury is incidental to the group's purpose.

These organized groups making *independent* expenditures from their own funds—funds that were not raised for the purpose of spending on Connecticut elections—do not have to form political committees, no matter how much they spend. Reporting is required, however, after spending in excess of \$1,000 on independent expenditures. General Statutes § 9-601d.

Groups (such as certain grassroots groups) that raise and spend less than \$1,000 also do not have to form political committees when their spending in coordination with candidates falls within exceptions to the definitions of contribution or expenditure.

#### ***B. Coordinated Political Activity***

Generally speaking, coordinated spending is a type of contribution and outside groups, whether grassroots or higher-spending, may not make contributions to a candidate, either monetary or in-kind, without first forming a political committee and then staying within the relevant contribution limits and disclosure requirements. Even small amounts of spending by a group that is coordinating with a campaign may be considered impermissible, unless it falls within an exception, as described in more detail below. These exceptions are a type of safe harbor for spending for groups large and small.

There are twenty-four exceptions to the definition of contribution and fifteen to the definition of expenditure, that allow various types of political activity, even if it involves spending. For ease of reference, these definitions are appended to this

Ruling. When a group's activity and spending falls within one or more of these exceptions, then coordinated political activity is permissible. Many of the scenarios proposed by the "grassroots groups" requesting this Ruling fall within one or more of these exceptions.

For candidates who voluntarily choose to participate in the CEP, one of the leading clean elections programs in the nation, the limits on accepting contributions are strict and the sources of allowable contributions are extremely limited. CEP candidate committees may only receive monetary qualifying contributions and only from individuals. In joining the Program, participating candidates are required to forego most non-monetary "in-kind" contributions. Participating candidates who violate the Program requirements may, in some circumstances, be responsible for the return of all grant monies. It is therefore particularly important that groups wishing to coordinate with a candidate who is participating in the Program are careful to fit their activity within an exception.<sup>3</sup>

### *C. Independent Expenditures*

As an alternative to coordination, organized groups may make unlimited independent expenditures. An independent expenditure is "an expenditure, as defined in General Statutes § 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." General Statutes § 9-601c (a). Groups wishing to *raise* money to make independent expenditures in Connecticut elections have to register as an independent expenditure political committee if and when they have raised or spent or incurred over \$1,000 in the aggregate. They must then file periodic financial disclosure reports. General Statutes §§ 9-601d (b), 9-602, 9-605, 9-608. Those groups who merely spend from their preexisting treasuries, or do not raise money in excess of \$1,000 to be used for independent expenditures in Connecticut elections, do not need to form political committees. Rather, they need only file incidental reports when they have spent or incurred an aggregate of over \$1,000. General Statutes § 9-601d.

The Supreme Court has spoken in the broadest terms about the degree of independence that is necessary for "independent expenditures" to be considered free of the legal constraints that would otherwise apply to in-kind contributions. Such expenditures must be "totally independent," "wholly independent," "truly independent," and made "without any candidate's approval (or wink or nod) . . . ." according to the Court.<sup>4</sup> The statutes provide examples of when expenditures are presumed *not* independent, identifying specific instances where a committee, individual, or organized group that communicates with a candidate committee could cross

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<sup>3</sup> Some commenters have expressed the opinion that it is a violation of their rights not to be able to coordinate with a candidate. Courts have held that this is not so, in part, because the CEP candidates have voluntarily chosen to not to accept such assistance. "[B]ecause a candidate may freely choose whether to accept public funds and the conditions thereon in lieu of unlimited private fundraising, and presumably will make that choice only if she believes that doing so will expand her powers of speech and association, she cannot complain that those conditions burden her rights. Nor can the candidate's supporters and any political party with which she is affiliated complain that the limitations resulting from the candidate's voluntary choice burden their own rights." *Corren v. Condos*, 2018 U.S. App. LEXIS 21120 at \*3 (2d Cir. July 31, 2018).

<sup>4</sup> *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 221-22 (2003); *Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 442, 465 (2001); *Buckley v. Valeo*, 424 U.S. 1, 47 (1976).



the line between making an independent expenditure and making a coordinated expenditure. General Statutes § 9-601c (b). The expenditures may not be made based upon information about a candidate's or a committee's plans, projects or needs gotten from the candidate, or their consultant or agent.

## ***II. Permissible Political Activity for Groups Spending A Little or A Lot***

### ***A. Grassroots Groups Spending Little or No Money***

#### **1. What communication may take place between candidates and grassroots groups planning to make endorsements or produce scorecards but not spend money to either publicize the endorsement or scorecards, or otherwise support the candidates of their choice?**

During the election season, many grassroots groups wish to make endorsements of candidates or produce scorecards of legislators' records on issues germane to the group's interests. Groups that do not make expenditures to do so may coordinate freely with the endorsed candidates. Such groups may communicate their endorsement to the campaign and then the candidate committees are free to bear all costs for the distribution of any endorsements in mailers or other communications paid for by the candidate committee.

#### **2. May the grassroots group use social media to communicate endorsements or other messages of support for candidates?**

Yes, but they are required to attribute the source of the communication, i.e. disclose who is responsible for the communication on its face. There is an exception to the definition of contribution that permits the use of free social media created by volunteers, such that it may be used to communicate endorsements or the results of scorecards to the general public, even if it were coordinated and within 90 days of a vote. General Statutes § 9-601a (b) (18).<sup>5</sup> This includes the use of email and personal email lists.

