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ATTORNEYS AT LAW  
WASHINGTON HARBOUR  
3000 K STREET, N.W.  
SUITE 600  
WASHINGTON, D.C. 20007-5109  
202.672.5300 TEL  
202.672.5399 FAX  
WWW.FOLEY.COM

WRITER'S DIRECT LINE  
202.295.4081  
cmitchell@foley.com EMAIL

November 20, 2019

2019 NOV 21 PM 3:20  
OFFICE OF  
GENERAL COUNSEL

**By Messenger Delivery**

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
1050 First Street, N.E.  
Washington, DC 20002

ATTENTION: Christal Dennis, Paralegal

Re: Response and affidavits filed on behalf of 1820 PAC re:  
MUR 7646

Dear Christal:

Enclosed please find the original signed response and affidavits filed on  
behalf of 1820 PAC in the above-referenced matter.

Sincerely,

*Cleta Mitchell*  
Cleta Mitchell, Esq.

CMI:def

Enclosures

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BRUSSELS  
TOKYO

OFFICE OF  
GENERAL COUNSELIN AND BEFORE THE  
2019 NOV 22 PM 3: 20  
FEDERAL ELECTION COMMISSION

In re:

1820 PAC

MUR 7646

Thomas Datwyler, in his official capacity as Treasurer  
Respondent**RESPONSE OF 1820 PAC TO COMPLAINT**

---

Respondent 1820 PAC, by its Treasurer, Thomas Datwyler, in his official capacity as Treasurer of the Committee (“Treasurer”), (collectively hereafter “the Committee”), files this Response and Objection(s) to the Complaint filed with the Federal Election Commission (“Commission” or “FEC”) by Lisa Roberts, Executive Director of the Maine Democratic Party (“Complainant”).

The Complaint alleges that the Committee committed a violation of the Federal Election Campaign Laws, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I (“the Act”) and the regulations promulgated thereunder by the Commission.

The Committee affirmatively states that the Committee has not committed any violation of the Act and the Complaint must be dismissed.

**Factual Background**

1820 PAC was established on March 1, 2019, for the purpose of making independent expenditures only in the 2020 United States Senate race in Maine. See <https://docquery.fec.gov/cgi-bin/forms/C00698126/1318072/> (“the Committee”)

In 2019, the Committee produced and paid for a television ad, “Maine Tradition” which was aired in the State of Maine (“the Ad”). The messages in the Ad were developed solely based on the internal discussions between and among the leadership of the Committee with its polling firm and its media consultants from SCRPMedia. See Affidavits of Scott Reed and Erik Potholm.

The ad includes 20 seconds of video footage of Sen. Susan Collins, obtained from a public source on YouTube. See Affidavit of Erik Potholm.

However, the messages, graphics, narration, and script were developed entirely by the Committee with no consultation, discussion, or involvement with the Collins campaign or any person representing the Collins campaign. See Affidavits of Scott Reed and Erik Potholm.

The Committee utilized only a small fraction of publicly available footage of Sen. Collins in the production of its Ad, the content of which was developed and produced based on the polling data and internal discussions within the Committee. Absent the intellectual property and work product by the Committee, the video footage is meaningless and does not constitute campaign 'materials' as envisioned in the Commission's regulations.

### Legal Analysis

The Complaint alleges that the Committee violated the law, but cites to no statute that was violated by the Committee; rather, the Complaint argues that the Committee made a \$275,000 contribution to the Collins for Senate campaign.

The Committee made an independent expenditure regarding the reelection of Susan Collins to the U. S. Senate, as that term is defined in 52 U.S.C. §30101(17). The FEC regulations set forth when an independent expenditure is converted to a *coordinated public communication*, which requires three factors that must be present:

1. The communication is publicly disseminated and is paid for by a third party.  
11 C.F.R. §109.21(a)(1);
2. The communication meets the content 'prong' described in the regulations.  
11 C.F.R. §109.21(a)(2), and
3. The communication meets the conduct 'prong' described in the regulations.  
11 C.F.R. § 109.21(a)(3).

The Committee agrees that the Ad was publicly disseminated and paid for by the Committee, and the content of the Ad references and depicts Sen. Collins.

The Committee rejects the assertion that the Ad and the Committee's actions in producing the Ad meet the 'conduct' standard required by Commission regulations for coordinated public communications.

