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VIA E-MAIL

CELA@fec.gov

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 SMP and Rebecca Lambe, in her official capacity as Treasurer (collectively, “**Respondents**”), in response to the complaint in MUR 7797 (the “**Complaint**”) filed by the Foundation for Accountability and Civic Trust (“**FACT**”), alleging a violation of the Federal Election Campaign Act of 1971, as amended (the “**Act**”), and Federal Election Commission (“**FEC**” or the “**Commission**”) regulations.

The Complaint falsely alleges that Respondents engaged in prohibited coordination with Sara Gideon and her principal campaign committee in connection with two television advertisements produced by Respondents. The Complaint’s sole basis for its allegation is that Maeve Coyle, Sara Gideon’s Communications Director, posted a public message on Twitter explaining what voters in Maine should hear about Senator Susan Collins’s record. As FACT is well aware, the Commission has repeatedly made clear that such activity does not constitute “coordination” for purposes of the Act. Moreover, Respondents’ advertisements were created and shipped to stations before Maeve Coyle posted this message, so it is factually inaccurate to claim that these advertisements were produced or disseminated at the “request or suggestion” of Maeve Coyle’s message.

As the public message posted by Maeve Coyle is the sole basis for the Complaint’s allegation that Respondents committed a violation of the Act or FEC regulations and this message does not

establish that Respondents violated the Act or Commission regulations, the Commission should dismiss the Complaint.

FACTUAL BACKGROUND

Sara Gideon is a candidate for U.S. Senate in Maine in 2020, running to challenge the sitting U.S. Senator, Susan Collins.¹ Sara Gideon for Maine is Sara Gideon's principal campaign committee.²

SMP is a federally registered super PAC.³ As a super PAC, SMP operates completely separately from any federal candidates and their committees, including Sara Gideon and her campaign.

In August 2020, Respondents created two 30-second advertisements, one entitled "Too Much" and the other entitled "No Thanks" (the "*Advertisements*").⁴ The Advertisements featured information about Senator Susan Collins's record, specifically her vote for the Tax Cuts and Jobs Act of 2017 and its detrimental impact, and the fact that she has taken millions in contributions from corporate interests. Respondents shipped the Advertisements to stations on August 31, 2020.

On September 1, 2020, Maeve Coyle, Sara Gideon's Communications Director, posted a public message on Twitter, telling the general public that "Voters across Maine should see and hear how Collins has taken money from drug and insurance companies and then voted their way instead of for Maine people" and "In Portland they should also see and hear how Collins has stood with Trump and McConnell instead of Maine people."⁵ This message is the sole basis for the Complaint's allegation that Respondents committed a violation of the Act or FEC regulations.

LEGAL ANALYSIS

A. The Complaint Alleges No Facts That Establish That the Advertisements at Issue Are Coordinated Communications Because the Complaint Alleges No Facts That Establish That the Conduct Prong Is Met

The Complaint alleges that Respondents coordinated with Sara Gideon and her campaign on the Advertisements at issue. However, no coordination occurred, and the Complaint fails to establish that the Advertisements are coordinated communications.

¹ Sara Gideon, FEC Form 2 - Statement of Candidacy (amended Oct. 15, 2020), <https://docquery.fec.gov/pdf/051/202010159294514051/202010159294514051.pdf>.

² Sara Gideon for Maine, FEC Form 1 - Statement of Organization (amended Oct. 15, 2020), <https://docquery.fec.gov/pdf/269/202010159294510269/202010159294510269.pdf>.

³ SMP, FEC Form 1 - Statement of Organization (amended Oct. 1, 2019), <https://docquery.fec.gov/pdf/667/201910019163579667/201910019163579667.pdf>.

⁴ See Compl. at 3.

⁵ *Id.* at 2. Note, the screenshot of the message in the Complaint lists 1:47pm as the time of the message, but visiting the site now indicates that the message was posted at 2:47pm. Maeve Coyle (@maevemcoyle), Twitter (Sept. 1, 2020, 2:47pm), <https://twitter.com/maevemcoyle/status/1300867976103702530>. The source of this discrepancy is unclear.