Although such communication would not be considered a contribution, it is still an expenditure, and so attribution must be used on such communications. General Statutes § 9-621. The law states, and the courts have long upheld, that there is no *de minimis* exception for attributions. *See Seymour v. Elections Enforcement Commission*, 255 Conn. 78, 762 A.2d 880 (2000) (single page press release that was faxed required to have an attribution); *see also Cassidy v. Lawson*, 3:02 CV 1688 (September 29, 2005), 2005 WL 2508593, 2005 U.S. Dist. LEXIS 23147. The Commission, in Advisory Opinion 2008-01 explained: “[U]se of the Internet to communicate with the public would be considered an expenditure subject to Connecticut’s campaign finance laws. *See, e.g., In the Matter of a Complaint by Frank DeJesus, Hartford*, State Elections Enforcement Commission, File No. 2006-193 (civil penalty imposed for failure to report expenditure related to purchase and payment of web hosting services for website that, at various times, contained mes-

<sup>5</sup> General Statutes § 9-601a (b) (18) provides:

As used in this chapter and chapter 157, “contribution” does not mean: . . . The value associated with the *de minimis* activity on behalf of a party committee, political committee, slate committee or candidate committee, including for activities including, but not limited to, (A) the creation of electronic or written communications or digital photos or video as part of an electronic file created on a voluntary basis without compensation, including, but not limited to, ***the creation and ongoing content development and delivery of social media on the Internet or telephone, including, but not limited to, the sending or receiving of electronic mail or messages*** . . . (emphasis added).

sages made for the purpose of influencing an election); *see also* FEC Advisory Opinion 1998-22 (reporting requirements apply to Connecticut individual's independent creation of a website, and costs associated with creating and maintaining that website).

Some commenters have asked for further guidance as to the reporting in campaign finance filings of expenditures related to Internet use and the language required in the attribution on electronic communications, especially when applied to volunteers using their personal electronics to create and develop social media communications.

For those coordinating with candidates, the Commission has long said that volunteers may use their own electronic devices such as computers and cell phones without triggering any disclosure on a campaign finance report for the volunteers or the candidate committee for which they are volunteering.<sup>6</sup> *See e.g.* 2018 Guide for Statewide Office and General Assembly Candidates Participating in the Citizens' Election Program, p. 42.

The law does require that the source of communications regarding elections be disclosed. As the Connecticut Supreme Court noted in *Seymour*, there are a number of important justifications for this requirement including the ability of a regulatory agency to enforce the law, and to know whether contribution limits and the rules (such as those of the CEP) are being followed. The United States Supreme Court has instructed that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

When a respondent has achieved partial, but substantial compliance with attribution requirements, the Commission has in the past concluded that no further action is required in the matter. *See e.g. In the Matter of a Complaint by Jennifer Day*, File No. 2010-136 (2011). Commenters stated that with respect to the attribution language used by volunteers who are uncompensated and are only creating and developing their own ongoing content over social media using their own cell phones and computers, the formal "paid for" and declarations of approved by or independence in the statute can be confusing. In such cases, the Commission would find substantial compliance where there is a clear indication in the email, post or other social media communication as to the name of the group responsible for the communication and the name and address of an agent who can be reached to answer any additional questions in the event a complaint is filed, or which the public can use to research the speaker behind the communication in order to evaluate the message.

### **3. May a grassroots group encourage supporters to work for the campaigns of candidates?**

To the extent that the group is not spending any money and the persons being steered to the campaign are volunteers, it would be permissible to encourage individuals to go and volunteer for a campaign. If a group of uncompensated volunteers were posting on the social media they create, develop, and maintain about the opportunity to volunteer while substantially complying with attribution requirements, then that would not raise issues. If the group intends to make any future expenditures

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<sup>6</sup> If, however, a volunteer pays for web-hosting or a domain name on behalf of a candidate, they would need to seek reimbursement from the candidate committee or, if the candidate is not participating in the CEP, it could simply be reported by the candidate committee as an in-kind contribution from the volunteer (subject to the aggregate contribution source and dollar limits to the recipient committee).

to benefit these candidates, however, see the discussion in Part II (B) (7) and (8) regarding similar activities by groups wishing to make independent expenditures.

**4. May a grassroots group encourage supporters to canvass for the campaigns of candidates, independently of those campaigns, and distribute that campaigns' literature?**

Volunteer supporters of a grassroots group that wish to coordinate with candidates rather than make independent expenditures for candidates may also volunteer for the candidate committee, and distribute literature paid for by the candidate committee. General Statutes §§ 9-601a (b) (4), 9-601b (b) (4). If the group intends to make any future expenditures to benefit these candidates, however, see the discussion in Part II (B) (7) and (8).

**5. May a grassroots group host phone-banking sessions out of any supporter's home, with the caveat that attendance is optional, and members use their own phones?**

To the extent that the group is not spending money, people are using their own personal phones and not making or incurring any additional phone charges and the activity takes place at a person's residence, this is permissible. General Statutes §§ 9-601a (b) (5), 9-601b (b) (6). The call list could be provided by the candidate or, if it is purchased by a supporter of the group, that individual would need to be reimbursed by the candidate committee.

To the extent that money is being spent to send out invitations or serve food and the group is working in coordination with the candidate committee (for example, using call lists provided by the campaign), there is an exception to the definitions of expenditure and contribution for the hosting of events at a residence. General Statutes §§ 9-601a (b) (5), 9-601b (b) (6). The owner of the residence may pay up to \$400 per event and the event may be co-hosted by another individual paying up to another \$400 for food, beverage and invitations. Receipts are provided to the candidate's treasurer and that treasurer reports the event.

**6. May a grassroots group encourage their supporters to host a fundraiser for a candidate committee?**

The exceptions for volunteer supporters' use of social media and the hosting of house parties, which can either be fundraisers or meet-and-greets, would allow for this. General Statutes §§ 9-601a (b) (5) & (18), 9-601b (b) (6). If supporters of a group chose to have an event for a candidate at one of the supporter's residences, and the statutory house party exemption rules were observed, then the event would be permissible. The event could be coordinated with the candidate, who could attend. The candidate committee could provide the mailing list for invitations, or the supporter could use their personal mailing list (e.g. a Christmas card list). General Statutes § 9-601b (d). Care must be taken to observe the spending limits for house parties and to provide the candidate's treasurer with the information that they will need to report.

**7. May a group host a fundraiser for a candidate committee?**

No, not if the group makes expenditures from its treasury to do so. Groups may not make contributions to committees without first forming a political committee.

If the group is able to hold an event without spending any money, for example in a free room at the local library available to anyone who signs up and with advertising by volunteers over social media they created then, to the extent that the

group is not making any expenditures that could be coordinated contributions, it may be possible.

Individual supporters of the group may, however, choose to have a house party for the candidate, and that house party may even be for the purpose of fundraising. (See the above questions & answers.)