There is no factual dispute regarding the interactions between the Committee and the Collins campaign: there were none.

The only issue is the use by the Committee of a small portion of publicly available footage of Senator Collins.

The Committee submits that the use of publicly available b-roll (background video only) for part of the Committee's Ad is not a 'republication' of campaign materials, as that is envisioned in the regulations.

The few seconds of b-roll used by the Committee is of no value absent the Committee's incorporation of its own messages, its own narrative, its own decisions about what to say, how to say it, and where to place the Ad for viewing by the voters. All of those considerations and decisions were made solely by the Committee.

Republication implies the wholesale adoption and dissemination of finished campaign products, such as bumper stickers, signs, brochures, completed television, radio or other advertising, or other actual campaign materials, communications, and paraphernalia. Using a tiny portion of unfinished, publicly available footage does not violate the Act, where the messages, content, and communications of the Ad were and are solely the product of the Committee's analysis and work.

As discussed in Statements of Reason of Commissioners Matthew Peterson, Caroline Hunter and Lee Goodman in MURs 6603, 6777, 6801, 6870, and 6902, "...republiation requires more than respondents creating and paying for advertisements that incorporate as background footage brief segments of video footage posted on publicly accessible websites by authorized committees of federal candidates. Here, snippets of b-roll footage of federal candidates were "incorporated into [] communication[s] in which [respondents] add[ed their] own text, graphics, audio, and narration to create [their] own message."

In 2007, in the Statement of Reasons in MUR 5743, Commissioners Ellen Weintraub and Hans von Spakovsky wrote: "... the Commission recently adopted two rulemakings that inform our decision here. In regulations that specifically considered communications over the Internet, the Commission took a decidedly deregulatory approach, emphasizing the unique nature of the Internet as a communications medium. *See Final Rules on Internet Communications*, 71 Fed. Reg. 18,589, 18,589-18,590 (April 12, 2006) ("Through this rulemaking, the Commission recognizes the Internet as a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach."). In the most recent coordination rulemaking, the Commission created a safe harbor for the use of publicly available information. *See 11 C.F.R. § 109.21(d)(2)-(5); Final Rules on Coordinated Communications*, 71 Fed. Reg. 33,190 (June 8, 2006)."

The same analysis should be applied here.

Information, graphics, footage, and other publicly available materials obtained from the internet, which are not finished campaign products, cannot be treated as a "republiation" of campaign materials.

### **Conclusion**

For all of these reasons, the Committee submits that the Ad is not a republication of Collins campaign materials and no violation of the Act has occurred. The Complaint must be dismissed.

Respectfully submitted,



Cleta Mitchell, Esq.  
Counsel to 1820 PAC, Respondent  
FOLEY & LARDNER LLP  
3000 K Street NW #600  
Washington, DC 20007  
(202) 295-4081 (direct)  
[cmitchell@foley.com](mailto:cmitchell@foley.com)

November 20, 2019

**BEFORE THE FEDERAL ELECTION COMMISSION**

City of Alexandria

MUR 7646

Commonwealth of Virginia

**Affidavit of Erik Potholm**

I, Erik Potholm, an adult citizen and resident of the Commonwealth of Virginia, do hereby affirm and state:

1. I am a Partner in the firm of SRCPmedia, one of the leading political media production and consulting firms in the United States ("SRCP"). See [www.scrpmedia.com/about](http://www.scrpmedia.com/about)
2. I joined SRCP in 1994 and have been engaged in the political and media consulting business and advertising for over twenty years.
3. SRCP is retained by 1820 PAC, an independent expenditures only PAC, established to make independent expenditures during the 2020 election cycle in Maine.
4. My duties as an SRCP partner in the 2020 election cycle include working with the 1820 PAC to develop media advertising and messaging for the 1820 PAC.
5. In my capacity as an SRCP partner working with the 1820 PAC, I was personally involved in the creation of advertisements for the 1820 PAC that featured Sen. Susan Collins (R-M) entitled "Maine Tradition" ("the Ad").
6. The Ad is referenced in a complaint filed with the FEC alleging that it violates federal law governing coordinated public communications.
7. All footage of Senator Collins used in the Ad came from a public YouTube site, which our production team found online.
8. The footage continues to be publicly available at:  
<https://www.youtube.com/watch?v=h0mT9P9tAFc>
9. The publicly available footage is more than five minutes in length, of which a mere 20 seconds was used by 1820 PAC in the Ad.
10. The messages and narration in the Ad were developed solely by and for 1820 PAC.

