



**FEDERAL ELECTION COMMISSION  
Washington, DC 20463**

Email and U.S. Mail

Marc Elias  
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June 23, 2021

RE: MURs 7638 and 7658  
Sara Gideon and  
Gideon Leadership PAC

Dear Mr. Elias:

The Federal Election Commission notified your clients, Sara Gideon and Gideon Leadership PAC and Sean Smith, in his official capacity as treasurer, ("Gideon Leadership PAC") of the above referenced complaints filed on August 23 and October 31, 2019, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and your client's response, on June 4, 2021, the Commission dismissed the allegation that Sara Gideon and the Gideon Leadership PAC violated 52 U.S.C. § 30122. The Commission also found no reason to believe that Gideon Leadership PAC violated 52 U.S.C. §§ 30103 and 30104 by failing to register and report as a federal political committee. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed.

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,

*Mark Shonkwiler*

Mark Shonkwiler  
Assistant General Counsel

Enclosure: Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Sara Gideon  
Gideon Leadership PAC and Sean Smith  
in his official capacity as treasurer<sup>1</sup>  
Cain for Congress and Jeremy Fischer  
in his official capacity as treasurer  
Maine Democratic Party and Betty Johnson  
in her official capacity as treasurer

**MURs:** 7638 and 7658

## I. INTRODUCTION

14        These matters were generated by Complaints filed with the Federal Election Commission  
15        (the “Commission”) by Edward Youngblood and Kendra Arnold, Executive Director for the  
16        Foundation for Accountability and Civic Trust.<sup>2</sup> These matters stem from a Maine state political  
17        committee, the Gideon Leadership PAC (the “State PAC”), reimbursing its principal, Sara  
18        Gideon (“Gideon”), for \$2,750 in federal contributions she made in 2015 and 2016. The  
19        Complaints allege that Gideon, the State PAC, and the two recipient federal committees, Cain for  
20        Congress and Jeremy Fischer in his official capacity as treasurer (“Cain Committee”) and the  
21        Maine Democratic Party and Betty Johnson in her official capacity as treasurer (“Maine  
22        Democratic Party”), violated provisions of the Federal Election Campaign Act of 1971, as  
23        amended (the “Act”).

24 Based on the available information, the Commission exercises its prosecutorial discretion  
25 to dismiss the allegations that the State PAC made and Gideon allowed her name to be used to  
26 make contributions in the name of another. Additionally, the Commission finds no reason to

<sup>1</sup> Maine's Ethics Commission on Campaign Finance reports that Gideon Leadership PAC was terminated in 2019. <https://www.mainecampaignfinance.com/#/exploreCommitteeDetail/4851> (last viewed Feb. 11, 2020).

<sup>2</sup> See 52 U.S.C. § 30109(a)(1).

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1 believe that the Cain Committee and the Maine Democratic Party violated the Act by knowingly  
 2 accepting prohibited contributions. Finally, the Commission finds no reason to believe that the  
 3 State PAC was required to register and report as a federal political committee.

4 **II. FACTUAL AND LEGAL ANALYSIS**

5 **A. Background**

6 Sara Gideon was elected to the Maine state legislature in 2012<sup>3</sup> and registered the State  
 7 PAC as a multi-candidate committee with the Maine Ethics Commission in May 2014.<sup>4</sup> During  
 8 the five years that it operated before terminating in the summer of 2019, the State PAC raised  
 9 and spent \$272,288.71.<sup>5</sup> As permitted under Maine law, the State PAC accepted contributions  
 10 from individuals, corporations, and political action committees.<sup>6</sup> During its existence, the State  
 11 PAC transferred a majority of the funds it raised (\$160,829.89) to a state party committee, the  
 12 Maine Democratic House Campaign Committee.<sup>7</sup>

13 The Complaints allege and Respondents acknowledge that the State PAC reimbursed  
 14 Gideon for the following \$2,750 in federal contributions:<sup>8</sup>

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<sup>3</sup> Gideon declared her candidacy for U.S. Senate on June 24, 2019. Sara Gideon, FEC Form 2, *Statement of Candidacy*, (amend. Sept. 30, 2019, and Jan. 31, 2020). Gideon was not a federal candidate at the time of the alleged violations in these Matters.

<sup>4</sup> Maine Ethics Commission, Campaign Finance, Gideon Leadership PAC Registration (May 23, 2014), <https://mainecampaignfinance.com/adminReportPreview.html#/adminReportPreview>.

<sup>5</sup> See <https://www.mainecampaignfinance.com/#/exploreCommitteeDetail/4851>.

<sup>6</sup> MUR 7638, Compl. at 2. The Complaint states that in accordance with Maine law, the State PAC accepted \$57,500 in corporate contributions, as well as \$17,000 in contributions from other state political action committees. The State PAC accepted \$20,150 from individuals during the period in question. See Gideon Leadership PAC filings at <https://mainecampaignfinance.com/#/exploreCommittee Detail/4851>.

