

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Keith Yagaloff, Broad Brook

File No. 2022-071

AGREEMENT CONTAINING A CONSENT ORDER

Respondent, Jason Bowsza, First Selectmen of East Windsor and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

ALLEGATIONS

1. The Complainant in this matter alleges in part that the Respondent violated General Statutes § 9-369b by using a town paid, subscription-based notification system to improperly communicate to residents concerning a November 8, 2022 referendum regarding funding for the expansion of Scout Hall, a youth facility that was proposed to be renovated and expanded to include a senior/recreation center.
2. The Complaint also alleged four other potential violations of General Statutes § 9-369b based on materials posted by the Respondent to the Town's website, on social media, and in a regularly published newsletter, the Five Village Voice. After investigation it was determined that these allegations were not in violation of § 9-369b and will be dismissed.

LAW

3. General Statutes § 9-369b provides in relevant part:

(a)(1)(A) Except as provided in subdivision (2) of this subsection, any municipality may, by vote of its legislative body, authorize the preparation, printing and dissemination of concise explanatory texts or other printed material with respect to local proposals or questions approved for submission to the electors of a municipality at a referendum. For the purposes of this section, in a municipality that has a town meeting as its legislative body, the board of selectmen shall be deemed to be the legislative body of such municipality...

(4) Except as specifically authorized in this section, no expenditure of state or municipal funds shall be made to influence any person to vote for approval or disapproval of any such proposal or question or to otherwise influence or aid the success or defeat of any such referendum. The provisions of this subdivision shall not apply to a written, printed or typed summary of any official's views on a proposal or question, which is prepared for any news medium or which is not distributed with public funds to a member of the public except upon request of such member. For purposes of this section, the maintenance of a third-party comment

posted on social media or on an Internet web site maintained by the state, a municipality or a regional school district permitting such third-party comments shall not constitute an expenditure of state or municipal funds. (Emphasis added)

4. The Commission uses a three-prong analysis in applying the provisions of General Statutes § 9-369b: (1) whether the communication advocates, (2) whether it was made with public funds, and (3) whether it was made while a referendum was pending.
5. Concerning the advocacy prong, the Commission has previously interpreted and published the meaning of advocacy and "... utilizes an objective standard and evaluates whether a 'reasonable person' would believe that a communication urged them to vote in a particular manner." *In the Matter of a Complaint by Kirk Carr, Clinton*, File No. 2014-054. In determining whether a communication constitutes "advocacy" in violation of C.G.S. § 9-369b, the Commission applies the following test: "communications which urge a particular result, either by express wording of advocacy or when considered as a whole, would make the ordinary reasonable person believe that a particular result is urged, constitute advocacy.... In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing." *In the Matter of a Complaint by George Zipparo, Redding*, File No. 2013-093B; *In the Matter of a Complaint by Mary V. Gadbois, East Lyme*, File No. 2010-123; and see also *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296, 330 (1999).
6. With regard to whether or not the referendum was pending, The Commission has held that a referendum is legally pending when all of the necessary legal conditions have been satisfied to require that a referendum be held. *In the Matter of a Complaint by Alex Ruskewich, Wilton*, File No. 2014-118A. The Commission has also held that all necessary legal conditions have been satisfied when a town meeting is adjourned to convene a referendum, as the time, place, manner, and question are all in place at that time. *In the Matter of a Complaint filed by Kirk Carr, Clinton, 2014-053*.

FACTUAL BACKGROUND

7. At all times relevant hereto, the Respondent was the First Selectman of the Town of East Windsor.
8. On July 7, 2022 the East Windsor Board of Selectman voted to send a question regarding funding for the expansion of Scout Hall, a youth facility that was proposed to be renovated and expanded to include a senior center/recreation center, to the Town Meeting, the legislative body of the Town.
9. On July 21, 2022, the Town Meeting approved the referendum question and adjourned the Town Meeting to convene the referendum for a vote on November 8, 2022. As the time,

date, and question to be placed on the ballot were all determined at the time of the adjournment, the Commission finds that the July 21, 2022 date is the date the referendum was pending for purpose of this analysis.