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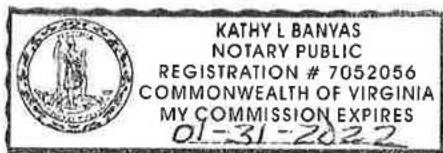
FEDERAL COUNSEL

11. Neither I nor any person employed by or working with or for SCRCP had any communications with the Collins campaign or any agent or vendor of the Collins campaign requesting or suggesting that we develop the Ad, nor did we have any communications with the Collins campaign, or any person associated with the Collins campaign in obtaining the footage used in the Ad or the messages and narration in the Ad.
12. I am aware of the prohibitions under federal law against discussing or communicating with any person associated with the Collins campaign regarding the creation, dissemination, or contents of a public communication paid for by a third party such as 1820 PAC.
13. All decisions regarding the Ad, its development, production, content, and messaging were made by SCRCP personnel in conjunction with the client, 1820 PAC, and the pollster for the PAC.
14. All information and messages in the Ad were obtained either from publicly available sources or from the polling data paid for by the 1820 PAC.
15. There was no coordination with the Collins campaign by any person involved in the development, production, and/or dissemination of the Ad and the use of the publicly available footage was a *de minimis* use of the footage.

The above and foregoing is true and correct to the best of my knowledge and belief.

Erik Potholm

Erik Potholm appeared before me personally on this 18<sup>th</sup> day of November, 2019, and did swear and affirm under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief.



Notary Public

Notary S E A L

My Commission Expires: 01-31-2022

**BEFORE THE FEDERAL ELECTION COMMISSION**

City of Dallas

MUR 7646

State of Texas

**Affidavit of Scott Reed**

I, Scott Reed, an adult citizen and resident of the State of Texas do hereby affirm and state:

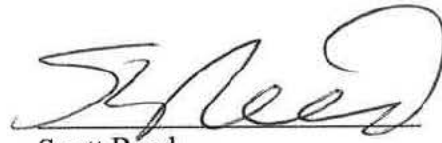
1. I am the Chairman of the 1820 PAC, an Independent Expenditures Only political committee filed with the Federal Election Commission, whose purpose is to make independent expenditures in the 2020 Maine US Senate election ("the 1820 PAC").
2. I personally worked with SCRP Media ("SCRP") to develop a television ad for the 1820 PAC in support of Sen. Susan Collins (R-ME) which we entitled "Maine Tradition" ("the Ad").
3. The Ad was developed strictly from 1820 PAC polling data and discussions with the pollster and SCRP and was not the result of any conversations with the Collins campaign or any person related to the Collins campaign.
4. Neither I nor any person associated with the 1820 PAC engaged in any discussions nor did we have any involvement with the Collins campaign or any agent or representative of the Collins campaign regarding the Ad.
5. No person from the Collins campaign suggested or requested that the 1820 PAC develop, produce, or disseminate the Ad.
6. Since founding the 1820 PAC, I have not had any material involvement or substantial discussion with any person involved with the Collins campaign on any subject, including but not limited to this Ad or any other matter related to the Collins campaign.
7. I have been involved in federal political campaigns for over twenty years and am well aware of the prohibitions against coordinating public communications paid for by an entity such as the 1820 PAC with a campaign or political party.
8. The footage that is publicly available from which the Ad's clips were taken is more than five minutes in length; the Ad utilized only a fraction of footage from the publicly available montage.
9. The total use of footage in the Ad by the 1820 PAC is a *de minimis* use of footage from publicly available sources.

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OF



The above and foregoing is true and correct to the best of my knowledge and belief.

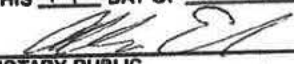
  
Scott Reed

Scott Reed appeared before me personally on this 19 day of November, 2019, and did swear and affirm under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief.

  
Notary Public

Notary S E A L

My Commission Expires:

DISTRICT OF COLUMBIA: SS  
SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 19 DAY OF November, 2019.  
  
NOTARY PUBLIC  
My Commission Expires 6/30/20

