STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.: 762-12-11 Wncv

STATE OF VERMONT
Plaintiff

v.

REPUBLICAN GOVERNORS ASSOCIATION and BRIAN DUBIE
Defendants

DECISION ON DEFENDANTS' MOTIONS TO DISMISS

By its complaint filed on December 9, 2011, the State of Vermont alleges that the Republican Governors Association (the RGA) and former gubernatorial candidate Brian Dubie violated Vermont's campaign finance laws. The alleged violations stem from the Dubie campaign's decision to share confidential polling data with the RGA. Currently pending are motions to dismiss filed by the RGA and Mr. Dubie.

"A motion for failure to state a claim may not be granted unless it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 7, 186 Vt. 605 (mem.). Such motions are "disfavored" and "rarely granted." *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 5, 184 Vt. 1. In reviewing a motion to dismiss, the court "restrict[s] its inquiry to the facts alleged in the complaint," *Wentworth v. Crawford & Co.*, 174 Vt. 118, 121 (2002), and "accepts all factual allegations pleaded in the complaint as true and all reasonable inferences from those facts." *Gilman v. Maine Mut. Fire Ins. Co.*, 2003 VT 55, ¶ 14, 175 Vt. 554 (mem.).

FACTS

The following facts are drawn from the complaint. Defendant Brian Dubie was the Republican candidate for governor of the State of Vermont during the November 2010 election. Compl. ¶ 10 (filed Dec. 9 2011). Mr. Dubie formed a candidate committee named Friends of Brian Dubie (the Dubie Campaign) to conduct his campaign. *Id.* From January 2010 through November 2010, Corwin Bliss was Mr. Dubie's campaign manager. *Id.* ¶ 13. Mr. Dubie oversaw Mr. Bliss and gave him instructions. *Id.*

The RGA is a political organization based in Washington, D.C. which works to elect Republican gubernatorial candidates. *Id.* ¶ 7. The RGA developed and funded various

advertisements aimed at encouraging Vermonters to vote for Mr. Dubie, and against Democratic candidate Peter Shumlin during the 2010 gubernatorial race.[1] *Id.* ¶ 16.

In July of 2010 Mr. Dubie's campaign hired a company called Public Opinion Strategies (POS) to conduct several opinion polls. *Id.* ¶ 26. The Republican Party gave $40,000 to the Dubie Campaign to help finance the opinion polls. *Id.* ¶ 65. The Dubie Campaign did not share the poll results with the Republican Party. *Id.* The results of the opinion polls were not made public and it was important to the Dubie Campaign that they not be public. *Id.* ¶¶ 65–66.

The RGA was aware that the Dubie campaign was conducting the opinion polls, and requested that the campaign share its polling data. *Id.* ¶¶ 27–28. Mr. Bliss gave permission to POS to provide the Dubie Campaign's confidential polling reseults directly to the RGA. *Id.* ¶ 29. POS transmitted the results from three polls to the RGA. *Id.* ¶¶ 35, 37, 41. In addition, POS sent campaign strategy emails that highlighted issues and geographic locations which should be targeted. *Id.* ¶ 88. The Dubie Campaign spent $93,000 on the polling data which was sent to the RGA. *Id.* ¶ 34–41.

The polling data that POS provided to the RGA materially affected the RGA's advertising decisions. *Id.* ¶¶ 52, 78, 96. Specifically, RGA used the polling data to determine the advertising budget, the substantive content of the advertising, the geographic target of the advertising, and the advertising medium. *Id.* ¶¶ 67, 78, 88–96. The RGA spent $242,000 on political advertising supporting Brian Dubie or opposing Peter Schumlin. *Id.* ¶ 2. The Dubie campaign knew, or was willfully blind to the fact, that the RGA would use the polling data to shape its advertising decisions. *Id.* ¶ 98.

