STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of Government Action Fund (GAF PAC)

File No. 2008-003

AGREEMENT CONTAINING CONSENT ORDER, FORFEITURE AND PAYMENT OF A CIVIL PENALTY FOR VIOLATIONS OF CONNECTICUT GENERAL STATUTES § 9-607 (formerly § 9-333i)

This Agreement, by and between Thomas Gaffey of the City of Meriden, County of New Haven, State of Connecticut (hereinafter referred to as the Respondent) and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Respondent is the Chairperson of the Government Action Fund political committee (hereinafter "GAF PAC") and has been from its inception in 1999 until the present time. During the same time period, the Respondent was an incumbent candidate for State Senate and was re-elected five times, with candidate committees formed to support his re-election for the November 2000, 2002, 2004, 2006 and 2008 state elections.

2. A preliminary audit of the GAF PAC conducted by Commission staff indicated that certain filings were incomplete and lacking in certain required disclosures. Accordingly, at its regular meeting held on January 16, 2008, the Commission initiated an investigation into the GAF PAC's expenditures, receipts and campaign finance disclosure reporting, and the relationship to and transfers between candidate committees for Senator Gaffey in 2004 and 2006. The Respondent cooperated throughout the investigation, as did the GAF PAC treasurer and related staff.

3. GAF PAC and Senator Gaffey's candidate committees had the same treasurer during all relevant periods related to this investigation, up to and including his 2006 candidate committee. Senator Gaffey's 2008 candidate committee has a different treasurer and is not part of the investigation in this matter. Issues arising out of the investigation with the GAF PAC treasurer are addressed in a separate document.

4. Conn. Gen. Stat. §§ 9-606 and 9-608 (formerly Conn. Gen. Stat. §§ 9-333h and 9-333j) require committee treasurers to file periodic statements of receipts and expenditures with the Commission (previously the Secretary of the State had been the filing repository for such reports, prior to December 31, 2006), under penalty of false statement, and requires (a) an itemized accounting of each contribution and expenditure, (b) maintenance of internal

records for the committee, and (c) that a copy of each statement filed by a treasurer is provided to the chairman of a political committee.

5. It is understood and agreed that for relevant time periods provided herein, the applicable statute prior to December 31, 2006 was Conn. Gen. Stat. § 9-333i, and thereafter Conn. Gen. Stat. § 9-607, based upon the recodification of the campaign finance laws. The substance of each statute remained the same during the period under review, from 2004 to 2007.

6. Conn. Gen. Stat. § 9-607 (formerly Conn. Gen. Stat. § 9-333i) provides, in relevant part:

> (a) ***No financial obligation shall be incurred by a committee unless authorized by the campaign treasurer***, except that certain expenditures of a candidate's personal funds may be reimbursed as provided in subsection (k) of this section.
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> (b) ***No*** candidate, campaign treasurer, or ***committee shall be liable for any debt*** incurred in aid of or in opposition to any political party, referendum question or the candidacy of any person or persons for said offices or positions ***unless such debt was incurred pursuant to an authorization issued under subsection (a) of this section***. . . .
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> (d) Except as provided in subsections (j) and (k) of this section, ***no payment in satisfaction of any financial obligation incurred by a committee shall be made by or accepted from any person other than the campaign treasurer and then only according to the tenor of an authorization issued pursuant to subsection (a) of this section***. . . .
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> (f) ***The campaign treasurer shall preserve all internal records of transactions required to be entered in reports filed pursuant to section 9-608 for four years from the date of the report in which the transactions were entered. Internal records required to be maintained in order for any permissible expenditure to be paid from committee funds include, but are not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence showing the campaign or other lawful purpose of the expenditure.*** If a committee incurs expenses by credit card, the campaign treasurer shall preserve all credit card statements and receipts for four years from the date of the report in which the transaction was required to be entered. If any checks are issued pursuant to subsection (e) of this section, the campaign treasurer who issues them shall preserve all cancelled checks and bank statements for four years from the date on which they are issued. If debit card payments are made pursuant to subsection (e) of this section, the campaign treasurer who makes said payments shall preserve all debit card slips and bank statements for four years from the date on which the payments are made. In the case of a ***candidate committee***, the campaign treasurer ***or the candidate, if the candidate so requests***, shall preserve all internal records, cancelled checks, debit cards slips and bank statements for four years from the date of the last report required to be filed under subsection (a) of section 9-608. . . .