<sup>7</sup> See Gideon Leadership PAC Disclosure Reports, Maine Ethics Commission.

<sup>8</sup> MUR 7638, Compl. at 2-3 and Ex. B, C, and D; MUR 7658 at 2-3. See also, e.g., Brent Scher, *Collins Challenger Used PAC to Reimburse Own Contributions*, WASH. FREE BEACON (Aug. 1, 2019), <https://freebeacon.com/politics/collins-challenger-used-pac-to-reimburse-own-contributions/>; Mal Leary, *Gideon*

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Date	To	Amount	Reimbursement Date <sup>9</sup>
Sept. 30, 2015	Emily Cain/Cain for Congress	\$1,000	Oct. 28, 2015
June 13, 2016	Emily Cain/Cain for Congress	\$250	June 1, 2016
July 11, 2016	Maine Democratic Party	\$1,000	July 25, 2016
Oct. 3, 2016	Maine Democratic Party	\$500	Oct. 12, 2016

The Complaints allege that the State PAC improperly used nonfederal funds to make contributions in Gideon’s name. Further, the MUR 7658 Complaint alleges that the Cain Committee and the Maine Democratic Party accepted prohibited contributions when they failed to return the contributions made in Gideon’s name within 30 days of becoming aware of the PAC reimbursements to Gideon in August 2019.<sup>10</sup> The MUR 7638 Complaint further alleges that the State PAC was required to register with and report to the Commission as a political committee.<sup>11</sup>

10 In response, Gideon states that at the time of the contributions and reimbursements in  
11 2015 and 2016, she did not know that the Act prohibited reimbursing contributions.<sup>12</sup> The  
12 response notes that the State PAC had sufficient permissible funds with which to make the  
13 contributions directly, and it timely reported the reimbursements on its Maine State campaign  
14 finance reports.<sup>13</sup> Gideon also reports that when she learned that her actions violated the law,  
15 she disgorged the payments she received from the State PAC to the United States Treasury, and

*Admits to Campaign Finance Violation, ME. PUBLIC RADIO* (Aug. 2, 2019), <https://www.mainepublic.org/post/gideon-admits-campaign-finance-violation>.

9 MUR 7638, Compl. Ex. E.

<sup>10</sup> MUR 7658, Compl. at 1-2 (Oct. 31, 2019). See also Scher, *supra* note 6; Leary, *supra* note 6.

11 MUR 7658, Compl. at 2-3.

<sup>12</sup> Gideon Resp. at 1-2 (Sept. 19, 2019).

<sup>13</sup> *Id.* See also Maine Ethics Commission, Campaign Finance, Candidate Sara Gideon, <https://mainecampaignfinance.com/#/exploreDetails/3606/11/141/19/2012>.

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1 informed the recipient committees so they could correct the public record.<sup>14</sup> Finally, Gideon  
 2 declares that there was no evasion of the Act's political committee registration requirement  
 3 because the State PAC lacked the "major purpose" of nominating or electing federal  
 4 candidates.<sup>15</sup>

5 In their responses, both the Cain Committee and the Maine Democratic Party state that  
 6 they did not know of the State PAC's reimbursements to Gideon until she notified them in  
 7 August 2019.<sup>16</sup> Both the Cain Committee and the Maine Democratic Party explain that upon  
 8 learning that Gideon had disgorged the funds paid to her by the PAC and that the PAC had  
 9 sufficient federally permissible funds at the time of the contributions, they amended their  
 10 disclosure reports to reflect that the contributions were from the State PAC.<sup>17</sup>

11 **B. Legal Analysis**

12 **1. The Commission Dismisses the Allegation that the State PAC and Gideon  
 13 Made Contributions in the Name of Another**

14 The Act and Commission regulations prohibit persons from making a contribution in the  
 15 name of another, knowingly permitting their name to be used to effect such a contribution, or  
 16 knowingly accepting such a contribution.<sup>18</sup>

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<sup>14</sup> MUR 7658, Compl. at 2-3.

<sup>15</sup> *Id.*

<sup>16</sup> Cain Committee Resp. at 1 (Dec. 20, 2019) and Maine Democratic Party Resp. at 1 (Nov. 14, 2019).

<sup>17</sup> *Id.* See also FEC Form 99, Miscellaneous Document, Cain Committee (reporting that the Gideon contributions were made by the State PAC with permissible funds) (Nov. 1, 2019); Maine Democratic Party, 2016 August Monthly FEC Form 3X, Report of Receipts and Disbursements (amend. Sept. 4, 2019) (disclosing State PAC as the contributor); and 2016 Pre-General FEC Form 3X, Report of Receipts and Disbursements (amend. Sept. 4, 2019) (same).

<sup>18</sup> 52 U.S.C. § 30122.

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1        By reimbursing Gideon for the four federal contributions totaling \$2,750, the State PAC  
 2 and Gideon violated the Act. Gideon and the State PAC explain that they did not know their  
 3 actions were illegal.