The RGA has not filed any campaign finance reports with the Secretary of State listing contributions. *Id.* ¶ 109. Particularly relevant here is that the RGA did not report receiving in-kind contributions of polling data from the Dubie Campaign. *Id.* ¶¶ 107-108. Mr. Dubie did not report receiving in-kind contributions of advertising from the RGA on his campaign finance reports. *Id.* ¶ 105.

ANALYSIS

Based on the facts presented above, the State asserts three separate violations of Vermont's campaign finance laws. First, the State asserts that the RGA's advertising expenditures were in-kind contributions to the Dubie Campaign that exceeded the $3,000 contribution limit imposed by 17 V.S.A. § 2805(b). Second, the State asserts that the Dubie Campaign's provision of polling data to the RGA was an in-kind contribution to a Vermont

[1] The RGA placed ads in its own name and in that of its Vermont political committee, Green Mountain Prosperity. Compl. ¶¶ 9, 15. For clarity, both Green Mountain Prosperity and the RGA are referred to as the RGA.

political committee which exceeded the $2,000 single source limit imposed by 17 V.S.A. § 2805(a). Third, the State asserts that both the Mr. Dubie and the RGA failed to meet certain reporting requirements as required by 17 V.S.A. §§ 2803(a) & 2811. The defendants argue that the complaint should be dismissed in its entirety.

I. The RGA's Contribution of Advertising to the Dubie Campaign (Counts II – IV)

The State first argues that the Dubie Campaign's provision of confidential polling data to the RGA facilitated the RGA's expenditures on advertisements which were developed based on that polling data. From this, the State argues that the RGA's advertising expenditures should be considered an in-kind campaign contribution to the Dubie Campaign pursuant to 17 V.S.A. § 2809(c) and, consequently, the contribution exceeded the $3,000 limit imposed by § 2805. In response, the RGA argues that the provision of polling data is insufficient to meet the "facilitation" standard as it has been interpreted by the Second Circuit.

Under Vermont law, a political committee may not contribute more than $3,000 to a gubernatorial candidate in any given election cycle. 17 V.S.A. § 2805(b) (as enacted by 1997 Vt. Acts and Resolves 64).[2] However, a political committee may make independent expenditures to support or oppose a candidate without restriction. *Buckley v. Valeo*, 424 U.S. 1, 45 (1976). Whether an outlay of a political committee is properly classified as a campaign contribution or an independent expenditure depends upon whether it is "intentionally facilitated by, solicited by or approved by the candidate or the candidate's political committee." 17 V.S.A. § 2809(c).[3] The Vermont Secretary of State has promulgated a rule explaining that the term "intentionally facilitate" means "to consciously, and not accidentally, have done an action to make the activity or expenditure possible." Administrative Rule 2000-1(2)(b), Vermont Campaign Finance Law Regulation of Related Expenses; see 17 V.S.A. § 2809(f) (authorizing the Secretary of State to adopt rules relating to campaign finance).

The Second Circuit considered the facilitation standard contained in § 2809(c) in *Landell v. Sorrell*, 382 F.3d 91, 145 (2d Cir. 2004) partially rev'd by *Randall v. Sorrell*, 548 U.S. 230 (2006). In *Landell*, the plaintiff argued that the "'facilitated by' standard [was] vague because it [left] open the possibility that any communication about a candidate's views with a third party that then undertakes independent expenditures will qualify as a contribution." *Id.* The Second Circuit stated as follows:

---

[2] The contribution limitations contained in § 2805 were declared unconstitutionally low by the U.S. Supreme Court in *Randall v. Sorrell*, 548 U.S. 230 (2006). The Federal District Court ruled that the limitations previously in place were revived. *Oxfeld v. Sorrell*, 2008 WL 4642254, *3 (D. Vt. Oct. 15, 2008).

[3] The statutory scheme is slightly more complex than this explanation. Vermont statutes label expenditures which are facilitated, solicited or approved by a candidate as "related expenditures," and "related expenditures" are subject to campaign finance restrictions. See 17 V.S.A. § 2809.

