

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR: 7797

DATE COMPLAINT FILED: Sept. 16, 2020

DATE OF NOTIFICATIONS: Sept. 18, 2020

LAST RESPONSE RECEIVED: Nov. 2, 2020

DATE ACTIVATED: Jan. 5, 2021

EXPIRATION OF SOL: Sept. 1, 2025

ELECTION CYCLE: 2020

COMPLAINANTS:Foundation for Accountability and Civic Trust
Kendra Arnold**RESPONDENTS:**Sara Gideon for Maine and Lisa Lunn in her official
capacity as treasurer

Sara Gideon

Maeve Coyle

SMP (formerly Senate Majority PAC) and Rebecca
Lambe in her official capacity as treasurer**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30116(a), (f)

11 C.F.R. § 109.21

11 C.F.R. § 110.1(b)(1)

11 C.F.R. § 110.9

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that SMP (formerly Senate Majority PAC) and Rebecca Lambe in her official capacity as treasurer (“SMP”), coordinated with Sara Gideon and Sara Gideon for Maine and Lisa Lunn in her official capacity as treasurer (the “Gideon Committee”) by creating an advertisement in response to a tweet issued by the Committee’s Communications Director, Maeve Coyle, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaint alleges that Coyle published a tweet using coded words to

1 communicate a request or suggestion that advertisements be run in specific markets concerning
2 specific themes and asserts that the fact that SMP ran thematically similar advertisements in the
3 identified markets the next day indicated that those advertisements were coordinated with the
4 Gideon Committee.

5 As discussed below, because the available information is insufficient to raise a reasonable
6 inference that SMP coordinated with Sara Gideon and the Gideon Committee, we recommend
7 the Commission dismiss the allegations that Gideon, the Gideon Committee, and Coyle violated
8 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by accepting excessive in-kind contributions in the
9 form of coordinated communications and dismiss the allegations that SMP violated 52 U.S.C.
10 § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions in the
11 form of coordinated communications.

12 **II. FACTUAL BACKGROUND**

13 Sara Gideon was a 2020 candidate for Senate in Maine and was running for a seat held by
14 Sen. Susan Collins.¹ Sara Gideon for Maine is Gideon's principal campaign committee.² At the
15 time of the tweet referenced in the Complaint, Maeve Coyle was the Gideon Committee's
16 Communications Director.³ SMP is an independent-expenditure-only political committee

¹ FEC Form 2, Sara Gideon, Amended Statement of Candidacy at 1 (Dec. 6, 2020),
<https://docquery.fec.gov/pdf/639/202012069366414639/202012069366414639.pdf>.

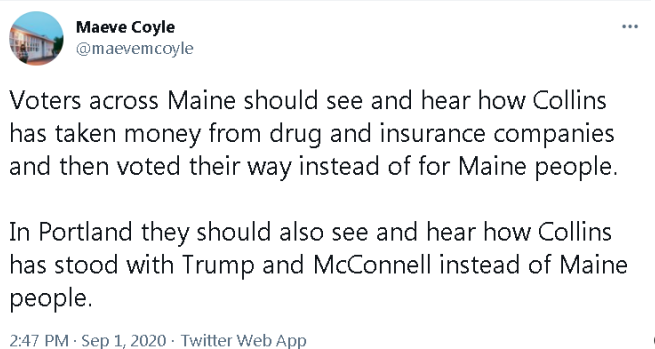
² *Id.*; FEC Form 1, Sara Gideon for Maine, Amended Statement of Organization (Dec. 6, 2020),
<https://docquery.fec.gov/pdf/628/202012069366414628/202012069366414628.pdf>.

³ Compl. at 3 (Sept. 16, 2020); Gideon Committee Resp. at 1 (Nov. 2, 2020).

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1 registered with the Commission.⁴ During the 2020 election cycle, SMP reported making
 2 \$372,290,232.12 in independent expenditures in support of or opposition to federal candidates in
 3 the 2020 cycle, including \$491,914.92 in support of Gideon and \$27,415,557.30 in opposition of
 4 Collins.⁵

5 On the afternoon of September 1, 2020, Coyle, using a Twitter account that noted her role
 6 as the Gideon Committee's Communications Director, tweeted:



7
 8 The same day, SMP uploaded at least two advertisements to YouTube. One, titled "Too
 9 Much," discussed Senator Collins and her vote on a 2017 tax break.⁷ The advertisement claimed
 10 that this tax break benefitted drug and oil companies, as well as Wall Street, and cited to assorted

⁴ FEC Form 1, SMP, Amended Statement of Organization at 1-2 (Nov. 24, 2020), <https://docquery.fec.gov/pdf/287/202011249337130287/202011249337130287.pdf>; *see also* SMP Resp. at 2 (Nov. 2, 2020) ("SMP is a federally registered Super PAC."). SMP was formerly known as Senate Majority PAC. *See* FEC Form 1, Senate Majority PAC, Amended Statement of Organization at 1 (Nov. 1, 2016), <https://docquery.fec.gov/pdf/439/201611019037017439/201611019037017439.pdf>; FEC Form 1, SMP, Amended Statement of Organization at 1 (Nov. 15, 2017) (indicating a name change), <https://docquery.fec.gov/pdf/356/201711169086695356/201711169086695356.pdf>.