#### **8. May a group have a candidate forum?**

It depends on when it is held, how it is organized and what costs are involved. Because the organization and holding of a candidate forum usually involves costs, the issue is whether the costs fall within the definition of *expenditure* under campaign finance law. Because the participation of candidates in a forum held by an outside group inevitably requires coordination as well, if any of the spending involved falls under the definition of “an expenditure,” as further outlined below, then it would be a coordinated expenditure (a contribution) and would be impermissible.

If the event is held in someone’s home or in a free public space, as addressed above, it might not involve any expenditures.

The relevant applicable definition of expenditure is “any payment . . . or anything of value . . . made to promote the success or defeat of any candidate . . . .” Using this definition, if the group having the multi-candidate debate that does not promote one candidate over another, then, generally speaking, it would not be considered an expenditure to hold such an event. Much would depend on the surrounding facts, such as whether all candidates were included or certain ones excluded, and the basis for such determinations; whether the format was impartial to all participants; whether it was promoted equally for all candidates; who else appeared and participated in the forum, etc. All of these factors would be germane to determining whether the forum promoted the success or defeat of any or all the involved candidates.

During the ninety days before an election or primary, the definition of expenditure also includes “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.” General Statutes § 9-601b (a) (2) (emphasis added). Because advertising for candidate debates will often include communications that clearly identify the participating candidates, then, if they occur within the ninety days before a primary or election and via certain types of media, those communications are automatically considered to be expenditures. Unless an exception applies,<sup>7</sup> this would constitute an impermissible in-kind contribution even if it does not promote the success or defeat of any of the candidates.<sup>8</sup>

It is also important to remember that organized groups cannot coordinate with any committees, including town committees or political committees, without the

<sup>7</sup> It should be noted that such a coordinated expenditure for a communication would **not** be considered an impermissible contribution if the communication was made using volunteer created social media or email. General Statutes § 9-601a (b) (18). Similarly, if the communication only went to a restricted class of recipients such as members for which there is an exception in the law, the communication would **not** be considered an impermissible contribution. General Statutes § 9-601a (b) (2).

<sup>8</sup> SEEC has proposed in past legislative sessions an exception to the “clearly identified candidate” prong for certain communications such as advertisements for debates, but it has yet to pass into law. SEEC will continue to propose this legislative change.

respective expenditures becoming contributions to those committees, and groups cannot make such contributions.<sup>9</sup> For example, if an outside group were to attempt to “partner” with a town committee to host a debate by paying for half the cost of the forum rental charge, any costs paid for by the outside group would be considered an impermissible contribution to the town committee.

**9. May a group talk to campaign staff or volunteers or the candidate about what resources they need?**

This would be considered coordination which is acceptable for groups who are not making expenditures or whose activities and spending fall within exceptions to the definitions of contribution and expenditure, such as those detailed above. See General Statutes § 9-601c (b) (7).

***B. Organized Groups Making or Planning to Make Independent Expenditures***

**1. Are there any limits as to the amounts an incidental spender may spend independently of a candidate’s campaign?**

No. As mentioned above, an organized group may make *unlimited independent expenditures* on behalf of the candidacy for nomination or election of any individual or any party. General Statutes § 9-601d. Certain filing requirements apply, however, if the group spends or incurs over \$1,000. See Advisory Opinion 2014-02. Certain attribution requirements applies as well. See General Statutes § 9-621 (h).

**2. Are there any possible fines or penalties for violations of the rules governing independent expenditures?**

Yes. Violations of Connecticut’s statutes governing independent expenditures carry both potential civil and criminal sanctions. Whether a violation is found and a determination of the amount for any penalty would be based on the facts and circumstances of each case. The Commission, in assessing a civil penalty, would consider the amount spent and whether such violation was intentional or inadvertent as well as the person’s good faith efforts to comply. General Statutes §§ 9-7b, 9-601d (i) & 9-623; Regs., Conn. State Agencies § 9-7b-48.

**3. May a group solicit funds for the express purpose of making independent expenditures to support Connecticut candidates?**

Yes, but if an organized group solicits or receives funds in excess of \$1,000 for the express purpose of making independent expenditures to support Connecticut candidates, then that group is required to form a political committee. General Statutes § 9-602 (a); Declaratory Ruling 2013-02. If that group only intends to make independent expenditures then it has the option of forming an independent expenditure political committee. An independent expenditure political committee is formed by filing a registration statement with the Commission, and is then required to file periodic disclosure reports, as well as incidental reports. If the group also wishes to make contributions to candidates or spend in coordination with them, it would need to form a traditional political committee, which is permitted to make contributions within certain limits to non-CEP candidates and other committees, but may only accept contributions in limited amounts from certain sources. These requirements are discussed in detail in Advisory Opinion 2014-02.

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<sup>9</sup> Only committees and individuals may make contributions to other committees, with the exception of referendum and independent expenditure committees. A group could form a political committee if they wanted to make contributions.

If an organized group is planning to make independent expenditures for a candidate, the group should ensure that those activities can be performed wholly and totally without any coordination with the candidate, their committee or agents. The group should review carefully the scenarios in the rebuttable presumptions found in the definition of “independent expenditure” (General Statutes § 9-601c) and avoid them, and take any other necessary actions to ensure that there is no coordination.

**4. Is there a certain point in time at which an organized group can sever all communications with a candidate (or potential candidate) and thereby guarantee that expenditures will be found to be independent?**

No. The timing of any communications with a candidate is only one factor in the analysis of whether an expenditure is independent or coordinated. The determination of whether an expenditure is truly independent relies on all of the facts in a given situation.

In order to *not* be considered a contribution under the law, an expenditure must be wholly and totally independent of a candidate or committee. In the simplest scenario, therefore, an organized group making an independent expenditure for a candidate will have never had any communication with the benefitting candidate or committee or agent thereof.

The Commission recognizes, however, that this is not always the case but that an organized group is capable of making an independent expenditure for a candidate despite prior, limited communication between the two parties. It would not result in a finding of coordination if an incidental spender and a candidate engaged in discussions solely grounded in that spender’s position on a legislative or policy matter, including urging the candidate or committee to adopt that spender’s position, so long as there is no discussion between the spender and the candidate regarding the candidate or spender’s campaign advertising, messaging, communications with voters, strategy, polling, allocation of resources, fundraising, or campaign activities.