> We think that, in light of the terms "solicited by or approved by" that accompany it, the term facilitated should be given a narrower reading. Such a reading would also resolve the ambiguity of the statutory language so as to guarantee the constitutionality of the statute. Accordingly, we construe the phrase "facilitated by" as requiring some "prearrangement" or "coordination" with the candidate. Under such a construction, sharing routine information about a candidate is not sufficient to meet the "facilitated by" requirement. Thus, the provision is not constitutionally invalid.

Id. at 145–46 (citations omitted). The Second Circuit's discussion of the "facilitated by" standard was neither discussed nor overruled by the Supreme Court in *Randall*, 548 U.S. 230.

The distinction between coordinated and independent expenditures is also borne out in federal law. 2 U.S.C. § 441a(a)(7); 11 C.F.R. ch. I, subch. A, pt. 109. Pursuant to § 441a(a)(7)(B)(i), "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." The Federal Election Commission (FEC) has promulgated regulations describing six types of conduct which amount to coordination under § 441a. 11 C.F.R. § 109.21(d).[4] The category of conduct relevant in this case is the second: "material involvement."

Pursuant to § 109.21(d)(2), a communication is coordinated with a campaign if a candidate, authorized committee, or political party committee is materially involved in decisions regarding:

(i) The content of the communication;
(ii) The intended audience for the communication;
(iii) The means or mode of the communication;
(iv) The specific media outlet used for the communication;
(v) The timing or frequency of the communication; or
(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

One example given by the FEC of conduct sufficient to meet the material involvement standard is the sharing of polling data:

[4] The six standards are (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) use of common vendor; (5) use of former employee or contractor; or (6) dissemination, distribution, or republication of campaign material. 11 C.F.R. § 109.21(d)(1)–(6).

> [A] candidate is materially involved in a decision regarding the content of a communication paid for by another person if he or she has a staffer deliver to that person the results of a polling project recently commissioned by that candidate, and the polling results are material to the payor's decision regarding the intended audience for the communication.

68 Fed. Reg. 421-01, 433 (Jan. 3, 2003).

With these principles in mind, the court turns to the application of 17 V.S.A. § 2809(c) to the facts of this case. The complaint alleges that POS provided confidential polling data to the RGA at the direction of the Dubie Campaign, and that the RGA used that data to develop advertisements promoting Mr. Dubie. Applying the broadest definition of the word "facilitate," there can be no doubt that sharing of polling data "facilitates" advertising based on that polling data.

However, the Second Circuit has also determined that to avoid a constitutional violation, the facilitation standard should be construed narrowly to require some "coordination" or "prearrangement." *Landell*, 382 F.3d at 145. The court finds this more exacting standard met by the pleadings as well. The State alleges that the Dubie Campaign used its confidential polling data to inform its campaign decisions. It then shared this confidential data with the RGA, allowing the RGA to make its expenditure decisions based on the same confidential information. The Dubie Campaign created a mechanism that allowed the RGA to coordinate its expenditures with the campaign. This amounts to "coordination" and is therefore sufficient to meet the facilitation standard contained in § 2809(c) as it has been interpreted by the Second Circuit. *Id.* This decision is also in accordance with federal guidance on the same issue which declares that third party expenditures made on the basis of shared polling data should be considered campaign contributions under federal law. 68 Fed. Reg. 421-01, 433.

The RGA's advertising expenditures would undoubtedly be considered campaign contributions if the Dubie Campaign had directly requested that they target a particular geographic area, issue, or medium. This result cannot be avoided by employing a third party to achieve the same result. This *de facto* coordination is exactly the type of activity that campaign finance law is intended to prevent. See *Shays v. Fed. Election Comm'n*, 337 F. Supp. 2d 28, 64 (D.D.C. 2004) ("Informal understandings and de facto arrangements can result in actual coordination as effectively as explicit agreement or formal collaboration. In drafting new regulations to implement the existing statutory standard for coordination—an expenditure made 'in cooperation, consultation or concert, with, or at the request or suggestion of' a candidate—we expect the FEC to cover 'coordination' whenever it occurs . . .") (quoting Senator John McCain discussing the Bipartisan Campaign Reform Act).

