



State of Delaware
Department of Elections

February 17, 2017

Mr. Charles Copeland, Chairman
Republican State Committee of Delaware
360 College Square
Newark, DE 19711

**Re: Alleged Campaign Finance Violations in Connection with
February 25, 2017 Special Election for 10th Senate Seat**

Dear Chairman Copeland:

I write in response to the February 13, 2017 and February 15, 2017 letters of the Republican State Committee of Delaware regarding the February 25 special election in the 10th Senate District. Let me state preliminarily that my authority as the State Election Commissioner to act upon issues relating to campaign finance violations under 15 *Del. C. Ch. 80* is limited. The State Election Commissioner has the authority to investigate alleged violations under 15 *Del. C. § 302A* but cannot prosecute campaign violations. *Young v. Red Clay Consolidated School District*, 2015 WL 5853762, at *8 (Del. Ch., 2015) (“As an agency created by statute, the Department’s authority was limited to the powers granted by the statute. *Wilm. Vitamin v. Tigue*, 183 A.2d 731, 740 (Del.Super.1962).”). With that limitation, coupled with the proximity of the Republican State Committee of Delaware complaint to the special election, I have conducted a preliminary investigation of the allegations of illegal campaign contributions. I have reviewed the following documents:

1. The February 13, 2017 and February 15, 2017 letters from the Republican State Committee of Delaware
2. The February 14, 2017 letter from counsel to First State Strong PAC ; and
3. The February 15, 2017 letter from the Delaware Building and Construction Trades Council

A copy of each of these documents is attached.

<https://ivote.de.gov>

State Election Commissioner
905 S Governors Ave Ste 170
Dover DE 19904
Phone: (302) 739-4277

New Castle County Office
Carvel State Office Bldg
820 N French St STE 400
Wilmington DE 19801
Phone: (302) 577-3464

Kent County Office
100 Enterprise Pl Ste 5
Dover DE 19904
Phone: (302) 739-4498

Sussex County Office
119 N Race St
PO Box 457
Georgetown DE 19947
Phone: (302) 856-5367

STGP001 v1.1 7/7/2015

By letter dated February 13, the Republican State Committee of Delaware submitted copies of two mailers and one door hanger that it asserts were distributed in coordination with the democratic candidate for the open 10th District Senate seat. The Republican State Committee of Delaware asserts that each of these materials constitutes illegal campaign contributions to the democratic candidate's campaign. The Republican State Committee of Delaware alleges that the mailers, paid for by First State Strong PAC, and the door hanger, paid for by the Delaware Building and Construction Trades Council, are contributions to the candidate's campaign and must be reported as such. I investigated these allegations using the materials listed above. I discuss my preliminary investigative findings on the mailers and the door hangers separately.

Mailers as Express Advocacy

The Republican State Committee of Delaware asserts that the mailers, paid for by the First State Strong PAC, constitute express advocacy because they reference no specific issue and are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The Republican State Committee of Delaware argues that, since the mailers constitute express advocacy, the mailers are a contribution to the democratic candidate's campaign. First State Strong PAC denies that the mailers constitute express advocacy, and asserts that it produced and distributed the mailers without coordination with the Democratic candidate.

I rely upon the analysis contained in Attorney General's Opinion arising from the Burris-Rochford Education Mailing Plan. That Opinion defined "express advocacy" as "speech which expressly advocates the election or defeat of a candidate with expressed terms such as 'vote for', 'elect', 'defeat.'" Del. Op. Att'y Gen. 00-IB17 (Del. A.G.), 2000 WL 1920140 at *2 (internal citations omitted). The Attorney General's Office wrote that, "[a]ll other advocacy, which does not advocate for a particular fate of a candidate, has come to be described as "issue advocacy." *Id.* Without need for elaboration, I conclude that the language in the mailers and cited in the Republican State Committee of Delaware letter does not advocate for the fate of any candidate and so does not constitute express advocacy. Accordingly, I conclude that the expenditures by First State Strong PAC for the mailers did not constitute contributions to the democratic candidate's campaign.