The important fact is that a communication between the candidate and the spender, no matter when it occurs, does not establish consent or coordination or serve as consultation between the parties regarding the expenditure or campaign strategy generally. Determinations whether an expenditure is coordinated or independent are fact-specific and often involve the totality of circumstances.

**5. What communication may take place between candidates and groups planning to make endorsements or produce scorecards and also spend money to either publicize the endorsement or scorecards, or otherwise support the candidates of their choice?**

**a. Interviews and Questionnaires**

If a group plans to make expenditures and also wants to communicate directly with the candidate to gather information, then questionnaires and interviews, if properly crafted and executed, are one such way information may be gathered from a candidate without the communication being considered coordination.

Questionnaires and interviews should be confined to issues and policies and should not veer into campaign strategy. They should not include questions aimed at determining campaign plans, projects and/or needs, because if expenditures are later made by the group based on the candidate’s own plans, it would likely be deemed a contribution (i.e. a coordinated expenditure). If the content of a questionnaire includes such questions about strategy, for example, that would be evidence

of coordination or cooperation with the candidate should the organized group attempt to do an independent expenditure at a later point in time.

Similarly, if the conversation during an interview evolved to include discussion of the group's plans regarding the content, intended audience, timing, location and/or mode and frequency of communications regarding the endorsement, then later expenditures by the group implementing those plans would likely fall within the definition of a coordinated expenditure and therefore constitute an impermissible contribution to the candidate.

Groups that will be making independent expenditures should therefore exercise caution when drafting questionnaires and interviewing candidates to gather background information. Best practices include (1) careful review of questionnaire content in light of the definition of independent expenditure; (2) beginning interviews by sharing with candidates the definitions of independent expenditure and contribution; (3) clearly expressing the intent at the beginning of an interview to avoid any conversation that would fall within those definitions; (4) training interviewers as to questions to be avoided; (5) conducting interviews according to a predetermined set of questions and not deviating from it; and/or (6) *not* asking the candidate or committee if or how they would like the group to possibly later spend funds to benefit the candidate or committee.

Some groups publish scorecards that rate candidates or legislators based on their voting records and legislative initiatives, distilling this information down to scores or other explanatory formats to evaluate such candidates or legislators in regard to their performance on issues of concern to the groups. References to specific politicians may be limited to their score or to a reporting, in the sections discussing particular bills, of the role they played with respect to that particular bill in the relevant legislative session.

To the extent the scores do not involve communication with the candidate or committee or agent thereof, there is little danger of published scorecards resulting in findings of coordination. To the extent that communication is required to determine a score, outside groups should follow the advice set forth above regarding background questionnaires and interviews to gather information if they are planning to spend money and distribute them via certain media within ninety days of the primary or election, as discussed further below.

**b. May group notify candidates of decision to endorse?**

Yes, an endorsing group may contact candidates to inform them that an endorsement has been made. As noted previously, care should be taken not to cross the line into coordinating campaign activities with an endorsee if the group plans to make expenditures on behalf of the candidate, since candidates cannot receive contributions from organized groups. For example, alerting candidates of the timing and location of a press conference so that they may attend or including them in the drafting of a press release to announce the endorsements could result in a determination that coordination had occurred. However, the endorsing group is free to use publicly available statements about a candidate's positions on the subjects that they are interested in as quotes in the announcement.

**c. May candidates use an endorsement or scorecard rating in their materials?**

Yes, participating candidates, like any other candidate, may use a quote from a group's endorsement in their campaign material. The endorsement itself, as well as

the use of language from a press release supporting that endorsement, absent any other financial, logistical, or administrative support, would not be a campaign contribution. Again, caution should be exercised with respect to coordination. For example, a candidate would have received an impermissible in-kind contribution if he or she distributed a glossy flyer designed or published by the incidental spender in order to announce its endorsements to the general public.

#### **6. In what ways may groups communicate their endorsements and scorecards with voters?**

Generally speaking, spending money to announce an endorsement or distribute the contents of a scorecard would be an expenditure depending on the content, the timing and distribution method of the communication. Under Public Act 13-180, the definition of expenditure includes communications made within ninety days of the primary or election that refer to one or more clearly identified candidates, and are 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 are sent by mail. General Statutes §§ 9-601b (a) (2) and 9-601b (b) (7). This would cover most distribution methods for endorsements and scorecards, making them expenditures because they clearly identify candidates, if they are distributed to the general public within ninety days before the election.

Since these communications are generally expenditures (unless they fall within one of the exceptions to the definition of expenditure), the relevant question then would be whether the expenditure for the distributions of an endorsement or scorecard is independent (and thus permissible) or is coordinated (and impermissible unless it falls within one of the exceptions to the definition of contribution).<sup>10</sup>

#### **a. Membership Communications**

One exception to the definitions of expenditure and contribution is for membership communications. Specifically, General Statutes § 9-601b (b) (2) excludes from the definition of ‘‘expenditure’’ communications ‘‘made by any corporation, organization or association to its members, owners, stockholders, executive or administrative

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<sup>10</sup> In response to a commenter’s request regarding pre-recorded video interviews distributed on social media, the Commission provides clarification: Money spent on a video promoting, supporting, attacking or opposing the election of a candidate, or clearly identifying the candidate over certain media during ninety days before the vote may be considered a coordinated expenditure even if it addresses policy rather than saying ‘‘Vote for Candidate A.’’ The United States Supreme Court addressed this possibility in *Citizens United*.

Making an expenditure, independent or coordinated, involves far more than simply the last step of posting a video on social media. Communications must be created, and this may involve fundraising (acquiring the funds to be spent), budgeting, strategizing, design, planning, media acquisition, development, recording equipment and filming costs, distribution and any number of additional prior acts. To the extent that any of these activities are done with the intention that the result will be a communication that fits the definition of an independent expenditure, any attendant expenditures for these activities must be themselves independent expenditures, and cannot be coordinated. *See* SEEC Declaratory Ruling 2014-02; Declaratory Ruling 2014-01.