(j) A candidate or his ***committee worker shall be reimbursed by the campaign treasurer for any permissible expenditure which the*** candidate or ***committee worker has paid from his own personal funds if (1) the campaign treasurer authorized the expenditure, (2) the candidate or worker provides the campaign treasurer with a written receipt or other documentary evidence from the vendor proving his payment of the expenditure, and (3) in the case of a reimbursement to the candidate, a detailed accounting of the expenditure is included in the report of the campaign treasurer. Internal records required to be maintained in order for any candidate or committee worker to be reimbursed from committee funds include, but are not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence showing the campaign or lawful purpose of the expenditure.*** The campaign treasurer shall preserve all such internal records for the same period of time as required in the case of cancelled checks, except that the campaign treasurer of a candidate committee may, upon request of the candidate, give such internal records to the candidate to keep for such period. [Emphasis added.]

7. The Respondent used his personal credit cards when making certain expenditures, and sought and received payment from GAF PAC directly to his personal credit card accounts for many claimed committee expenditures. The Respondent also requested and received payment for cell phone expenses directly to his personal cell phone account. As it pertains to GAF PAC, the Respondent is the Chairperson and is not a candidate within the meaning of Conn. Gen. Stat. § 9-601 and § 9-607(f). Although the treasurer of the PAC maintained various internal financial records, the Respondent maintained the credit card statements and some cell phone summary sheets. The treasurer did not require the delivery to him of the monthly credit card statements nor the telephone bills prior to approving payment, but has indicated that he was aware that the Respondent was maintaining them. Neither the Respondent nor the treasurer maintained the detailed monthly cell phone bills. The failure to provide such contemporaneous documentation to the GAF PAC treasurer to support the lawful purpose of such expenditures prior to payment, was in violation of Conn. Gen. Stat. § 9-607(f) (formerly Conn. Gen. Stat. § 9-333i(f)). The Respondent asserts that if the treasurer had requested such records, he would have complied.

8. The process utilized to pay claimed GAF PAC committee expenditures was that Senator Gaffey would telephone the GAF PAC treasurer's secretary, who had no formal role with the committee but served as a long time bookkeeper for the PAC, and would request that the treasurer pay a dollar amount directly to the Respondent's personal credit card account, typically AAA Financial. The secondary payee names and specific amounts identified by the Respondent during these calls were usually noted on the GAF PAC check register. The filed reports usually, but not always, included the total credit card payment and the secondary payees included in such payment, but seldom broke down that total payment into the individual secondary payee amounts as required. Nor were the required purpose codes used for each secondary payee identified. The GAF PAC treasurer's secretary would then prepare a committee check for the treasurer's signature. All checks were signed by the treasurer. The Respondent acknowledges that few, if any, invoices or documents were

provided contemporaneously to the committee treasurer to support the claimed committee expenditure. However, some documentation and information was not in the possession of the treasurer and had to be reconstructed or assembled for the purposes of this investigation.

By delegating storage responsibilities to Respondent, the treasurer was following the same procedure he had followed for many years when acting as the Respondent's campaign treasurer. Under the explicit statutory language dealing with candidate committees, such delegation is allowed. A candidate can request to maintain documents of a candidate committee, pursuant to Conn. Gen. Stat. § 9-607(f) and (j). However, neither the Respondent nor the treasurer were aware that the rules governing maintenance of records were different for candidate committees than political committees.

9. The Respondent was not reimbursed in the manner provided in Conn. Gen. Stat. § 9-607(j), which requires reimbursement to the worker after he has paid the expenditure from his own personal funds, but rather was extended an advance in the form of payment made directly to his personal credit card account from the GAF PAC, in violation of Conn. Gen. Stat. § 9-607(j). The Respondent's position is that the payments were not an "advance," and that incurring the charge on a personal credit card meets the payment prerequisite for reimbursement under 9-607(j).