The RGA cites *FEC v. Christian Coalition* to support its position that the sharing of polling data cannot amount to coordination or facilitation of its advertising expenditures. 52 F. Supp. 2d 45 (D.D.C. 1999). In *Christian Coalition*, the trial court considered in a limited way whether sharing of polling data could amount to coordination for campaign finance purposes. The polling data in question indicated only that candidate Jesse Helms trailed candidate Harvey Gantt in a North Carolina senate race. *Id.* at 74. Publicly available polls also showed that Helms trailed in that race. *Id.* It was unclear whether Mr. Helms' internal polling data had been provided to the political action committee. See *Id.* ("Reed *may have* been advised of the results of internal polls conducted by Helms for Senate showing Senator Helms trailing Gantt.") (emphasis added). From this, the FEC argued that the Christian Coalition expended funds in the North Carolina senate race because it was advised of the polling data, and that the expenditures should be considered in-kind campaign contributions. *Id.* at 95. The court rejected this argument stating that "there [was] no evidence or allegation that the Helms campaign requested or suggested that the Coalition distribute voter guides or make GOTV calls nor did the campaign discuss the content, timing, location or volume of the voter guides with the Coalition." *Id.* The polling data at issue in the *Christian Coalition* case is materially different than that at issue here. It was of such a general nature that it could not give strategic direction to a political action committee. It therefore could not have allowed a political committee to coordinate expenditures with the campaign.

The court is also unpersuaded by the Dubie Campaign's argument that POS polling data could not have facilitated a particular advertisement because the RGA declined to follow a strategy email sent by POS to both Mr. Dubie and the RGA. The RGA's advertisements were based on confidential polling data provided to the RGA by POS at the direction of the Dubie Campaign. As described above, these allegations allege facilitation of the RGA's advertising expenditures.

Accepting all factual allegations pleaded in the complaint as true and all reasonable inferences drawn from those facts, the court finds that Counts II – IV adequately state claims for violations of Vermont's campaign finance law.

II. The Dubie Campaign's Contribution of Polling Data to the RGA (Count I)

The State alleges that the polling data given by the Dubie Campaign to the RGA constituted an in-kind contribution to a political committee that exceeded the $2,000 contribution limit imposed by 17 V.S.A. § 2805(a). Compl. ¶ 43. In response, the RGA argues that the limitation on contributions to political committees imposed by § 2805(a) is unconstitutional as applied.

The sharing of polling data would amount to a "contribution" under § 2801(2) (defining "contribution" as a "gift . . . of anything of value"). Because the polling data is valued at $93,000, the contribution would be over the $2,000 limit imposed by § 2805(a).

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech." In *Buckley v. Valeo*, the Supreme Court held that limits on campaign contributions do not encroach upon First Amendment interests to as great a degree as expenditure limitations, explaining that in "contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." 424 U.S. at 20–21. However, in making that distinction the Court recognized that contribution limits still do implicate fundamental First Amendment interests. *Id.* at 23.

When the government attempts to regulate the financing of political campaigns and express advocacy through contribution limits, it must have a countervailing interest that outweighs the limit's burden on the exercise of First Amendment rights. Thus, limits on contributions must be "closely drawn to achieve a 'sufficiently important' government interest." *Green Party of Conn. v. Garfield*, 616 F.3d 189, 199 (2d Cir. 2010) (quoting *FEC v. Beaumont*, 539 U.S. 146, 162 (2003)). This distinguishes them from limits on expenditures, which are subject to strict scrutiny. *Green Party of Conn.*, 616 F.3d at 198–99. The Supreme Court has recognized only one interest sufficiently important to outweigh the First Amendment interests implicated by campaign contribution limits: preventing corruption or the appearance of corruption. *Davis v. FEC*, 128 S. Ct. 2759, 2773 (2008); *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496–97 (1985); *Cal. Med. Ass'n [CMA] v. FEC*, 453 U.S. 182, 197–98, 202–03 (1981). The Second Circuit held that Vermont's limits on contributions to political committees—contained in § 2805(a) —are a valid limit on speech to prevent real and apparent corruption. *Landell*, 382 F.3d at 140.