The fact that a candidate and spender have communicated about policy in the past will not alone make an expenditure coordinated, and just because a spender has discussed policy with a candidate does not necessarily make later expenditures independent.



personnel, or their families.”<sup>11</sup> See also General Statutes § 9-601a (b) (2) (“ ‘[C]ontribution’ does not mean . . . [a]ny communication made by a corporation, organization or association to its *members*, owners, stockholders, executive or administrative personnel, or their families . . .”).

For organized groups that have members, this exception for internal communication allows the group to communicate with its membership without that communication resulting in a contribution or expenditure. It even covers communications expressly advocating the election or defeat of a particular candidate, so long as the communication remains limited to the restricted class. It covers communications that may have been coordinated with the candidate or committee, again, so long as the communication remains limited to the restricted class.

Membership organizations are groups composed of members. A group with members might, for example, be a trade association, a cooperative, a corporation without capital stock or a local, national or international labor organization.<sup>12</sup> The Commission has adopted the definition of “member” as enunciated first by the Federal Election Commission (“FEC”). See *Complaint of Karen Murphy, Stamford*, File No. 2009-141 (finding a soccer league to be eligible for the membership exception). That definition specifies “members” to include:

[A]ll persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization’s invitation to become a member, and either:

- (1) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
- (2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or
- (3) Have a significant organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization’s highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization’s annual budget; or the right to participate directly in similar aspects of the organization’s governance.

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<sup>11</sup> Like organizations with members, corporations also have a restricted class to which they may communicate without being considered an expenditure or contribution. Corporations are not the focus of this declaratory ruling, however, and thus will not be specifically addressed. Anyone seeking guidance on the restricted class of corporations may call and speak with Commission staff.

<sup>12</sup> Such groups need to be composed of members who have the authority to administer the organization according to the organization’s bylaws; have bylaws stating the qualifications for membership; make its bylaws available to its members; expressly solicit persons to become members; expressly acknowledge new members by, for example, sending a membership card or including the member’s name on a newsletter list; and cannot be raising money to make expenditures in Connecticut elections. See e.g. 11 C.F.R. 114.1 (e) (1); see FEC Advisory Opinions 2008-21 (CME Group, Inc.) and 2007-16 (American Kennel Club).

11 C.F.R. 100.134 (f).

This definition, which the Commission and its staff have applied in the past to organized groups, creates a general guideline for determining whether a group's membership structure satisfies the standards for a membership organization or association that can utilize the membership exceptions to the definitions of contribution and expenditure included in Connecticut's campaign finance laws. *See* General Statutes §§ 9-601a (b) (2), 9-601b (b) (2). The definition also serves to demonstrate what would *not* be considered a membership organization or association, for example, a loosely associated group of individuals, such as a Facebook group, or listserv, or any other email list subscription not associated with a group that meets some or all of the above criteria.

The breadth of the membership communication exception affords these types of groups great latitude in communicating with their members. A membership organization or association may rely on this exception to communicate in-house to the restricted group regarding political subjects, and even encourage them to support, volunteer on behalf of, or vote for or against selected candidates, regardless of prior coordination with that candidate, because the costs associated with the communications would not be considered expenditures. Because this is an exception to both contribution and expenditure, there are no attribution requirements; however, the Commission recommends making sure that the source of the communication is clear so as to not create confusion.

The membership exception allows the group to coordinate with candidates for the limited purpose of the membership communication, but this carries with it some risks and liabilities. One risk is that if the coordinated communication goes beyond the restricted class of members and also goes to non-members, then it becomes an impermissible expenditure, and an impermissible in-kind contribution to the candidate. For example, if an organized group chooses to create an interview video of a candidate regarding policy issues to be distributed to its members within 90 days of a vote or invite a candidate to attend a membership organization's meeting to speak directly to its members, but the general public also receives the distribution or is invited, the cost of the event will be considered a coordinated expenditure, and thus a contribution, which candidates may not accept. Once the communication extends beyond the restricted class, the associated cost of the entire communication would be considered an expenditure for the purposes of the campaign finance laws. *See* Advisory Opinion 2014-02.

#### **b. Press Releases on Websites and Social Media**

When organized groups are acting independently of candidates, they are not required to file campaign finance reports until they reach over \$1,000 in aggregate expenditures. At that time, fees paid for web-hosting services, payments to increase circulation of a post or increase the number of apparent followers, advertising costs and content development costs, as well as any other associated costs, would be included.

Many groups are in the practice of issuing press releases and have inquired as to whether they may announce their candidate endorsements through a press release. The Commission has long held and will continue to hold that limited communication of endorsements by a group beyond its membership (if applicable) to the public

through its normal press release channels will not be the subject of civil action, absent any other aggravating factors.<sup>13</sup>

For groups that customarily post their press releases through established social media platforms, the Commission further applies this reasoning to a one-time share of the press release through each such platform, extending the *de minimis* exception to this activity. See General Statutes § 9-601a (b) (18). For example, if a group has a Twitter account and customarily posts a press release to its website on a page dedicated to press releases and then shares a link to those press releases on its Twitter account, doing so for a press release concerning the endorsement of a candidate, then it will be considered *de minimis* even if the posting is done by a paid employee. The communication is still required to have a substantially compliant attribution.

#### **7. May a group pay for supporters or members to canvass or phone-bank for the campaigns of candidates independently of those campaigns?**

An incidental spender may encourage, or pay, supporters or members to canvass for the campaigns of candidates, independently of those campaigns. The spender may distribute literature that it designs and pays for. The organized group may also pay for phone-banking.

If, however, an expenditure is made by the group for the distribution of the campaign's own material, it is presumed to be an impermissible coordinated expenditure. General Statutes § 9-601c (b) (2). Similarly, if an expenditure is made for phone-banking and the phone-banking is done with a call-list provided by the candidate, then it would be an impermissible coordinated expenditure.

