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November 2, 2020

VIA EMAIL

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

Re: MUR 7797

Dear Mr. Jordan:

We write as counsel to Speaker Sara Gideon, Maeve Coyle,¹ Sara Gideon for Maine, and Lisa Lunn in her official capacity as Treasurer of Sara Gideon for Maine (collectively, “Respondents”) in response to the complaint in MUR 7797 (the “Complaint”) filed by the Foundation for Accountability and Civic Trust (“FACT”) on September 16, 2020, alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Federal Election Commission (“FEC” or “Commission”) regulations.

The Complaint alleges that Respondents engaged in prohibited coordination with the political committee SMP in connection with two SMP advertisements concerning Senator Susan Collins. The only factual basis for the allegation is a short public statement Ms. Coyle posted on Twitter which FACT argues served as the impetus for the ads. However, the Commission has already made clear on several occasions that posts on public websites do not qualify as coordination under the Act. Because the Complaint alleges no additional facts indicating that coordination between Respondents and SMP occurred, the Commission should find no reason to believe that Respondents violated the Act and dismiss this Complaint.

FACTUAL BACKGROUND

Speaker Sara Gideon is the Democratic nominee for United States Senate in Maine. Her opponent is Senator Susan Collins.² Sara Gideon for Maine is Speaker Gideon’s principal campaign committee and Maeve Coyle serves as the Committee’s communications director.³

In her capacity as communications director, Ms. Coyle maintains a publicly available Twitter account from which she posts a wide range of campaign updates and political messages for public consumption. Her Twitter account is open to the general public and an individual does not need to be approved in order to access her Twitter feed. On September 1, 2020, she tweeted the following message: “Voters across Maine should see and hear how Collins has taken money from drug and insurance companies and then

¹ Ms. Coyle was not listed as a respondent in the Complaint. However, because she received a copy of the Complaint from the Commission, she has chosen to respond to the Complaint in tandem with the named respondents.

² Sara Gideon, Statement of Candidacy, FEC Form 2 (amended Oct. 15, 2020).

³ Sara Gideon for Maine, Statement of Organization, FEC Form 1 (amended Oct. 15, 2020).

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voted their way instead of for Maine people. In Portland, they should also see and hear how Collins has stood with Trump and McConnell instead of Maine people.”⁴

SMP is a federal Super PAC.⁵ It was formed and operates completely independently from Speaker Gideon and the Committee.

On September 1, 2020, SMP posted two 30 second videos to YouTube entitled “Too Much” and “No Thanks.”⁶ Too Much discussed how Senator Collins voted to raise taxes on Maine’s middle class while lowering taxes for big corporations, including pharmaceutical and oil companies. No Thanks also discussed Senator Collins’s vote to raise taxes on Maine’s middle class while lowering taxes for big corporations, with a clip of President Trump thanking Senator Collins for her vote interspersed throughout.

According to a tweet by Senator Collins’s campaign that was included in the Complaint, No Thanks aired in the Portland-Auburn media market during several morning news programs on September 2, 2020, while Too Much aired in the Bangor and Presque Isle media markets during several morning news and reality television programs on September 2, 2020.⁷

LEGAL ANALYSIS

The Complaint alleges that Respondents coordinated with SMP on these two advertisements. However, the Complaint alleges no facts indicating that any coordination occurred. A communication is a “coordinated communication” under 11 C.F.R. § 109.21 only if it satisfies all three prongs of the regulation: the payment prong, the content prong, and the conduct prong. As explained below, the Complaint fails to allege any facts demonstrating that the conduct prong was satisfied with regard to either of these advertisements. As such, the Complaint fails to allege facts which, if taken as true, would constitute a violation of the Act or Commission regulations and therefore must be dismissed.⁸

The Complaint alleges that the advertisements meet the conduct prong under 11 C.F.R. § 109.21(d)(1) because the Committee requested them through a public post on Twitter. This assertion is incorrect as a matter of law. The Commission’s regulations, and the Commission’s interpretation of those regulations on numerous occasions, make clear that communications appearing on a publicly available website are not sufficient to find that the conduct prong has been satisfied.

As part of the revision of the coordination regulations in 2003, the Commission established that the conduct prong would be satisfied if a campaign made a “request or suggestion” that a third party disseminate a communication on its behalf.⁹ In the accompanying Explanation and Justification, the

⁴ Twitter Post by Maeve Coyle, (Sept. 1, 2020 at 2:47 PM), <https://twitter.com/maevemcoyle/status/1300867976103702530>.

⁵ SMP, Statement of Organization, FEC Form 1 (amended Oct. 1, 2019).

⁶ SMP, *Too Much* (Sept. 1, 2020), <https://www.youtube.com/watch?v=SLRPHIAyfbo&feature=youtu.be>; SMP, *No Thanks* (Sept. 1, 2020), https://www.youtube.com/watch?v=qgj4Q7g_zKc&feature=youtu.be.

⁷ See Complaint at 3.