Door Hangers as Coordinated Expenditures

The door hangers distributed by the Delaware Building and Construction Trades Council clearly constitute express advocacy. Thus, the only issue is whether payments for the door hangers constituted "independent expenditures" under 15 *Del. C.* § 8001 (13). The Republican State Committee of Delaware alleges coordination based on two assertions. In its

February 13 letter, the Republican State Committee of Delaware concedes that the door hangers might be independent expenditures but nonetheless alleges coordination. It bases this conclusion on two circumstances. First, per the February 13 letter, the candidate attended an AFL-CIO rally and the Delaware Building and Construction Trades Council is an arm of the AFL-CIO. Second, per the February 15 letter, the AFL-CIO hosted two events supporting the candidate, one of which, at least, the candidate attended. While these events demonstrate that the AFL-CIO supports the democratic candidate, neither event demonstrates that the Delaware Building and Construction Trades Council coordinated with the democratic candidate on the door hangers. Moreover, in its letter dated February 15, the Delaware Building and Construction Trades Council denies coordination on the door hangers. In short, based on the facts alleged by the Republican State Committee of Delaware, even assuming the facts are true, I cannot conclude that the Delaware Building and Construction Trades Council coordinated with the democratic candidate. That the candidate appeared at the office of one arm of the AFL-CIO for events in support of the candidate does not mean that another arm of the AFL-CIO coordinated with the candidate on the distribution of the door hangers. Absent this necessary nexus, I see no ground to find coordination. Nonetheless, I investigated coordination of the door hanger with the democratic candidate's campaign with the Delaware Building and Construction Trades Council. In its letter dated February 15, the Delaware Building and Construction Trades Council denies coordination. There is no evidence to rebut this assertion. I conclude, based on this preliminary investigation of a complaint made in such close proximity to the election, that the door hangers did not constitute a contribution to the candidate's campaign.

I trust this addresses all of the issues relating to alleged illegal campaign contributions raised in the complaint dated February 13, 2017 and the follow up letter dated February 15, 2017. I do not intend to refer this preliminary investigation to the Attorney General's office pursuant to 15 *Del. C.* § 302A(a)(3). If the Republican State Committee of Delaware believes it is warranted, it may file a complaint with the Office of Civil Rights and Public Trust of the Attorney General's office for further investigation and possible prosecution.

Very truly yours,



Elaine Manlove
State Election Commissioner

Cc: Ann Woolfolk, Deputy Attorney General



Republican State Committee of Delaware
360 College Square * Newark, DE 19711

Paid for by the Republican State Committee of Delaware

February 13, 2017

VIA EMAIL AND HAND DELIVERY

The Honorable Elaine Manlove
Commissioner of Elections
905 S. Governor's Ave., Suite 170
Dover, DE 19904

**Re: Special Election State Senate District 10;
Illegal contributions to Campaign of Stephanie Hansen**

Dear Commissioner Manlove:

As you know, a special election is scheduled for February 25th in the 10th Senate District. Stephanie Hansen is the democratic candidate. Recently, we have become aware of a number of mailers and other political documents being distributed on Ms. Hansen's behalf which clearly constitute "express advocacy," and yet, according to the disclosures on these documents are not being paid for by Ms. Hansen's campaign. As such, we believe that these constitute illegal contributions to Ms. Hansen's campaign, and we ask that her campaign be directed to immediately reimburse those who have paid for the mailers and for you to take other appropriate action. Because the election is now less than two weeks away, we ask that you act as quickly as possible.

With this letter, we enclose copies of 2 mailers and 1 door hanger (the "Illegal Advertisements"). While the first two of these items do not specifically direct the reader to vote against John Marino, the Republican candidate, the lack of such specific direction does not mean that the Illegal Advertisements do not meet the test for "express advocacy." As you know, federal courts have held that advocacy constitutes express advocacy when it specifically uses certain words expressly advocating for the election or defeat of a candidate or if "*the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.*" *FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 469-70 (2007). Here, for the reasons explained below, the Illegal Advertisements are susceptible of no reasonable interpretation other than to vote against John Marino and therefore constitute express advocacy. With respect to the third item, the door hanger, the reader is specifically directed to vote for Ms. Hansen.