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. The Complaint alleges no facts that demonstrate that the conduct prong was satisfied in connection with the Advertisements. As such, the Complaint fails to allege facts which, even if taken as true, would constitute a violation of the Act or FEC regulations, and therefore, the Complaint must be dismissed.⁶

The Complaint claims that the Advertisements meet the conduct prong under 11 C.F.R. § 109.21(d)(1) because Sara Gideon’s Communications Director publicly posted on Twitter that voters in Maine need to hear about how Senator Susan Collins has taken money from drug and insurance companies and voted their way, and that Senator Collins has stood with Trump and McConnell instead of with Mainers.⁷ The Complaint claims that this message is a request that advertisements with specific content be distributed.⁸ This message is the Complaint’s sole basis for its allegation that the Advertisements are coordinated communications.

However, a statement posted on a public website and not sent to a select audience does not constitute a “request or suggestion” under 11 CFR § 109.21(d)(1). Furthermore, Respondents’ Advertisements were created and sent to stations prior to the time Maeve Coyle’s message was posted on Twitter. Accordingly, the Complaint alleges no facts that demonstrate that the Advertisements are coordinated communications because the Complaint alleges no facts that establish that the conduct prong has been satisfied.

1. The Complaint’s Claim That a Statement to the General Public on a Public Website Is a “Request or Suggestion” Is Incorrect as a Matter of Law

First, the Complaint’s claim that the message constitutes a “request or suggestion” is incorrect as a matter of law. Maeve Coyle’s message posted on Twitter does not constitute a “request or suggestion” and would not be evidence of coordination under 11 CFR § 109.21(d)(1) because the statement was posted on a public website and was not sent to a select audience. The Commission’s regulations, and the Commission’s interpretation of those regulations on numerous occasions, make clear that public communications made to the general public and not directed to a select audience are never 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 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

⁶ See 11 C.F.R. § 111.4(d); FEC 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).

⁷ Compl. at 2.

⁸ *Id.* at 6.

⁹ 11 C.F.R. § 109.21(d)(1).

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 As this language demonstrates, a request or suggestion made on a publicly available website does not, as a matter of law, satisfy the conduct prong.

The Commission has re-affirmed this basic principle through the enforcement process. In MUR 6821, the FEC dismissed a complaint which alleged that a coordinated communication occurred when Senate Majority PAC began to air an advertisement with similar themes to those contained in a message posted on the publicly available website of Shaheen for Senate, the principal campaign committee of Senator Jeanne Shaheen. In finding that there was no reason to believe that any violation of the Act occurred, and dismissing the complaint, 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 Further, in MUR 7124, the Commission dismissed a complaint filed by FACT against Katie McGinty, a candidate for U.S. Senate. The complaint alleged that the phrase “voters need to know” posted on McGinty’s campaign website constituted a “request or suggestion” and that certain advertisements produced by third parties were thus coordinated communications. 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 standard.¹²

The material facts at issue here are nearly identical to those the Commission considered in MUR 6821 and MUR 7124. Here, the Complaint claims that Sara Gideon’s Communications Director requested or suggested the Advertisements by posting a message on a public website.¹³ Since the content appeared on a public website and was not sent to a select audience, it cannot constitute a “request or suggestion” under 11 C.F.R. § 109.21(d)(1), and as a matter of settled law, it is insufficient to establish coordination.

2. Respondents’ Advertisements Were Not Created, Produced, or Disseminated at the “Request or Suggestion” of Maeve Coyle’s Message

Second, the facts prove that Respondents’ Advertisements were not created, produced, or distributed to stations for dissemination at the “request or suggestion” of Maeve Coyle’s public post.

¹⁰ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003).

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 Compl. at 1, 8.

Respondents created and produced their Advertisements in August 2020. Respondents shipped the Advertisements to stations on August 31, 2020. As clearly documented in the Complaint, Maeve Coyle posted her message to Twitter on September 1, 2020.¹⁴ Accordingly, Respondents' Advertisements were not and, moreover, could not have been created, produced, or distributed to stations for dissemination at the "request or suggestion" of the Twitter message posted by Maeve Coyle.

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 they 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. It should instead immediately dismiss the Complaint and close the file.

Very truly yours,



Marc E. Elias
Ezra W. Reese
Rebecca K. Mears
Counsel to Respondents

¹⁴ See *supra* note 5 and accompanying text.

¹⁵ 52 U.S.C. § 30109(a)(2).

¹⁶ See 11 C.F.R. § 111.4(d); FEC 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).

¹⁷ FEC 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).