10. Conn. Gen. Stat. § 9-607 (formerly Conn. Gen. Stat. § 9-333i) further provides:

> (g) (1) As used in this subsection, (A) ***"the lawful purposes of his committee" means:*** (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; ***(ii) for a political committee, the promoting of the success or defeat of candidates for nomination and election to public office or position subject to the requirements of this chapter,*** or the success or defeat of referendum questions, provided a political committee formed for a single referendum question shall not promote the success or defeat of any candidate, ***and provided further a <u>legislative caucus committee</u> may expend funds to defray costs of its members for conducting legislative or constituency-related business <u>which are not reimbursed or paid by the state;</u>*** and (iii) for a party committee, the promoting of the party, the candidates of the party and continuing operating costs of the party, and (B) "immediate family" means a spouse or dependent child of a candidate who resides in the candidate's household. [Emphasis added.]

11. The GAF PAC expended thousands of dollars for Senator Gaffey to attend legislative conferences such as the National Conference of State Legislators (NCSL) and Council of State Government (CSG). However, the GAF PAC is a committee of two or more individuals and is not a legislative caucus committee. Paying for legislative conferences is not a lawful

purpose of a committee of two or more individuals such as GAF PAC. Consequently, such expenditures violated Conn. Gen. Stat. § 9-607(g) (formerly Conn. Gen. Stat. § 9-333i(g)). The Commission does not have prior cases on this specific issue, but has a prior Opinion of Counsel analyzing this issue. Respondent maintains that he was unaware that legislative conferences were not a permissible expenditure of a political committee of two or more individuals, as distinguished from conferences on candidate development or political issues. Respondent and his treasurer believed that such conferences were legitimate committee expenditures.

12. Conn. Gen. Stat. § 9-607 further provides, in relevant part:

> (g) . . . (4) As used in this subdivision, ***expenditures for "personal use" include expenditures to defray normal living expenses*** for the candidate, the immediate family of the candidate ***or any other individual and expenditures for the personal benefit of the candidate or any other individual having no direct connection with, or effect upon***, the campaign of the candidate or ***the lawful purposes of the committee,*** as defined in subdivision (2) of this section. ***No goods, services, funds and contributions received by any committee under this chapter shall be used or be made available for the personal use of any candidate or any other individual. No candidate, committee, or any other individual shall use such goods, services, funds or contributions for any purpose other than campaign purposes permitted by this chapter.*** . . .
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> (h) No campaign treasurer of a political committee may provide an honorarium to, compensate or make a gift to, any elected public official who is subject to the provisions of this chapter, for any speaking engagement or other services rendered on behalf of such committee, except that the provisions of this subsection shall not apply to: (1) Reimbursement for actual travel expenses or food and beverage for the personal consumption of such public official or members of his immediate family, in connection with the rendering of any such services by the public official; or (2) any contribution made to such public official in connection with his campaign for nomination or election to an office or position included in this chapter, which is reported in accordance with the provisions of this chapter. ***Except as provided in this subsection, no such elected public official may receive any gift, honorarium or compensation from a political committee.*** . . . [Emphasis added.]

13. The investigation revealed that in four instances, the Respondent attended conferences of the National Conference of State Legislatures (hereinafter "NCSL") in 2004 in Salt Lake City, Utah; in 2005 in Seattle, Washington; in 2006 in Tampa, Florida; and in 2006 in Nashville, Tennessee. In each instance, the Respondent submitted travel vouchers to Legislative Management at the Connecticut General Assembly and received reimbursement from the State of Connecticut, and also sought and received payment from GAF PAC to his personal credit card for the same amounts for the same conferences. Respondent explained that different staff was involved in each reimbursement or payment process, but Respondent

acknowledges that he was the person primarily responsible for ensuring that such errors did not occur.

14. The Respondent also attended a conference of the Council of State Governments in 2005 in Montville, Connecticut and was reimbursed for the registration fee by both the State of Connecticut and GAF PAC.