Taking each Illegal Advertisement individually:

1. In the first mailer, paid for by First State Strong PAC, the headline at the top reads “John Marino Keeps Losing Elections,” and the tagline at the bottom reads “We can’t afford him in the State Senate.” The only reason to include this tagline is to tell voters they should vote against Marino in the election for state senate – why else mention elections and “we can’t afford him in the State Senate”? The ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

2. Similarly, in the second mailer, also paid for by First State Strong PAC, the tagline reads “John Marino’s attacks are divisive and disrespectful. We already get that from the White House. We don’t need it in Delaware.” What exactly is the “issue” here? That someone can be disrespectful? There is no “issue” advocacy going on. The advertisement can only be reasonably interpreted as an exhortation to vote against John Marino.

We further note that both of these mailers were paid for by “First State Strong PAC.” To date, this PAC, which was only formed on January 25, 2017, has filed disclosures indicating it has spent approximately \$186,900 on third-party advertisements. However, the PAC has not made any filing disclosing its contributors. For all we know, the PAC has received contributions from all the same people who have contributed to Ms. Hansen’s campaign committee – and, given that this PAC was formed only one month before the special election, it was clearly formed as a way for donors to fund additional advertisements in the race. We also note that the PAC’s website (www.FirstStateStrong.com) clearly states that people should “Vote for Stephanie Hansen.”

3. Finally, we attach a doorhanger which directly states “vote for Stephanie Hansen.” This is pure express advocacy. The doorhanger states it is paid for by “Delaware Building and Construction Trades Council,” which has not filed a Third-Party Advertiser Report.

None of the foregoing constitute the classic “issue” advocacy piece as identified in the 2000 Delaware Attorney General opinion first recognizing the distinction between “express” and “issue” advocacy. In that opinion, an advertisement was proposed that spoke about a person’s education plan. Certain details of the plan were discussed and readers were then invited to call the person and express support for the plan. There was no mention of any election, no mention of any candidacy, and no mention of any legislative or executive branch office. The proposed ad, and many advertisements since that time, have followed this classic issue advocacy approach.

Here, however, as express advocacy, all of these Illegal Advertisements constitute a contribution to the campaign, unless they are exempt as an Independent Expenditure. However, we do not believe the foregoing to be Independent Expenditures because, if they were, we would expect to see words of express advocacy such as “vote for” or “vote against,” and no such words appear.

February 13, 2017
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As to the doorhanger, we acknowledge that such might be an "Independent Expenditure," but note that Ms. Hansen recently posted a video on her Facebook page where there was a rally at the Plumbers & Pipefitters' offices at which she appeared. The Plumbers and Pipefitters are part of the AFL-CIO, and the Delaware Building and Construction Trade Council is the local arm of the AFL-CIO. In short, we do not believe that having coordinated with Ms. Hansen by hosting a rally for her, the AFL-CIO can simultaneously claim that doorhangers it posted on her behalf are independent. The two organizations have coordinated.

Fundamental issues are at stake here, and there is only a short time before the election. We ask that you investigate these matters as promptly as possible. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "CRL Copeland", with a large, stylized flourish at the end.

Charles Copeland
Chairman, Delaware Republican Party

JOHN MARINO KEEPS LOSING ELECTIONS BECAUSE HIS PROPOSALS HURT THE MIDDLE CLASS.

Failed trickle-down ideas we keep rejecting

John Marino's proposals would hurt the middle class by taking money out of public schools and cutting off special treatment for the wealthy.

Marino would shift the tax burden onto the middle class

- Favors taking money out of public schools and cutting off special treatment for the middle class
- Promises a new break only for millionaires - which means cutting the middle class
- Would make it easier for corporations to cut middle class jobs and benefits

**John Marino would hurt Delaware's middle class.
WE CAN'T AFFORD HIM IN THE STATE SENATE.**



John Marino uses social media for insults, 'alternative facts', and personal attacks.