⁵ *See SMP: Spending*, FEC, <https://www.fec.gov/data/committee/C00484642/?tab=spending#independent-expenditures> (last visited Feb. 16, 2021).

⁶ Compl. at 2. (Sept. 16, 2020). Although the Complaint lists the tweet in question as having occurred at 1:47pm, it appears that the tweet was actually issued at 2:47 pm. *See* Maeve Coyle (@maevemcoyle), TWITTER (Sept. 1, 2020, 2:47 PM), <https://twitter.com/maevemcoyle/status/1300867976103702530>. The Complaint was notarized in Iowa, suggesting that Complainant may be in a different time zone, which may explain this discrepancy.

⁷ SMP, *Too Much*, YOUTUBE (Sept. 1, 2020), <https://www.youtube.com/watch?v=SLRPHIAyfbo&feature=youtu.be>. It is unclear at what time the advertisement was uploaded to YouTube.

1 publications.⁸ The advertisement then asserts that Collins received more than \$5 million from
2 “corporate special interests” and cites to the “FEC” in support of this claim.⁹ The second, titled
3 “No Thanks,” also notes Susan Collins’s vote on the 2017 Tax Bill and shows former President
4 Donald Trump making complimentary statements about Collins.¹⁰ Like “Too Much,” “No
5 Thanks” computes the benefit that this tax bill provided to drug and oil companies as well as
6 Wall Street, and claims that Collins received more than \$5 million from corporate special
7 interests.¹¹

8 According to the Complaint, these advertisements aired on television on September 2,
9 2020, the day after Coyle’s tweet.¹² The Complaint, citing to a tweet issued by the Collins
10 campaign, notes that “No Thanks,” the advertisement featuring former President Trump, ran in
11 Portland while “Too Much” ran in Bangor and Presque Isle, Maine.¹³ The Complaint also cites a
12 September 2, 2020, article in the *Bangor Daily News*, which characterized the Coyle tweet as
13 “attempt[ing] to draw attention to anti-Collins narratives that the campaign wants highlighted by
14 outside groups it is barred from coordinating with formally.”¹⁴

⁸ *Id.*

⁹ *Id.*

¹⁰ SMP, *No Thanks*, YOUTUBE (Sept. 1, 2020),
https://www.youtube.com/watch?v=qgj4Q7g_zKc&feature=youtu.be.

¹¹ *Id.*

¹² Compl. at 3 (citing Team Collins (@TeamCollins207), TWITTER (Sept. 2, 2020, 2:02 p.m.),
<https://twitter.com/TeamCollins207/status/1301218842702761985>).

¹³ *Id.*

¹⁴ Compl. at 2 (citing Jessica Piper, Michael Shepherd, & Caitlin Andrews, *Attacks In Maine’s US Senate Race Shift to the Husbands Of The Party Candidates*, BANGOR DAILY NEWS, Sept. 2, 2020,
<https://bangordailynews.com/2020/09/02/politics/daily-brief/attacks-in-maines-us-senate-race-shift-to-the-husbands-of-the-party-candidates/>).

1 The Complaint asserts that each advertisement was a coordinated communication,
2 satisfying the “conduct” prong of the coordination analysis and argues that there is no “publicly
3 available information safe harbor” to the “request or suggestion” conduct standard.¹⁵ The
4 Complaint, citing to 11 C.F.R. § 109.21(e), asserts that “[a]greement or formal collaboration
5 between the person paying for the communication and the [candidate or candidate’s committee]
6 is not required for a communication to be a coordinated communication.”¹⁶

7 In response, SMP asserts that it created the advertisements in question in “August 2020”
8 and shipped the advertisements to the television stations on August 31, 2020, the day before
9 Coyle’s tweet.¹⁷ SMP characterizes the advertisements as featuring “information about Senator
10 Susan Collins’s record, specifically her vote for the Tax Cuts and Jobs Act of 2017 and its
11 detrimental impact, and the fact that she has taken millions in contributions from corporate
12 interests.”¹⁸ SMP also asserts that “no coordination occurred,” and that the Complaint fails to
13 establish that a coordinated communication occurred because the temporal proximity and
14 thematic similarities between Coyle’s tweet and the advertisements are insufficient to satisfy the
15 conduct prong of the Commission’s coordination framework.¹⁹ SMP further contends that
16 because Coyle’s tweet was posted on a public webpage and was not shared with a select
17 audience, it was insufficient to satisfy the conduct prong.²⁰

¹⁵ Compl. at 5.