15. The Respondent also attended an NCSL meeting in Washington, D.C. on the No Child Left Behind Act, and was reimbursed the base hotel cost by both the State of Connecticut and GAF PAC.

16. The conference expenses described in paragraphs 13 through 15, above, for which the Respondent received reimbursement from the State of Connecticut Office of Legislative Management, and also received payment on his behalf from GAF PAC directly to his personal credit card account, total $2,804.48.

17. In addition, GAF PAC mistakenly paid the Respondent's credit card account directly for the same expenditure to MJ 21 restaurant twice, $149.21 each time.

18. The Commission concludes, as set forth above, that as a result of the foregoing errors, the Respondent received duplicate payments, which overpayments necessarily resulted in receiving political committee funds for his personal use in violation of Conn. Gen. Stat. § 9-607(g)(4) (formerly Conn. Gen. Stat. § 9-333i(g)(4)) and received gifts or compensation from a political committee of the same amount, in violation of Conn. Gen. Stat. § 9-607(h), in the amount of $2,953.69. The Respondent asserts that these payments were made in error, and that he never intended to benefit personally.

19. The Respondent admits that such duplication occurred and that he should have reviewed the materials more carefully in order to prevent such errors from occurring. The Respondent has made reimbursement for the above to GAF PAC in the amount of $1,548.01 to date. The Respondent offered to make the remaining restitution amount to GAF PAC, but was asked by the Commission to refrain from doing so until the conclusion of this matter, in part because actual amounts were still being determined. The remaining amount has now been determined to be $1,405.68.

20. The PAC also paid for hotel charges that were not reimbursed by Legislative Management with respect to the Seattle, Tampa, Nashville and Washington, D.C. conferences. The Commission maintains that such hotel upgrades or the extra day were for the personal benefit of the Respondent and not related to a lawful purpose of the political committee. Accordingly, by receiving payment to his credit card in the amount of $1,097.32 for such expenditures, the Commission concludes that the Respondent violated Conn. Gen. Stat. § 9-607. The Respondent contends that these items were not upgrades but lodging expenses for what he considered at the time to be legitimate expenses. Respondent also asserts that even if an upgrade occurred, it would not be a violation of expenditure rules because the Commission, in contrast to Legislative Management, has no limitations on the daily cost of lodging. The Commission maintains that in these particular instances, the Respondent

would have had to demonstrate to the treasurer the political purpose of the additional charge or extra day over and above the base room rate already reserved.

21. The Respondent also caused the PAC to incur expenses relating to a travelling companion, which expenses bore no relationship to the lawful purposes of the committee, in the amount of $189 for expenses related to a small travel agent fee for the conference at Salt Lake City in 2004, and travel expenses related to a political event in Washington D.C. in 2007, in violation of Conn. Gen. Stat. § 9-607. Prior to the commencement of the investigation, the Respondent made reimbursement to the PAC sufficient to cover such expenditures.

22. The Respondent also received the benefit of payment from GAF PAC directly to Sprint for his personal cell phone, in amounts totaling $5,084.46 in the years 2004 to 2007, out of a total of $5,826.20 in total Sprint bills for the same period. While the Respondent claims that many of the calls were related to the operation of the political committee, no receipts, invoices or phone bills were provided to the treasurer to substantiate the political purpose of the expenditure, and none were requested by the treasurer. Only after the payment of the expenditure, did the Respondent occasionally provide the cover sheet of the bill to the treasurer. Expenditures made to Sprint on Respondent's behalf generally followed the same procedure described in paragraphs 7 to 9, above, and were made based upon a phone call to the secretary of the GAF PAC treasurer, without contemporaneous documentation. The fact that cell phone bills were paid by the treasurer without first receiving any documentation is contrary to the requirements of Conn. Gen. Stat. § 9-607, even if the expenditure is later determined to be PAC related.

