



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 16, 2022

**VIA ELECTRONIC MAIL ONLY**

Marc E. Elias, Ezra W. Reese, and Rebecca K. Mears  
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RE: MUR 7797  
SMP (f/k/a Senate Majority PAC)  
and Rebecca Lambe in her official  
capacity as treasurer

Dear Mr. Elias, Mr. Reese, and Ms. Mears:

On September 18, 2020, the Federal Election Commission notified you of a complaint alleging that your clients, SMP and Rebecca Lambe in her official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on March 10, 2022, found no reason to believe that your clients violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions, and closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Theodore Lutz".

Theodore Lutz  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** SMP (formerly Senate Majority PAC) and **MUR 7797**  
5 Rebecca Lambe in her official capacity  
6 as treasurer  
7 Sara Gideon for Maine and Lisa Lunn  
8 in her official capacity as treasurer  
9 Sara Gideon  
10 Maeve Coyle  
11

12 **I. INTRODUCTION**

13 The Complaint alleges that SMP (formerly Senate Majority PAC) and Rebecca Lambe in  
14 her official capacity as treasurer (“SMP”), coordinated with Sara Gideon and Sara Gideon for  
15 Maine and Lisa Lunn in her official capacity as treasurer (the “Gideon Committee”) by creating  
16 an advertisement in response to a tweet issued by the Committee’s Communications Director,  
17 Maeve Coyle, in violation of the Federal Election Campaign Act of 1971, as amended (the  
18 “Act”). Specifically, the Complaint alleges that Coyle published a tweet using coded words to  
19 communicate a request or suggestion that advertisements be run in specific markets concerning  
20 specific themes and asserts that the fact that SMP ran thematically similar advertisements in the  
21 identified markets the next day indicated that those advertisements were coordinated with the  
22 Gideon Committee.

23 As discussed below, because the available information is insufficient to raise a reasonable  
24 inference that SMP coordinated with Sara Gideon and the Gideon Committee, the Commission  
25 finds no reason to believe that Gideon, the Gideon Committee, and Coyle violated 52 U.S.C.  
26 § 30116(f) and 11 C.F.R. § 110.9 by accepting excessive in-kind contributions in the form of  
27 coordinated communications and finds no reason to believe that SMP violated 52 U.S.C.  
28 § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions in the  
29 form of coordinated communications.

1     **II.     FACTUAL BACKGROUND**

2             Sara Gideon was a 2020 candidate for Senate in Maine and was running for a seat held by  
3     Sen. Susan Collins.<sup>1</sup> Sara Gideon for Maine is Gideon’s principal campaign committee.<sup>2</sup> At the  
4     time of the tweet referenced in the Complaint, Maeve Coyle was the Gideon Committee’s  
5     Communications Director.<sup>3</sup> SMP is an independent-expenditure-only political committee  
6     registered with the Commission.<sup>4</sup> During the 2020 election cycle, SMP reported making  
7     \$372,290,232.12 in independent expenditures in support of or opposition to federal candidates in  
8     the 2020 cycle, including \$491,914.92 in support of Gideon and \$27,415,557.30 in opposition of  
9     Collins.<sup>5</sup>

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

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

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

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

<sup>4</sup>            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>.

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



**Maeve Coyle**  
 @maevemcoyle

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.

In Portland they should also see and hear how Collins has stood with Trump and McConnell instead of Maine people.

2:47 PM · Sep 1, 2020 · Twitter Web App

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 2           The same day, SMP uploaded at least two advertisements to YouTube. One, titled “Too  
 3 Much,” discussed Senator Collins and her vote on a 2017 tax break.<sup>7</sup> The advertisement claimed  
 4 that this tax break benefitted drug and oil companies, as well as Wall Street, and cited to assorted  
 5 publications.<sup>8</sup> The advertisement then asserts that Collins received more than \$5 million from  
 6 “corporate special interests” and cites to the “FEC” in support of this claim.<sup>9</sup> The second, titled  
 7 “No Thanks,” also notes Susan Collins’s vote on the 2017 Tax Bill and shows former President  
 8 Donald Trump making complimentary statements about Collins.<sup>10</sup> Like “Too Much,” “No  
 9 Thanks” computes the benefit that this tax bill provided to drug and oil companies as well as  
 10 Wall Street, and claims that Collins received more than \$5 million from corporate special  
 11 interests.<sup>11</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> SMP, *No Thanks*, YOUTUBE (Sept. 1, 2020), [https://www.youtube.com/watch?v=qgj4Q7g\\_zKc&feature=youtu.be](https://www.youtube.com/watch?v=qgj4Q7g_zKc&feature=youtu.be).

<sup>11</sup> *Id.*

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

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

14           In response, SMP asserts that it created the advertisements in question in “August 2020”  
15 and shipped the advertisements to the television stations on August 31, 2020, the day before  
16 Coyle’s tweet.<sup>17</sup> SMP characterizes the advertisements as featuring “information about Senator

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

<sup>13</sup> *Id.*

<sup>14</sup> 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/>).

<sup>15</sup> Compl. at 5.

<sup>16</sup> Compl. at 8.

<sup>17</sup> SMP Resp. at 2 (Nov. 2, 2020).