Called Planned Parenthood an **abortion superstore.**¹

Insulted John Carney, Tom Carper, and Markell, calling all of them **"idlots."**²

Attacked equal pay for women as a "disaster" and "a smokescreen."³

Attacked Social Security and Medicare as a **"cancer"** and said **"we can no longer afford"** them.⁴

CHECK THE FACTS: ¹Marino Facebook post, 10/4/15. ²Marino Facebook post, 10/6/15. ³Marino Facebook post, 4/8/14. ⁴Marino Facebook post, 8/4/11.

JOHN MARINO'S ATTACKS ARE DIVISIVE AND DISRESPECTFUL.
We already get that from the White House. We don't need it in Delaware.

Strong. Learn more about First State Strong at elections.delaware.gov. Not authorized by any candidate or candidate's committee.



**On Saturday, February 25th
Vote**

Stephanie Hansen for State Senate

If you cannot make it to vote at your polling place on February 25th, the Delaware Department of Elections has In-Person Absentee Voting available.

Beginning on February 13, registered voters can go the Department of Elections at 220 Lisa Drive, New Castle, 19720 and vote.

If you need a ride to vote, please call the Delaware State AFL-CIO office at (302) 256-0310

**Remember, vote
Stephanie Hansen
for State Senate.
She will fight for us.**

This important communication to our Union Brothers and Sisters is paid for by the Delaware Building and Construction Trades Council

Dear Union Brothers, Sisters

On Saturday, February 25th, there will be an important Special Election to fill Bethany Hall-Long's Senate seat and ask that you vote for **Stephanie Hansen**.

Let me explain *why* this Special Election is *critical* for Union members and families. Trump Republicans in Delaware want to pass anti-union, so-called, "Right-To-Work" laws. Don't be fooled about the wording. Without **Stephanie Hansen** in the Delaware State Senate, these laws will

- Strip our right to bargain collectively for health insurance and pension benefits
- Strip our right to organize
- Drive down wages
- Create unsafe workplaces
- Serve corporate special interests.

Stephanie Hansen will stand with our community and fight for laws that help working families and retirees in Delaware.

On February 25th, vote
Stephanie Hansen for State Senate.

In Solidarity,

Jim Maravelias

James Maravelias, President

Delaware State AFL-CIO

DE Building & Construction Trades Council



Republican State Committee of Delaware
360 College Square * Newark, DE 19711

Paid for by the Republican State Committee of Delaware

February 15, 2017

VIA EMAIL AND HAND DELIVERY

The Honorable Elaine Manlove
Commissioner of Elections
905 S. Governor's Ave., Suite 170
Dover, DE 19904

**Re: Special Election State Senate District 10;
Illegal contributions to Campaign of Stephanie Hansen;
Follow up to Feb. 13 letter**

Dear Commissioner Manlove:

I write to follow up the party's letter of February 13 regarding certain campaign finance violations. As part of that letter, we complained about door hangers which said "Vote for Stephanie Hansen" and were paid for by the Delaware Building and Construction Trades Council. Since sending that letter, we have since come across a Facebook posting by the "Delaware State AFL-CIO" inviting members to a special election canvass on Saturday, February 11, 2017 at 9:00 a.m. Moreover, we enclose a screen shot from Ms. Hansen's Facebook page showing her and former Maryland Governor O'Malley at that same event. Finally, we enclose a copy of an invitation to a fundraiser held February 13 at the same location.

The point of these documents is simple – the Building and Construction Trades Council has been coordinating events and fundraisers with the Hansen campaign. Therefore, any attempt to claim the door hangers are an independent expenditure must be rejected, and, accordingly, the cost of the door hangers constitutes a contribution to the Hansen Campaign (and, to the extent that the cost exceeds \$600, the campaign must reimburse the Council the amount of the excess). In addition, we expect to see the costs of the February 13 fundraising event to be paid for by the campaign and to be reflected on its upcoming 8-day report.

We continue to believe the Hansen campaign and its supporters are violating campaign finance laws for the reasons set forth in my letter of February 13 and as this letter. The special election is fast approaching, and we again ask that you investigate these matters as quickly as possible. Thank you.