23. In addition, the Respondent caused GAF PAC to pay for charges related to an additional phone on his personal cell phone account with Sprint, which was allowed to be used by a companion of Senator Gaffey for reasons unrelated to the lawful purposes of the political committee. GAF PAC paid charges for this phone during the period of use by the companion, in the amount of $49 one month, but negligible amounts for several other months, although the records available are not complete. The Respondent admits that usage of the phone was not strictly limited to PAC activities, and that he should have deducted the cost of the companion's usage from the monthly charges prior to seeking payment from the PAC.

24. While issues related to the reporting of GAF PAC expenditures are addressed separately with respect to the committee treasurer, the Respondent was notified of prior audit findings by Commission staff related to his 2000 and 2002 Senate campaigns, which encompass similar issues with respect to deficiencies in expenditure reporting. In addition, a 2003 article in the *Meriden Record Journal* questioned $9,000 in credit card bills for GAF PAC that went unreported for over a year, and raised issues regarding the maintenance of the PAC. The Respondent maintains that, as a result of the audits, subsequent candidate committees were restructured and a professional accountant retained, but no such improved process was implemented with respect to the GAF PAC. The Respondent maintains that he did not retain an accountant for GAF PAC due to the lesser amount of checks and expenditures, and now regrets such decision. The Commission concludes that based upon these three prior

communications, the Respondent knew or should have known to be more attentive to the expenditures and reporting requirements of the GAF PAC.

25. Connecticut General Statutes § 9-7b(a)(2) provides that the Commission may assess a civil penalty of two thousand dollars or twice the amount of the improper contribution or expenditure for each violation of Chapter 155 of the General Statutes. Pursuant to Regulations of Connecticut State Agencies §9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:

    (1) the gravity of the act or omission;
    (2) the amount necessary to insure immediate and continued compliance;
    (3) the previous history of similar acts or omissions; and
    (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

26. The Commission finds that the use of political committee funds for personal use to be a serious and grave act, in particular, receiving reimbursement from the State of Connecticut as well as from GAF PAC, even if unintentional.

27. The Commission finds that to insure immediate and continued compliance, it is necessary for the Respondent to terminate GAF PAC and forfeit the remaining balance of the committee, as well as pay a significant civil penalty.

28. Based upon prior audit reports, as well as a related news article, described in paragraph 24 above, it is found that the Respondent knew or should have known that GAF PAC had prior issues with expenditures and reporting, and should have exercised much greater care in monitoring said committee. That being said, the Commission has not had a prior enforcement action against the Respondent.

29. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

30. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.

31. 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 contest the validity of the Order entered into pursuant to this agreement.

32. This agreement and Order, and Respondent's compliance therewith, shall constitute a full and final settlement of all matters within the Commission's jurisdiction relating to the Respondent's involvement in GAF PAC from 2004-2007.

ORDER

IT IS HEREBY ORDERED THAT The Respondent shall remit a civil penalty to the Commission of six thousand dollars ($6,000) within 30 days of the adoption of the agreement; and

IT IS FURTHER ORDERED THAT The Respondent shall cause his treasurer to forfeit the remaining balance of funds in the GAF PAC account, after expenses, to the State Elections Enforcement Commission for deposit in the General Fund, within thirty days of the adoption of the final decision in this matter, and thereafter forthwith cause his treasurer to file a termination report for the Government Action Fund political committee (GAF PAC).

In addition, IT IS FURTHER ORDERED THAT the Respondent shall Henceforth strictly comply with the requirements of Conn. Gen. Stat. § 9-607, and the Respondent shall not establish or control any other political committee for a period of one year, and shall attend an educational program on campaign finance provided by the Commission prior to establishing or controlling another political committee.

The Respondent:

Thomas Gaffey
64C Nutmeg Drive
Meriden, Connecticut

Dated: 05/06/09

State Elections Enforcement Commission:

BY: Joan Andrews
Joan M Andrews, Esq.
Director of Legal Affairs and
Enforcement and
Authorized Representative of the State Elections
Enforcement Commission,
20 Trinity Street
Hartford, Connecticut

Date: 5/6/09

Adopted this ____day of _____ 200_, at Hartford, Connecticut.

Stephen F. Cashman, Chairman
By Order of the Commission