#### **8. May a group encourage supporters or members to work for the campaigns of candidates?**

An incidental spender may encourage supporters or members to work for a campaign, however, a group may not pay for campaign workers. A member cannot

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<sup>13</sup> See Advisory Opinion 2008-01: *Proposed Political Activity of Nonprofit Association* (withdrawn by Commission on January 26, 2011, following *Citizens United* and Public Act 10-187) (citing 11 CFR 114.4 (c) (6) (a) Federal Election Commission regulation allowing a corporation or organization that routinely posts press releases on its website to post a press release announcing its endorsement in the same manner, if the press release and notice of the press conference are distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing non-political press releases or holding press conferences for other purposes, and if the public announcement of the endorsement is not coordinated with the candidate, the candidate's agents or the candidate's authorized committees) and Minutes of the February 13, 2002 Meeting of the Maine Commission on Governmental Ethics and Election Practices (public financing jurisdiction which adopted a policy permitting a press release announcing a candidate endorsement available to the general public on an Association's website, provided that four conditions were met: 1) the association ordinarily makes press releases available to the general public on its website; 2) the press release is limited to an announcement of the organization's endorsement or pending endorsement and a statement of the reasons therefore; 3) the press release is made available in the same manner as other press releases made available on the website; and 4) the costs of making the press release available on the website are *de minimis*).

“volunteer” for a campaign while being paid by the organized group—that would be considered a coordinated expenditure (an in-kind contribution).<sup>14</sup>

When there are expenditures made to steer supporters or members to a campaign and they do not fall within the exceptions for membership communications or *de minimis* social media use by volunteers, it is important that the effort is independent of the candidate. For example, if a mailer was sent by post to inform the group’s supporters about a specific campaign event and request volunteers for that event, that might raise questions as to where the group got the information that volunteers were needed. If a complaint were filed against the group alleging that an impermissible coordinated expenditure had been made, there would be an investigation into whether there was coordination (clearly there had been an expenditure, i.e. for the cost of printing the mailers, for postage). There is not a presumption of coordination under these facts, but questions would be raised about how the group knew of the event, whether the campaign asked for this help, etc.

An additional problem may be created if volunteers or staff work for both the organized group and a candidate’s campaign and the group later makes expenditures. Not only does it create an avenue for communication and coordination between the group and the committee, but if the group makes subsequent expenditures to support the candidate, those expenditures may be presumed to be coordinated. General Statutes § 9-601c (b) (5), (7) and (9). For example, if a group sent volunteers to canvass for the campaign, and the campaign gave them a list of addresses and campaign materials to distribute, the volunteers—who are also supporters or members of the organized group—would then be coordinating with the campaign. Their knowledge gained and the use of that knowledge by the group would be a part of the totality of circumstances considered in analyzing whether or not there was coordination if the group subsequently made an expenditure in support of the candidate.<sup>15</sup>

Adopted this 22<sup>nd</sup> day of August, 2018 at Hartford, Connecticut by a vote of the Commission.

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Anthony J. Castagno, *Chairman*

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<sup>14</sup> If a volunteer is using paid vacation time to work for a campaign of their choice that would not trigger a finding that the employer had made an in-kind contribution to the candidate committee. If, however, the employer were to require the worker to volunteer during their vacation or require the worker to provide services to the campaigns of certain candidates or parties then that would raise issues as to whether there had been a coordinated contribution by the employer to the candidate committee.

<sup>15</sup> Some commenters have requested that the Commission address the weighing and operation of the rebuttable presumptions and the use of firewalls. Because the scope of this ruling is already quite broad, the Commission declines at this time to expand its discussion to further address these topics in detail. The Commission does note that in order to be used to rebut a Section 9-601c (b) presumption, a firewall would have to be proven to have been effectively designed and implemented to have actually prohibited the flow of information between the candidate and their agents and the spender, including employees consultants or any other individuals providing services to the spender.

### **Appendix A**

**Sec. 9-601a. (Formerly Sec. 9-333b). “Contribution” defined.** (a) As used in this chapter and chapter 157, “contribution” means:

(1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election 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) 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 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; or

(5) Funds received by a committee which are transferred from another committee or other source for any such purpose.

(b) As used in this chapter and chapter 157, “contribution” does not mean:

(1) A loan of money made in the ordinary course of business by a national or state bank;

(2) Any communication made by a corporation, organization or association solely to its members, owners, stockholders, executive or administrative personnel, or their families;

(3) Nonpartisan voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families;

(4) Uncompensated services provided by individuals volunteering their time on behalf of a party committee, political committee, slate committee or candidate committee, including any services provided for the benefit of nonparticipating and participating candidates under the Citizens’ Election Program and any unreimbursed travel expenses made by an individual who volunteers the individual’s personal services to any such committee. For purposes of this subdivision, an individual is a volunteer if such individual is not receiving compensation for such services regardless of whether such individual received compensation in the past or may receive compensation for similar services that may be performed in the future;

(5) The use of real or personal property, a portion or all of the cost of invitations and the cost of food or beverages, voluntarily provided by an individual to a candidate, including a nonparticipating or participating candidate under the Citizens’ Election Program, or to a party, political or slate committee, in rendering voluntary personal services at the individual’s residential premises or a community room in the individual’s residence facility, to the extent that the cumulative value of the invitations, food or beverages provided by an individual on behalf of any candidate or committee does not exceed four hundred dollars with respect to any single event or does not exceed eight hundred dollars for any such event hosted by two or more individuals, provided at least one such individual owns or resides at the residential premises, and further provided the cumulative value of the invitations, food or beverages provided by an individual on behalf of any such candidate or committee

does not exceed eight hundred dollars with respect to a calendar year or single election, as the case may be;

(6) The sale of food or beverage for use by a party, political, slate or candidate committee, including those for a participating or nonparticipating candidate, at a discount, if the charge is not less than the cost to the vendor, to the extent that the cumulative value of the discount given to or on behalf of any single candidate committee does not exceed four hundred dollars with respect to any single primary or election, or to or on behalf of any party, political or slate committee, does not exceed six hundred dollars in a calendar year;

(7) The display of a lawn sign by a human being or on real property;

(8) The payment, by a party committee or slate committee of the costs of preparation, display, mailing or other distribution incurred by the committee or individual with respect to any printed slate card, sample ballot or other printed list containing the names of three or more candidates;