¹⁶ Compl. at 8.

¹⁷ SMP Resp. at 2 (Nov. 2, 2020).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2-4.

1 Gideon, the Gideon Committee, and Coyle submitted a joint response, asserting that the
2 Complaint should be dismissed as a matter of law because Coyle's tweet was not made to a
3 select group of recipients and because the Complaint does not allege that SMP and the
4 Committee communicated privately.²¹ The Response also states that Coyle's Twitter account
5 was "publicly available," Twitter users do not need approval to view her posts, and Coyle "posts
6 a wide range of campaign updates and political messages for public consumption."²²

7 **III. LEGAL ANALYSIS**

8 The Act defines "contribution" to include "any gift, subscription, loan, advance, or deposit of
9 money or anything of value made by any person for the purpose of influencing any election for
10 Federal office."²³ "Anything of value" includes in-kind contributions.²⁴ When a person makes an
11 expenditure in cooperation, consultation, or in concert with, or at the request or suggestion of, a
12 candidate or the candidate's authorized committee or their agents, it is treated as an in-kind
13 contribution.²⁵ The Act prohibits any person from making, and any candidate or committee from
14 knowingly accepting, an excessive contribution.²⁶ For the 2020 election cycle, contributions by
15 persons other than multicandidate committees to any candidate and his or her authorized political
16 committees are limited to \$2,800 per election.²⁷

²¹ Gideon Committee Resp. at 3.

²² Gideon Committee Resp. at 2.

²³ See 52 U.S.C. § 30101(8)(A)(i); see also 52 U.S.C. § 30101(9)(A)(i) (similarly defining "expenditure").

²⁴ 11 C.F.R. § 100.52(d)(1).

²⁵ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

²⁶ 52 U.S.C. §§ 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

²⁷ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. See 52 U.S.C. § 30116(a)(2).

1 Under Commission regulations, a communication is “coordinated” with a candidate, an
2 authorized committee, a political party committee, or agent thereof, and is treated as an in-kind
3 contribution, if the communication meets a three-part test: (1) payment for the communication by
4 a third party; (2) satisfaction of one of five “content” standards of 11 C.F.R. § 109.21(c); and
5 (3) satisfaction of one of six “conduct” standards of 11 C.F.R. § 109.21(d).²⁸ According to the
6 regulations, all three prongs are required for a communication to be considered a coordinated
7 communication.²⁹

8 The payment prong is satisfied when a person, other than the candidate, authorized
9 committee, or political party committee pays for the communication.³⁰ SMP paid for the
10 advertisements, satisfying the payment requirement. The Complaint asserts that the “content”
11 standard was met because the advertisements identified a public candidate and were
12 disseminated on television in the candidate’s jurisdiction within 90 days of the election.³¹
13 Respondents do not dispute that both the payment and content standards are satisfied.³²

14 The six types of conduct that satisfy the conduct standard are: (1) request or suggestion;
15 (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee;
16 and (6) republication.³³ The request or suggestion conduct standard is satisfied when a
17 communication is created, produced, or distributed at the request or suggestion of a candidate or

²⁸ 11 C.F.R. § 109.21.

²⁹ *Id.* § 109.21(a).

³⁰ 11 C.F.R. § 109.21(a)(1).

³¹ Compl. at 5; *see also* 11 C.F.R. § 109.21(c).

³² *See* Gideon Committee Resp. at 2 (“[T]he Complaint fails to allege any facts demonstrating that the conduct prong was satisfied with regard to either of these advertisements.”); SMP Resp. at 3 (“The Complaint alleges no facts that demonstrate that the conduct prong was satisfied in connection with the Advertisements.”).

³³ 11 C.F.R. § 109.21(d)(1)-(6).