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Very truly yours,

A handwritten signature in black ink, appearing to read "Charles Copeland". The signature is stylized, with the first name "Charles" written in a cursive-like font and the last name "Copeland" in a more blocky, slightly cursive font. The signature is positioned above the printed name.

Charles Copeland
Chairman, Delaware Republican Party



Delaware State AFL CIO

February 9 at 8:01pm · Bear · 📍

Dear Friend of Labor;

President James Maravelias and the Executive Board of the Delaware State AFL-CIO is requesting your support of an AFL-CIO member-to-member,

Special Election canvas on Saturday, February 11, 2017

9:00AM

**Plumbers and Pipefitters Hall Local 74
201 Executive Court
Newark, DE 19702**

Due to the Special Election for the 10th Senate District which will be held on February 25th.

Members of the Delaware State AFL-CIO will be targeting AFL-CIO members' doors ONLY with a labor specific message about the upcoming Special Election.

Just a reminder;

9:00AM

**Plumbers and Pipefitters Hall Local 74
201 Executive Court
Newark, DE 19702**



Like Follow Share



Stephanie Hansen at Plumbers & Pipefitters Local 74.

February 11 at 10:05am · Newark

Thank you to Governor Martin O'Malley for energizing our volunteers this morning. SD10 shares a border with Maryland - and in many ways, we are in this together.

Stephanie Hansen

@StephanieHansenForSenat

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with special guests

U.S. Senator Tom Carper
U.S. Senator Chris Coons
Congresswoman Lisa Blunt Rochester

in honor of

Stephanie Hansen
Candidate, 10th Senate District

Monday, February 13th
6 p.m. - 8 p.m.

Local 74 - Executive Banquet & Conference Center
205 Executive Drive, Newark, DE 19702

Friends - \$100, Supporter - \$250, Sponsor - \$600

RSVP: erikjschramm@gmail.com or donate:
<http://www.hansenforsenate.org/contribute.htm>

per, Senator Coons, and Congresswoman Rochester are appearing
only as special guests. They are not asking for funds or donations.

Printed in House

February 14, 2017

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The Honorable Elaine Manlove
Commissioner of Elections
905 S. Governors Ave., Suite 170
Dover, DE 19904

Re: Republican State Committee of Delaware

Dear Commissioner Manlove:

On behalf of First State Strong PAC, we write in response to the utterly frivolous complaint filed by the Republican State Committee of Delaware. Although First State Strong has not yet been served with a formal complaint, we offer this response now as a gesture of good faith because of the short time frame before the February 25 special election. The complaint is without merit and should be immediately dismissed.

First State Strong PAC is a political committee registered with the Delaware Department of Elections. Its purpose is to evaluate candidates' proposals and educate voters on which proposals would best strengthen Delaware. It supports Stephanie Hansen because she proposes to protect funding for and improve our public schools, preserve open space and a clean environment, tackle the drug epidemic, create jobs, and hold the line on taxes. It opposes John Marino's candidacy for state senate because he has campaigned on proposals that would weaken Delaware by cutting health care for the middle class, pulling tax dollars out of public schools, attacking Planned Parenthood, and giving tax breaks to millionaires.

First State Strong PAC has not made contributions to, or coordinated expenditures with, candidates. All of its expenditures in connection with the special election have been wholly independent of Ms. Hansen. They have been made without cooperation or consultation with Ms. Hansen, her campaign committee, or her agents, and have not been made in concert with or at the request or suggestion of Ms. Hansen, her campaign committee, or her agents. *See Del. Code Ann. tit. 15, § 8002.* First State Strong PAC has dutifully filed third-party advertiser reports with the Commissioner pursuant to state law and these reports have been made immediately available to the public on the Commissioner's website.

Significantly, the complaint offers no evidence that the mailers were produced in coordination with Ms. Hansen's campaign. *See id.* § 8002(13)(a)-(c). Instead, the complaint offers its readers a series of arguments that have no basis in law or fact.