Governmental interests that have been rejected as a justification for contribution or expenditure limits include (1) the equalization of differing viewpoints, *Davis*, 128 S. Ct. at 2773; (2) an informational interest in "identifying the sources of support for and opposition to" a political position or candidate, *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 298 (1981); and (3) preventing "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form," *Citizens United v. FEC*, 130 S. Ct. 876, 902 (2010) (quotation omitted).

The RGA argues that the Dubie Campaign's decision to share polling data does not implicate real or apparent corruption, and therefore the government lacks a sufficiently important

interest to restrict the speech at issue in this case. A campaign cannot corrupt itself by sharing information with a political committee. The State maintains that there is potential for corruption here because (1) the Dubie Campaign was able to leverage $93,000 in polling data and turn it into $242,000 of coordinated campaign advertising; and (2) campaign limits can be circumvented if candidates are able to contribute freely to political committees.

The court can discern no real or apparent corruption when a candidate shares information with a political committee. A candidate simply cannot corrupt him or herself by sharing information. As explained above, the sharing of information may result in the political committee's expenditures being designated as contributions. In this case, the only apparent corruption could result from the RGA's $242,000 in advertising expenditures. However, this problem is addressed by contribution limits to candidates and by § 2809(c).

The State also argues that the Republican Party funded part of the opinion polls conducted by POS and that, when the Dubie Campaign gave the polling data to the RGA, the Republican Party was able to circumvent limits on contributions to political committees. The State's argument on this point is disconnected from the facts alleged in the complaint. The Dubie Campaign used monies given by the Republican Party and others to fund opinion polls that aggregated data regarding the preferences of Vermont constituents. The Dubie campaign then shared this information with the RGA. There is no evidence that the Republican Party was evading contribution limitations by funneling money through a political committee, as was discussed in *CMA*, 453 U.S. 182, 197–98.

In sum, the court finds that a candidate's decision to share information with a political committee does not allow for the circumvention of contribution limits; and that § 2805(a) does not serve to prevent any real or apparent corruption in this case. The State offers no other sufficiently important government interest which could justify the limitation on speech imposed. Therefore, § 2805(a) is unconstitutional as applied on the facts of this case. Count I of the Complaint is DISMISSED.

III. Reporting Requirements (Count V)

The State's claims regarding reporting violations are dependent upon the campaign finance violations discussed above. Having found that all claims relating to the RGA's in-kind contributions to the Dubie Campaign should not be dismissed (Counts II–IV), the corresponding reporting violations should not be dismissed either.

IV. Mr. Dubie's Personal Liability (Counts I – V)

The State asserts that Mr. Dubie is personally liable for (1) accepting impermissibly high campaign contributions; and (2) failing to report those campaign contributions.[5] In response, Brian Dubie argues that he is not personally liable for the alleged violations of his campaign committee because (1) "no allegation is made that [he] knew about or participated in sharing the polling data"; and (2) "[n]o allegation is made that any person from FBD had any reason to believe that the RGA was a [Vermont Political Committee]."[6] Brian Dubie's Mot. to Dismiss at 10–11. The State maintains that "the statute unequivocally holds the candidate responsible for the activities of his staff." Opp'n at 1.

a. Candidate's Personal Liability

Vermont law declares that "[n]o candidate . . . shall accept contributions totaling more that $3,000 from a political committee for any election." 1987 Vt. Acts & Resolves (Adj. Sess.) 263 § 3 (codified at 17 V.S.A. § 2805(b)).[7] Vermont law also requires that "[e]ach candidate for state office . . . who has made expenditures or received contributions of $500.00 or more . . . shall file with the Secretary of State campaign finance reports 40 days before the primary election and on the 25th of each month . . ." 17 V.S.A. § 2811(a).