1 her authorized committee, or alternatively, at the request or suggestion of the person paying for
2 the communication with the candidate or her authorized committee's assent to the suggestion.³⁴

3 The Commission explained that this conduct standard is "intended to cover requests or
4 suggestions made to a select audience, but not those offered to the public generally."³⁵ It
5 explicitly distinguished "a request that is posted on a web page that is available to the general
6 public," which does not satisfy the conduct standard, from a "request posted through an intranet
7 service or sent via electronic mail directly to a discrete group of recipients," which does.³⁶

8 The Commission has analyzed previous cases alleging "request or suggestion" using this
9 framework, and has concluded that information on a public website does not satisfy the meaning
10 of "request or suggest" under the conduct standard.³⁷ In reaching these conclusions, the
11 Commission noted that the alleged requests had all been accessible to the general public and that
12 there was no indication that private communications had occurred beyond the public notice.³⁸

13 As in these prior matters, Coyle's Twitter account is accessible by the general public, and
14 at the time of the tweet in question, it openly acknowledged her role with the Gideon campaign,
15 and her account had a significant number of followers.³⁹ Further, there is no additional
16 information to suggest that Coyle intended for SMP to respond to her alleged request, and the

³⁴ *Id.* § 109.21(d)(1)(i)-(ii).

³⁵ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) ("Coordination E&J").

³⁶ *Id.*

³⁷ See Factual & Legal Analysis at 9, MUR 6821 (Shaheen for Senate, *et al.*); see also Factual & Legal Analysis at 9-10, MUR 7124 (McGinty for Senate, *et al.*).

³⁸ Factual & Legal Analysis at 10, MUR 7124.

³⁹ See *supra* note 6 and accompanying text (noting Coyle's disclosed affiliation with the Gideon Committee); Maeve Coyle (@mavemcoyle), TWITTER, <https://twitter.com/maevemcoyle> (indicating that Coyle has more than 2,000 followers) (last visited Feb. 17, 2021); compare with First Gen. Counsel's Rpt. ("FGCR") at 2-4, MUR 6908 (noting ways in which the Twitter accounts in question were kept anonymous).

1 record does not indicate that the tweet conveyed coded information that would require additional
2 contacts between the parties to decipher its meaning.⁴⁰ As such, the available information does
3 not indicate that Coyle's tweet was a targeted request to a select audience.⁴¹

4 Additionally, SMP has asserted that coordination was impossible because the
5 advertisements in question were created and distributed to television stations before Coyle
6 published her tweet. The available information appears consistent with SMP's assertion that the
7 advertisements were developed before Coyle's tweet because they were published on YouTube
8 within hours of Coyle's tweet and aired on television stations throughout Maine the day after the
9 tweet. Without more information concerning the sequencing of events, the record fails to
10 support a reasonable inference that the Coyle tweet was a request or suggestion, resulting in a
11 coordinated in-kind contribution from SMP to the Gideon Committee.⁴² Therefore, we
12 recommend that the Commission dismiss the allegations as to all Respondents.

⁴⁰ OGC has recommended finding reason to believe that a coordinated communication occurred in prior matters where the communication in question was either intentionally obscured or where there was additional information suggesting that the request was made to an intended audience. *See* FGCR at 22-24, MUR 6908 (NRCC) (recommending that the Commission find that non-public communications and a "request or suggestion had occurred where a Committee's employees posted coded polling results on Twitter that were not readily searchable, using accounts that did not reveal their affiliation with the Committee"). The Commission split 2-2 on OGC's recommendation. Certification, MUR 6908 (NRCC) (Mar. 28, 2019).

⁴¹ *See* Coordination E&J, 68 Fed. Reg. at 432

⁴² Had the Committee received in-kind contributions in the form of coordinated communications, it would have been obligated to report those contributions. *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3. However, because the Complaint did not allege any reporting violations and we are recommending that the Commission dismiss the allegations concerning excessive in-kind contributions in the form of coordinated communications, we do not reach the issue of reporting obligations.

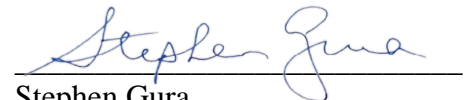
1 **IV. RECOMMENDATIONS**


- 2 1. Dismiss the allegation that SMP and Rebecca Lambe in her official capacity as
- 3 treasurer violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by
- 4 making excessive in-kind contributions;
- 5
- 6 2. Dismiss the allegations that Sara Gideon, Sara Gideon for Maine and Lisa Lunn in
- 7 her official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R.
- 8 § 110.9 by knowingly accepting excessive in-kind contributions;
- 9
- 10 3. Dismiss the allegations that Maeve Coyle violated 52 U.S.C. § 30116(f) and
- 11 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions;
- 12
- 13 4. Approve the attached Factual and Legal Analysis;
- 14
- 15 5. Close the file; and
- 16
- 17 6. Approve the appropriate letters.

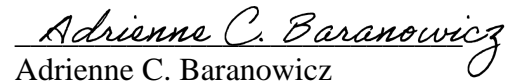
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