(9) The donation of any item of personal property by an individual to a committee for a fund-raising affair, including a tag sale or auction, or the purchase by an individual of any such item at such an affair, to the extent that the cumulative value donated or purchased does not exceed one hundred dollars;

(10) (A) The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair sponsored by the candidate committee of a candidate for an office of a municipality, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single such candidate or the candidate's committee with respect to any single election campaign if the purchaser is a business entity or fifty dollars for purchases by any other person;

(B) The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair or on signs at a fund-raising affair sponsored by a party committee or a political committee, other than an exploratory committee, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single party committee or a political committee, other than an exploratory committee, in any calendar year if the purchaser is a business entity or fifty dollars for purchases by any other person. Notwithstanding the provisions of this subparagraph, the following may not purchase advertising space in a program for a fund-raising affair or on signs at a fund-raising affair sponsored by a party committee or a political committee, other than an exploratory committee: (i) A communicator lobbyist, (ii) a member of the immediate family of a communicator lobbyist, (iii) a state contractor, (iv) a prospective state contractor, or (v) a principal of a state contractor or prospective state contractor. As used in this subparagraph, "state contractor", "prospective state contractor" and "principal of a state contractor or prospective state contractor" have the same meanings as provided in subsection (f) of section 9-612;

(11) The payment of money by a candidate to the candidate's candidate committee, provided the committee is for a nonparticipating candidate;

(12) The donation of goods or services by a business entity to a committee for a fund-raising affair, including a tag sale or auction, to the extent that the cumulative value donated does not exceed two hundred dollars;

(13) The advance of a security deposit by an individual to a telephone company, as defined in section 16-1, for telecommunications service for a committee or to

another utility company, such as an electric distribution company, provided the security deposit is refunded to the individual;

(14) The provision of facilities, equipment, technical and managerial support, and broadcast time by a community antenna television company, as defined in section 16-1, for community access programming pursuant to section 16-331a, unless (A) the major purpose of providing such facilities, equipment, support and time is to influence the nomination or election of a candidate, or (B) such facilities, equipment, support and time are provided on behalf of a political party;

(15) The sale of food or beverage by a town committee to an individual at a town fair, county fair, local festival or similar mass gathering held within the state, to the extent that the cumulative payment made by any one individual for such items does not exceed fifty dollars;

(16) An organization expenditure by a party committee, legislative caucus committee or legislative leadership committee;

(17) The donation of food or beverage by an individual for consumption at a slate, candidate, political committee or party committee meeting, event or activity that is not a fund-raising affair to the extent that the cumulative value of the food or beverages donated by an individual for a single meeting or event does not exceed fifty dollars;

(18) The value associated with the de minimis activity on behalf of a party committee, political committee, slate committee or candidate committee, including for activities including, but not limited to, (A) the creation of electronic or written communications or digital photos or video as part of an electronic file created on a voluntary basis without compensation, including, but not limited to, the creation and ongoing content development and delivery of social media on the Internet or telephone, including, but not limited to, the sending or receiving of electronic mail or messages, (B) the posting or display of a candidate's name or group of candidates' names at a town fair, county fair, local festival or similar mass gathering by a party committee, (C) the use of personal property or a service that is customarily attendant to the occupancy of a residential dwelling, or the donation of an item or items of personal property that are customarily used for campaign purposes, by an individual, to a candidate committee, provided the cumulative fair market value of such use of personal property or service or items of personal property does not exceed one hundred dollars in the aggregate for any single election or calendar year, as the case may be;

(19) The use of offices, telephones, computers and similar equipment provided by a party committee, legislative caucus committee or legislative leadership committee that serve as headquarters for or are used by such party committee, legislative caucus committee or legislative leadership committee;

(20) A communication, as described in subdivision (7) of subsection (b) of section 9-601b;

(21) An independent expenditure, as defined in section 9-601c;

(22) A communication containing an endorsement on behalf of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, from a candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, provided the candidate (A) making the endorsement

is unopposed at the time of the communication, and (B) being endorsed paid for such communication;

(23) A communication that is sent by mail to addresses in the district for which a candidate being endorsed by another candidate pursuant to this subdivision is seeking nomination or election to the office of state senator or state representative, containing an endorsement on behalf of such candidate for such nomination or election from a candidate for the office of state senator or state representative, provided the candidate (A) making the endorsement is not seeking election to the office of state senator or state representative for a district that contains any geographical area shared by the district for the office to which the endorsed candidate is seeking nomination or election, and (B) being endorsed paid for such communication; or

(24) Campaign training events provided to multiple individuals by a legislative caucus committee and any associated materials, provided the cumulative value of such events and materials does not exceed six thousand dollars in the aggregate for a calendar year.

(c) The provisions of subdivision (5) of subsection (b) of this section concerning the cost of invitations shall not be construed as preventing the candidate or the party, political or slate committee from paying all or any portion of such costs, in which case such amount paid by such candidate or committee shall not count toward the calculation of the cumulative value of the invitations, food or beverages provided pursuant to said subdivision (5).

**General Statutes § 9-601b. “Expenditure” defined:**

(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; or

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

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

(1) A loan of money, made in the ordinary course of business, by a state or national bank;

(2) A communication made by any corporation, organization or association solely to its members, owners, stockholders, executive or administrative personnel, or their families;

(3) Nonpartisan voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families;

(4) Uncompensated services provided by individuals volunteering their time on behalf of a party committee, political committee, slate committee or candidate committee, including any services provided for the benefit of nonparticipating and



participating candidates under the Citizens' Election Program and any unreimbursed travel expenses made by an individual who volunteers the individual's personal services to any such committee. For purposes of this subdivision, an individual is a volunteer if such individual is not receiving compensation for such services regardless of whether such individual received compensation in the past or may receive compensation for similar services that may be performed in the future;

(5) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate;