First, the complaint suggests that any communication containing "express advocacy" is a contribution to the candidate it supports, regardless of whether it is made independently of the

The Honorable Elaine Manlove
February 14, 2017
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candidate. That argument is absurd on its face. It ignores decades of Supreme Court precedents that have “distinguished direct contributions to candidates from independent expenditures.” *Citizens United v. Federal Election Commission*, 558 U.S. 310, 345 (2010), citing *Buckley v. Valeo*, 424 U.S. 1 (1976). But even if we were to excuse complainant’s failure to read up on recent Supreme Court decisions—particularly those issued the same year when complainant had to grapple with the Senate candidacy of Christine O’Donnell—its failure to take even a cursory look at Delaware’s statutes before filing the complaint merits less sympathy. *See* Del. Code Ann. tit. 15, § 8002(8)(g) (specifically exempting “independent expenditure[s]” from the definition of “contribution”). Simply put, an independent expenditure is *not* a contribution.

Second, after finally acknowledging the concept of protected independent speech, the complaint offers the following tortured reasoning:

Here, however, as express advocacy, all of these Illegal Advertisements constitute a contribution to the campaign, unless they are exempt as an Independent Expenditure. However, we do not believe the foregoing to be Independent Expenditures because, if they were, we would expect to see words of express advocacy such as “vote for” or “vote against,” and no such words appear.

So according to the complainant, the ads qualify as contributions because they *include* express advocacy; yet they somehow do not qualify as independent expenditures because they *lack* express advocacy. Not only is such an argument bizarrely illogical and inconsistent, it is also unmoored from any principle of campaign finance law. Delaware’s test of whether an expenditure is an independent turns on the absence of coordinating *conduct* between the sponsor and the candidate, not the *content* of such communications. Complainant offers no evidence of such coordinating conduct and, in fact, no such conduct occurred.

First State Strong’s mailers are a valid exercise of its First Amendment rights, produced independently of any candidate or campaign. We respectfully request that you publicly and immediately dismiss this frivolous complaint.

Very truly yours,



Jonathan S. Berkon
Emily A. Hogin
Counsel to First State Strong PAC



DELAWARE BUILDING & CONSTRUCTION TRADES COUNCIL

AFL-CIO

308 Markus Court • Newark, Delaware 19713
Phone: (302) 369-9600 • Fax: (302) 369-9800
Website: www.debuildingtrades.com

JAMES MARAVELIAS
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Boilermakers Local 193
Laborers Local 199
Glaziers Local 252
Electricians Local 313
Iron Workers Local 451
Operating Engineers Local 542
Cement Masons Local 592
Carpenters Local 626
Sprinkler Fitters Local 669
Floorlayer's Local 1823
Millwrights Local 1906
Carpenters Local 2012
Teamsters Local 326

February 15, 2017

The Honorable Elaine Manlove
Delaware Department of Elections
905 S. Governors Avenue, Suite 170
Dover, DE 19904

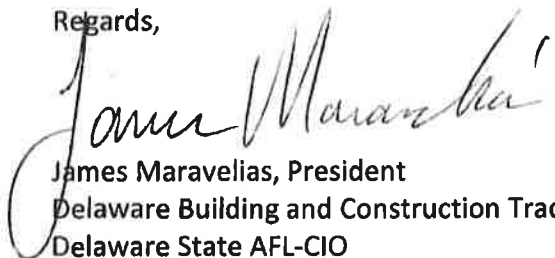
Dear Commissioner Manlove:

I am responding to your inquiry regarding the recently filed complaint.
To recap our conversation:

- All of the communications surrounding the upcoming special election are solely union member to union member communications pursuant to the definition of "membership communication" (Del. Code Title 15, Subchapter 1, §8002, (10) b.2);
- Pursuant to the definition of "Independent Expenditure," (Del. Code Title 15, Subchapter 1, §8002, (13)), the union member to union member communication activities were made without cooperation with, without consultation with, nor were made in concert with the candidate, the Hansen campaign committee or any agent of the candidate; and
- All notifications of our union member to union member communication activities are advertised only to local, union member participants.

Thank you for your attention to this matter.

Regards,



James Maravelias, President
Delaware Building and Construction Trades Council
Delaware State AFL-CIO