The State asserts that Mr. Dubie is personally liable for violating these statutes under the following provision:

> A person who violates any provision of this chapter shall be subject to a civil penalty of up to $10,000.00 for each violation and shall refund the unspent balance of Vermont campaign finance grants received, if any, calculated as of the date of the violation.

17 V.S.A. § 2806(b).

---

[5] The State also asserted that Mr. Dubie was liable for the in-kind contribution to the RGA exceeding limits on contributions to political committees. As discussed above, the court has dismissed this claim and therefore does not consider it here.

[6] While the parties' arguments focus largely on whether Vermont's campaign finance law holds candidates strictly liable for violations, the court notes that the complaint does allege that Mr. Dubie was personally responsible in that Mr. Bliss "gave POS permission to disclose confidential polling date," Compl. ¶ 29, and "Mr. Dubie gave [Mr. Bliss] instructions." Compl. ¶ 13.

[7] For purposes of this statute the term "candidate" includes a candidate's political committee. 17 V.S.A. § 2805(h).

When interpreting a statute, the court looks to the plain language of the law as a means of determining legislative intent. *Delta Psi Fraternity v. City of Burlington*, 2008 VT 129, ¶ 7, 185 Vt. 129. The court applies the plain meaning of the statute if it is unambiguous. *Farris v. Bryant Grinder Corp.*, 2005 VT 5, ¶ 8, 177 Vt. 456. Where there is uncertainty about legislative intent, the court "must consider the entire statute, including its subject matter, effects and consequences, as well as the reason for and spirit of the law." *In re Hinsdale Farm*, 2004 VT 72, ¶ 5, 177 Vt. 115.

The plain language of § 2805(b) requires a candidate to refuse to accept impermissibly high campaign contributions. Similarly, the plain language of § 2811(a) requires the candidate to file reports with the Secretary of State. These obligations rest squarely on the candidate. Thus, regardless of whether the candidate or his or her candidate committee actually accepts the contribution or fails to file the reports, the candidate is the one who actually violates the provision if appropriate actions are not taken. Therefore, the candidate is responsible under § 2806(b) as the "person who violates any provision of this chapter."

This interpretation is reasonable given that violations are usually prosecuted after a campaign has concluded. At that point in time, campaign committees may be largely without resources to satisfy judgments. A finding that candidates are not personally liable would essentially preclude the enforcement of Vermont's campaign finance law except in cases where violations were intentional. See 17 V.S.A. § 2806(a). Finally, had the Legislature intended to shield a candidate from liability for campaign finance violations, it would have stated that the candidate committee is the responsible party in § 2806(b).

b. Scienter Requirement

Mr. Dubie next argues that he cannot be held responsible because the state has not alleged that he knew of the violations. Specifically, he argues that he did not know that the RGA was a Vermont Political Committee.[8] The State argues that candidates are strictly liable for campaign finance violations.[9]

---

[8] The status of the RGA as a Vermont Political Committee (VPC) is relevant to several claims in this case. The RGA disputes that it is a VPC. The undersigned recently determined that the RGA is a VPC in *State v. Republican Governors Association*, No. 759-10-10 Wncv. That case is still pending and no final judgment has been entered. While the parties argue about whether the doctrine of issue preclusion should apply, they agree that it is unnecessary and a waste of resources to relitigate the RGA's status in the present action. While noting the RGA disagrees with the court's prior decision, the court will consider the RGA to be a VPC in this action unless and until the Vermont Supreme Court decides otherwise on appeal.

[9] Mr. Dubie also argues that "imposing personal liability on an individual political candidate regardless of whether he had any knowledge of or participation in alleged misconduct will have an unconstitutionally chilling effect on the First Amendment because it will burden free speech by restricting the right of citizen's to contact candidates." Mr. Dubie's Mot. to Dismiss at 19. Mr. Dubie goes on to argue that candidates will be hesitant to grant access to outside groups for fear that the Attorney General may launch an investigation. *Id.* The court rejects this argument.