10. Over the course of the investigation audio files of two communications sent out by the Respondent through Everbridge, a Town paid, subscription-based community notification system ("Everbridge") that included information on the referendum were reviewed.
11. The first audio recording was 4:22 in length and was sent out on October 26, 2022. The second recording was 4:29 in length and sent out to the public on November 2, 2022, six days before the referendum vote. Both messages in their openings contain the statement "Good evening, this is 1st Selectman Jason Bowsza reaching out to all residents in the Town of East Windsor", and each message thereafter devotes about three and one-half minutes of its content time to comment on the referendum question, including the following passages which are contained in both recordings:

"The new arrangement to use Scout Hall for multi-generational programming and service delivery makes sense from a financial position and organizational one."

and

"...approval of the proposed project will allow better customer service to people who are in need of social service intervention and will allow for more expansive utilization of the Scout Hall location."

DISCUSSION

12. In this case, all legal requirements to hold this referendum occurred on July 21, 2022, with the adjournment of the Town Meeting to convene the referendum for a vote. Accordingly, the two audio messages sent out through the Everbridge notification system on October 26, 2022 and November 2, 2022 were issued while the referendum was pending.
13. As previously stated, both messages at issue in their openings contain the statement "Good evening, this is 1st Selectman Jason Bowsza reaching out to all residents in the Town of East Windsor." As such, it is found Respondent directed each communication at issue in this matter to be transmitted.
14. The messages at issue in this matter were disseminated to the public utilizing the Everbridge subscription-based community notification system, the cost of which is paid for with Town funds.

15. Though some of the wording of the two messages disseminated over the Everbridge communications differ slightly, the Commission finds that both recordings advocate in favor of approval of the Scout Hall funding referendum in violation of General Statutes §9-369b(a)(4).
16. In this case the Respondent has no prior history with the Commission and has been cooperative with the Commission's investigation.

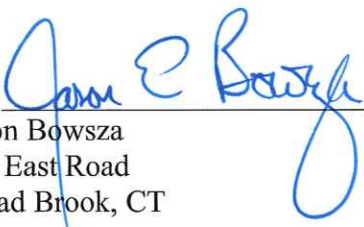
TERMS OF GENERAL APPLICATION

17. The Respondent admits to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
18. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or to contest the validity of the Order entered into pursuant to this Agreement.
19. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter, including the four additional allegations that that the Commission finds not to be in violation of General Statutes s 9-369b.
20. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

It is hereby ordered that the Respondents shall henceforth strictly adhere to the requirements of General Statutes § 9-369b.

For the Respondent:

By: 
Jason Bowsza
121 East Road
Broad Brook, CT

Dated: 11/8/23

For the State of Connecticut:

By: 
Michael J. Brandt
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
55 Farmington Avenue, 8th Floor
Hartford, CT

Dated: 11/27/23

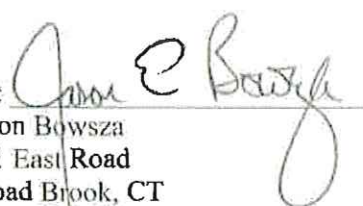
Adopted this ____ day of _____, 2023 at Hartford, Connecticut by vote of the Commission.

Commissioner
By Order of the Commission

ORDER

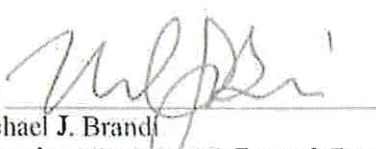
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For the Respondent:

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Jason Bowsza
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For the State of Connecticut:

By: 
Michael J. Brandt
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
55 Farmington Avenue, 8th Floor
Hartford, CT

Dated: 11/27/23

Adopted this 27th day of Nov., 2023 at Hartford, Connecticut by vote of the Commission.


Commissioner STEPHEN T. MARRAS
By Order of the Commission