1 Susan Collins’s record, specifically her vote for the Tax Cuts and Jobs Act of 2017 and its  
2 detrimental impact, and the fact that she has taken millions in contributions from corporate  
3 interests.”<sup>18</sup> SMP also asserts that “no coordination occurred,” and that the Complaint fails to  
4 establish that a coordinated communication occurred because the temporal proximity and  
5 thematic similarities between Coyle’s tweet and the advertisements are insufficient to satisfy the  
6 conduct prong of the Commission’s coordination framework.<sup>19</sup> SMP further contends that  
7 because Coyle’s tweet was posted on a public webpage and was not shared with a select  
8 audience, it was insufficient to satisfy the conduct prong.<sup>20</sup>

9 Gideon, the Gideon Committee, and Coyle submitted a joint response, asserting that the  
10 Complaint should be dismissed as a matter of law because Coyle’s tweet was not made to a  
11 select group of recipients and because the Complaint does not allege that SMP and the  
12 Committee communicated privately.<sup>21</sup> The Response also states that Coyle’s Twitter account  
13 was “publicly available,” Twitter users do not need approval to view her posts, and Coyle “posts  
14 a wide range of campaign updates and political messages for public consumption.”<sup>22</sup>

### 15 III. LEGAL ANALYSIS

16 The Act defines “contribution” to include “any gift, subscription, loan, advance, or deposit of  
17 money or anything of value made by any person for the purpose of influencing any election for

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2-4.

<sup>21</sup> Gideon Committee Resp. at 3.

<sup>22</sup> Gideon Committee Resp. at 2.

1 Federal office.”<sup>23</sup> “Anything of value” includes in-kind contributions.<sup>24</sup> When a person makes an  
2 expenditure in cooperation, consultation, or in concert with, or at the request or suggestion of, a  
3 candidate or the candidate’s authorized committee or their agents, it is treated as an in-kind  
4 contribution.<sup>25</sup> The Act prohibits any person from making, and any candidate or committee from  
5 knowingly accepting, an excessive contribution.<sup>26</sup> For the 2020 election cycle, contributions by  
6 persons other than multicandidate committees to any candidate and his or her authorized political  
7 committees are limited to \$2,800 per election.<sup>27</sup>

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

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<sup>23</sup> See 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C. § 30101(9)(A)(i) (similarly defining “expenditure”).

<sup>24</sup> 11 C.F.R. § 100.52(d)(1).

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

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

<sup>27</sup> 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).

<sup>28</sup> 11 C.F.R. § 109.21.

<sup>29</sup> *Id.* § 109.21(a).

1           The payment prong is satisfied when a person, other than the candidate, authorized  
2 committee, or political party committee pays for the communication.<sup>30</sup> SMP paid for the  
3 advertisements, satisfying the payment requirement. The Complaint asserts that the “content”  
4 standard was met because the advertisements identified a public candidate and were  
5 disseminated on television in the candidate’s jurisdiction within 90 days of the election.<sup>31</sup>  
6 Respondents do not dispute that both the payment and content standards are satisfied.<sup>32</sup>

7           The six types of conduct that satisfy the conduct standard are: (1) request or suggestion;  
8 (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee;  
9 and (6) republication.<sup>33</sup> The request or suggestion conduct standard is satisfied when a  
10 communication is created, produced, or distributed at the request or suggestion of a candidate or  
11 her authorized committee, or alternatively, at the request or suggestion of the person paying for  
12 the communication with the candidate or her authorized committee’s assent to the suggestion.<sup>34</sup>  
13 The Commission explained that this conduct standard is “intended to cover requests or  
14 suggestions made to a select audience, but not those offered to the public generally.”<sup>35</sup> It  
15 explicitly distinguished “a request that is posted on a web page that is available to the general

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<sup>30</sup> 11 C.F.R. § 109.21(a)(1).

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

<sup>32</sup> *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.”).

<sup>33</sup> 11 C.F.R. § 109.21(d)(1)-(6).

<sup>34</sup> *Id.* § 109.21(d)(1)(i)-(ii).

<sup>35</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (“Coordination E&J”).



1 public,” which does not satisfy the conduct standard, from a “request posted through an intranet  
2 service or sent via electronic mail directly to a discrete group of recipients,” which does.<sup>36</sup>

3 The Commission has analyzed previous cases alleging “request or suggestion” using this  
4 framework, and has concluded that information on a public website does not satisfy the meaning  
5 of “request or suggest” under the conduct standard.<sup>37</sup> In reaching these conclusions, the  
6 Commission noted that the alleged requests had all been accessible to the general public and that  
7 there was no indication that private communications had occurred beyond the public notice.<sup>38</sup>

8 As in these prior matters, Coyle’s Twitter account is accessible by the general public, and  
9 at the time of the tweet in question, it openly acknowledged her role with the Gideon campaign,  
10 and her account had a significant number of followers.<sup>39</sup> As such, the available information does  
11 not indicate that Coyle’s tweet was a targeted request to a select audience.<sup>40</sup>

12 Additionally, SMP has asserted that coordination was impossible because the  
13 advertisements in question were created and distributed to television stations before Coyle  
14 published her tweet. The available information appears consistent with SMP’s assertion that the  
15 advertisements were developed before Coyle’s tweet because they were published on YouTube  
16 within hours of Coyle’s tweet and aired on television stations throughout Maine the day after the  
17 tweet. Without more information, the record fails to support a reasonable inference that the

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<sup>36</sup> *Id.*

<sup>37</sup> 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.*).

<sup>38</sup> Factual & Legal Analysis at 10, MUR 7124.

<sup>39</sup> 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).

<sup>40</sup> See Coordination E&J, 68 Fed. Reg.at 432.

MUR 7797 (Sara Gideon for Maine, *et al.*)

Factual and Legal Analysis

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- 1 Coyle tweet resulted in a coordinated in-kind contribution from SMP to the Gideon Committee.<sup>41</sup>
- 2 Therefore, the Commission finds no reason to believe a violation of the Act occurred as to all
- 3 Respondents.

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<sup>41</sup> 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 the Commission is finding no reason to believe a violation occurred with respect to the allegations of excessive in-kind contributions in the form of coordinated communications, we do not reach the issue of reporting obligations.