⁸ See 11 C.F.R. § 111.4(a), (d); MUR 4960 (Clinton for U.S. Senate), Statement of Reasons, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).

⁹ 11 C.F.R. § 109.21(d)(l).

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Commission clarified that “[t]he ‘request or suggestion’ conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, *but not those offered to the public generally*. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1), but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1).”¹⁰

The Commission has held firm to this interpretation in several recent enforcement actions. In MUR 6821, it dismissed a complaint that alleged a coordinated communication when SMP aired an advertisement with similar themes to those contained in a message posted on the publicly available website of Senator Jeanne Shaheen’s principal campaign committee. In finding that there was no reason to believe that a violation of the Act had occurred, the Commission emphasized that “a communication resulting from a general request to the public or the use of publicly available information, including information contained on a candidate’s campaign website, does not satisfy the conduct standards.”¹¹

Similarly, in MUR 7124, the Commission dismissed a complaint filed by FACT against U.S. Senate candidate Katie McGinty alleging that coordinated communications occurred when Women Vote! and Majority Forward paid to air three advertisements supporting McGinty that contained themes similar to those posted on her campaign’s publicly available website. The Commission voted 5-0 to dismiss the complaint and made clear once again that “the ‘request or suggestion’ ‘conduct’ standard refers to requests or suggestions ‘made to a select audience, but not those offered to the public generally’” and therefore a request that is posted on a web page that is available to the general public does not trigger the request or suggestion conduct standard.¹²

Here, no conduct is alleged apart from a simple and public Twitter message posted by a member of the Committee’s staff. The Complaint does not allege that Ms. Coyle and SMP communicated about the advertisements privately. As a matter of settled law, the facts alleged are insufficient to establish coordination.

Despite clear Commission precedent to the contrary, FACT argues that this tweet constitutes an impermissible request or suggestion to create or disseminate the advertisements because the “request or suggestion” conduct standard does not contain a safe harbor for publicly available information, as the other four conduct standards do.¹³

¹⁰ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (emphasis added); *see also* Coordinated Communications, 71 Fed. Reg. 33,190, 33,205 (June 8, 2006) (citing H.R. Conf. Rep. No. 94–1057, at 38 (Apr. 28, 1976) (“[A] general request for assistance in a speech to a group of persons by itself should not be considered to be a “suggestion” that such persons make an expenditure to further such election or defeat.”)).

52 U.S.C. § 30109(a)(2).

¹¹ *See* FEC MUR 6821 (Shaheen for Senate), Factual and Legal Analysis at 8 (Dec. 2, 2015).

¹² FEC MUR 7124 (Katie McGinty for Senate), Factual and Legal Analysis at 8-9 (May 4, 2017).

¹³ *See* Complaint at 6.

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It is true that the “request or suggestion” conduct standard does not contain a safe harbor for publicly available information. So, for example, if a candidate were to *privately* request that an entity run an ad containing certain publicly available information, such conduct might satisfy the conduct prong of 11 C.F.R. § 109.21.¹⁴ However, that is not what is alleged here, nor is that what occurred. Instead, the Complaint points to a single, public tweet as evidence of coordination. The Commission has time and again found that such activity does not constitute coordination under the Act. To find otherwise in this matter would abrogate years of clear Commission precedent.

CONCLUSION

The Act requires that the Commission find “reason to believe that a person has committed, or is about to commit, a violation” of the Act as a precondition to opening an investigation into the alleged violation.¹⁵ In turn, the Commission may find “reason to believe” only if a complaint sets forth specific facts, which, if proven true, would constitute a violation of the Act.¹⁶ Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation.¹⁷

The Complaint has not alleged facts that provide a sufficient basis for the Commission to find “reason to believe” that the Act or Commission regulations have been violated. Accordingly, the Commission must reject the Complaint’s request for an investigation and should instead immediately dismiss the Complaint and close this matter.

Very truly yours,



Marc E. Elias
Jacquelyn K. Lopez
Andrea T. Levien
Counsel to Respondents

¹⁴ See Coordinated Communications, 71 Fed. Reg. 33,190, 33,205 (June 8, 2006).

¹⁵ 52 U.S.C. § 30109(a)(2).

¹⁶ See 11 C.F.R. § 111.4(a), (d); FEC MUR 4960 (Clinton for U.S. Senate), Statement of Reasons at 1, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas (Dec. 21, 2000).

¹⁷ *Id.*



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STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

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FAX 202-219-3923

AR/MUR/RR/P-MUR# 7797

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

October 1, 2020

Date

DocuSigned by:
Maeve Coyle

(Signature - Respondent/Agent/Treasurer)

Maeve Coyle

(Name - Please Print)

Communications Director

Title

RESPONDENT: Maeve Coyle

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: P.O. Box 812
(Please Print)

South Freeport, ME 04078

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/10/20

Date

(Signature - Respondent/Agent/Treasurer)

Sara Gideon

(Name - Please Print)

Candidate

Title

RESPONDENT: Sara Gideon

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

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