(6) The use of real or personal property, a portion or all of the cost of invitations and the cost of food or beverages, voluntarily provided by an individual to a candidate, including a nonparticipating or participating candidate under the Citizens' Election Program, or to a party, political or slate committee, in rendering voluntary personal services at the individual's residential premises or a community room in the individual's residence facility, to the extent that the cumulative value of the invitations, food or beverages provided by an individual on behalf of any candidate or committee does not exceed four hundred dollars with respect to any single event or does not exceed eight hundred dollars for any such event hosted by two or more individuals, provided at least one such individual owns or resides at the residential premises, and further provided the cumulative value of the invitations, food or beverages provided by an individual on behalf of any such candidate or committee does not exceed eight hundred dollars with respect to a calendar year or single election, as the case may be;

(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, that is made for the purpose of influencing any legislative or administrative action, as defined in section 1-91, or executive action, or (B) during a legislative session for the purpose of influencing legislative action;

(8) An organization expenditure by a party committee, legislative caucus committee or legislative leadership committee;

(9) 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;

(10) A communication containing an endorsement on behalf of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, from a candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, shall not be an expenditure attributable to the endorsing candidate, if the candidate making the endorsement is unopposed at the time of the communication;

(11) A communication that is sent by mail to addresses in the district for which a candidate being endorsed by another candidate pursuant to the provisions of this subdivision is seeking nomination or election to the office of state senator or state representative, containing an endorsement on behalf of such candidate for such nomination or election, from a candidate for the office of state senator or state representative, shall not be an expenditure attributable to the endorsing candidate,

if the candidate making the endorsement is not seeking election to the office of state senator or state representative for a district that contains any geographical area shared by the district for the office to which the endorsed candidate is seeking nomination or election;

(12) Campaign training events provided to multiple individuals by a legislative caucus committee and any associated materials, provided the cumulative value of such events and materials does not exceed six thousand dollars in the aggregate for a calendar year;

(13) A lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended;

(14) The use of offices, telephones, computers and similar equipment provided by a party committee, legislative caucus committee or legislative leadership committee that serve as headquarters for or are used by such party committee, legislative caucus committee or legislative leadership committee; or

(15) An expense or expenses incurred by a human being acting alone in an amount that is two hundred dollars or less, in the aggregate, that benefits a candidate for a single election.

(c) “Expense incurred but not paid” means any receipt of goods or services for which payment is required but not made or a written contract, promise or agreement to make an expenditure.

(d) The provisions of subdivision (6) of subsection (b) of this section concerning the cost of invitations shall not be construed as preventing the candidate or the party, political or slate committee from paying all or any portion of such costs, in which case such amount paid by such candidate or committee shall not count toward the calculation of the cumulative value of the invitations, food or beverages provided pursuant to said subdivision (6).

**General Statutes § 9-601c - “Independent expenditure” defined:**

(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, 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 committee, political committee or party committee;

(5) An expenditure made by a person or an entity on or after January first in the year of an election in which a candidate is seeking public office that benefits such candidate when such person or entity has hired an individual as an employee or consultant and such individual was an employee of or consultant to such candidate's candidate committee or such candidate's opponent's candidate committee during any part of the eighteen-month period preceding such expenditure;

(6) An expenditure made by a person for fundraising activities (A) 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 or to engage a campaign-related vendor, to be used

to promote or oppose a candidate's election to office if the provider of such services is or has provided consultant or creative services to such candidate, such candidate's candidate committee or an agent of such candidate committee, or to any opposing candidate's candidate committee or an agent of such candidate committee after January first of the year in which the expenditure occurs. 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. For purposes of this subdivision, campaign-related vendor includes, but is not limited to, a vendor that provides the following services: Polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking.

(c) When the State Elections Enforcement Commission evaluates an expenditure to determine whether an expenditure by entity is an independent expenditure, the following shall not be presumed to constitute evidence of consent, coordination or consultation within the meaning of subsection (a) of this section: (1) Participation by a candidate or an agent of the candidate in an event sponsored by the entity, unless such event promotes the success of the candidate's candidacy or the defeat of the candidate's opponent, or unless the event is during the period that is forty-five days prior to the primary for which the candidate is seeking nomination for election or election to office; (2) membership of the candidate or agent of the candidate in the entity, unless the candidate or agent of the candidate holds an executive or policymaking position within the entity after the candidate becomes a candidate; or (3) financial support for, or solicitation or fundraising on behalf of the entity by a candidate or an agent of the candidate, unless the entity has made or obligated to make independent expenditures in support of such candidate in the election or primary for which the candidate is a candidate.

(d) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, the commission shall consider, as an effective rebuttal to the presumptions provided in subsection (b) of this section, the establishment by the person making the expenditure of a firewall policy designed and implemented to prohibit the flow of information between (1) employees, consultants or other individuals providing services to the person paying for the expenditure, and (2) the candidate or agents of the candidate.

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### **Connecticut Higher Education Supplemental Loan Authority**

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#### **Notice of Intent to Amend CHESLA Loan Program Manual**

In accordance with the provisions of Connecticut General Statutes § 1-121, notice is hereby given that the Connecticut Higher Education Supplemental Loan Authority ("CHESLA"), pursuant to Connecticut General Statutes § 10a-224(f)(6), intends to amend the CHESLA Loan Program Manual ("Manual") to: (i) add the following definition to Section B: "'Eligible Non-U.S. Citizen' means an individual that would be an eligible noncitizen for purposes of the U.S. Department of Education Direct Loan Program"; (ii) add the phrase "must be a U.S. citizen or an Eligible Non-U.S. Citizen" to the first sentence of Section D. 2.; and (iii) add the following subsection to Section E. 1.: "j. Review and determine that the Applicant and any Co-Applicant, is a U.S. citizen or Eligible Non-U.S. Citizen".

Such amendments shall become effective 30 days after notice thereof has been published in the Connecticut Law Journal, unless the CHESLA Board of Directors

(“Board”) determines that based on comments received from members of the public, after such publication, that it would be desirable or appropriate to defer such effectiveness so that the Board may reconsider the proposed amendments in light of such comments.

All written comments, questions, and concerns regarding the proposed amendments may be submitted within 30 days of the publication of this notice in the Connecticut Law Journal to Jeanette W. Weldon, Executive Director, Connecticut Higher Education Supplemental Loan Authority, 10 Columbus Boulevard, 7<sup>th</sup> Floor, Hartford, CT 06106 or via email at [jweldon@chesla.org](mailto:jweldon@chesla.org)

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