As noted above, the State asserts that Mr. Dubie is personally liable under the following statutory provision:

> A person who violates any provision of this chapter shall be subject to a civil penalty of up to $10,000.00 for each violation and shall refund the unspent balance of Vermont campaign finance grants received, if any, calculated as of the date of the violation.

17 V.S.A. § 2806(b). The criminal penalty provision of this same statute states as follows:

> A person who knowingly and intentionally violates a provision of subchapters 2 through 4 of this chapter shall be fined not more than $1,000.00 or imprisoned not more than six months or both.

17 V.S.A. § 2806(a). Again the proper starting point for the analysis is the plain language of the statute. *Farris*, 2005 VT 5, ¶ 8.

The plain language of the statute indicates that a person who violates the civil penalty provision of Vermont's campaign finance law is responsible for those violations regardless of their state of mind. 17 V.S.A. § 2806(b). A candidate need not know they are violating the law to be held responsible. The juxtaposition of the criminal penalty provision contained in the same statute—which requires a finding of mens rea—makes the legislative intent on this issue clear: knowledge or intent to violate the law is not required for a civil penalty to attach. Therefore, whether or not the Dubie Campaign knew that the RGA was a Vermont Political Committee or what his staffers actually did is not relevant to the issue of his personal liability.

Mr. Dubie cites *In re Appeal of Tinker* for the proposition that strict liability should not be presumed when the legislature has been silent about the mens rea required for a particular offense. 165 Vt. 621, 622 (1996) (mem.). In *Tinker*, a woman intentionally hit another member of a local rescue squad with her jacket, causing an eye injury. Unbeknownst to Tinker, the victim suffered from a degenerative disk disease and was considered a disabled adult under the statute. *Id.* The statute was silent as to whether the defendant must know of the disability to be convicted. The court stated that "[w]hen the Legislature is silent as to the mens rea required for a particular offense, this Court will not simply assume that the statute creates a strict liability offense, but will try to determine the intent of the Legislature." *Id.* at 622. (citing *State v. Audette*, 149 Vt. 218, 221 (1988)). The Court went on to state:

The First Amendment does not insulate a candidate from enforcement of campaign finance provisions which are themselves constitutional.

> [G]iven the purpose of the abuse statute and the registry established by § 6911, the Legislature did not intend to permanently identify and stigmatize a person who engages in abusive conduct, however minor or isolated, against an individual whose impairment is neither apparent nor known to the perpetrator.

Id. at 622. As described above, the legislative intent to create strict liability here is clear from the parallel penalty provisions. Contrary to Mr. Dubie's arguments, *Tinker* did not involve the same type of statutory scheme with parallel civil and criminal penalty statutes. Compare 17 V.S.A. § 2806(1)(A)–(B) with 33 V.S.A. § 6902(A)–(B). Furthermore, unlike in *Tinker*, the purpose of Vermont's campaign finance statutes could not be effectuated unless candidates are held strictly liable.

In sum, Mr. Dubie's lack of knowledge and involvement have no bearing on whether the State has adequately stated a claim for campaign finance violations. While it is relevant to the determination of any penalty which may be imposed, it cannot serve as a basis to dismiss the claims against Mr. Dubie in his personal capacity.

CONCLUSION

1. The allegations in the complaint sufficiently state a claim that the advertisements developed and funded by the RGA were facilitated by the Dubie Campaign, and that they should be considered campaign contributions.
2. Vermont's limit on contributions to political committees (§ 2805(a)) is unconstitutional as it applies to Mr. Dubie's sharing of information with the RGA. Count I of the Complaint is DISMISSED.
3. Vermont's campaign finance laws hold candidates strictly liable for violations and the Complaint sufficiently states claims against Mr. Dubie in his individual capacity.

Dated: 9/25/12

Geoffrey Crawford,
Superior Court Judge