4        Even though the transactions were clearly prohibited, the Commission exercises its  
 5 prosecutorial discretion and dismisses the allegations. First, the State PAC did not attempt to  
 6 conceal the contribution reimbursements, but contemporaneously disclosed them on its Maine  
 7 Ethics Commission reports, which is consistent with its explanation that it did not know that its  
 8 actions were illegal. Further, when Gideon and the State PAC learned that the reimbursements  
 9 were illegal, Gideon disgorged the reimbursements to the Treasury and notified the recipient  
 10 committees that the State PAC should be reported as the source for the 2015 and 2016  
 11 contributions. Under the circumstances, which include the State PAC's contemporaneous  
 12 disclosure of the reimbursements, the remedial actions to disgorge the reimbursements and  
 13 correct the record, the passage of time, and the low amount in violation, the Commission  
 14 exercises its prosecutorial discretion and dismisses the allegation that the State PAC made and  
 15 Gideon allowed her name to be used to make contributions in the name of another in violation of  
 16 52 U.S.C. § 30122.<sup>19</sup>

17            **2. There is No Reason to Believe that the Cain Committee and the Maine**  
 18            **Democratic Party Knowingly Accepted Prohibited Contributions**

19        The treasurer of a political committee shall be responsible for examining all contributions  
 20 received for, *inter alia*, the evidence of illegality.<sup>20</sup> Contributions that present genuine questions  
 21 as to legality may either be deposited or returned to the contributor.<sup>21</sup> If the treasurer later

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<sup>19</sup>        *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>20</sup>        52 U.S.C. § 30102; 11 C.F.R. § 103.3(b).

<sup>21</sup>        11 C.F.R. § 103.3(b)(1).

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1 discovers the illegality of the contribution based on evidence not available to the committee at  
 2 the time of receipt, the treasurer shall, within 30 days, refund the contribution.<sup>22</sup> When federal  
 3 political committees receive contributions from nonfederal committees, they must ensure the  
 4 funds are permissible under the Act.<sup>23</sup> Federal committees must confirm that the nonfederal  
 5 committee making the contribution can demonstrate through a reasonable accounting method  
 6 that it has sufficient federally acceptable funds to cover the amount of the contribution at the  
 7 time it is made.<sup>24</sup>

8           Although the MUR 7658 Complaint alleges that the Cain Committee and the Maine  
 9 Democratic Party knowingly accepted prohibited contributions, the two recipient committees  
 10 maintain that they did not know of the reimbursements until August 2019, and the Commission  
 11 has no information to the contrary. Further, the recipient committees maintain that when they  
 12 learned of the reimbursements, they also were informed that the State PAC had sufficient  
 13 federally compliant funds to cover the amount of the contributions and that it should be  
 14 identified as the actual contributor. Both recipient committees subsequently amended their  
 15 disclosure reports.

16           Accordingly, the Commission finds no reason to believe that the Cain Committee or the  
 17 Maine Democratic Party violated 52 U.S.C. §§ 30122 and 30125 by knowingly accepting  
 18 prohibited contributions from the State PAC.

19           **3. The State PAC Was Not Required to Register and Report as a Federal  
 20 Political Committee**

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<sup>22</sup>           *Id.* § 103.3(b)(2).

<sup>23</sup>           *Id.* § 300.61.

<sup>24</sup>           See 11 C.F.R. § 110.3(c)(4); see also Advisory Opinion 2007-26 (Schock), Advisory Opinion 2006-06 (Busby), and Advisory Opinion 2004-45 (Salazar).

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1                   Political committees are required to register with the Commission, meet organizational  
 2 and recordkeeping requirements, and file periodic disclosure reports.<sup>25</sup> The Act defines a  
 3 political committee as “any committee, club, association, or other group of persons” that receives  
 4 aggregate contributions or makes aggregate expenditures in excess of \$1,000 during a calendar  
 5 year.<sup>26</sup> Notwithstanding the statutory threshold for contributions and expenditures, an  
 6 organization that is not controlled by a candidate will be considered a political committee only if  
 7 its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal  
 8 candidate).”<sup>27</sup>

10                  Although the State PAC exceeded the \$1,000 expenditure threshold in 2016, the available  
 11 information does not suggest that the State PAC’s major purpose was federal campaign activity.  
 12 Instead, the vast majority of the State PAC’s activity was related to Maine state races.<sup>28</sup>  
 13 Specifically, during the 2016 calendar year, the State PAC raised \$62,780 and spent \$80,226. It  
 14 appears that only the \$1,750 in reimbursed contributions from 2016 were related to federal  
 15 election activity. We are not aware of other information that suggests the State PAC was acting  
 16 as a federal political committee that was required to register and report with the Commission.

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<sup>25</sup>                  See 52 U.S.C. §§ 30102, 30103, 30104.

<sup>26</sup>                  52 U.S.C. § 30101(4)(A).

<sup>27</sup>                  Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007) (“Suppl. E&J”) (“[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate.”); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986). In *Buckley*, the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was overbroad, reaching “groups engaged purely in issue discussion.” *Buckley*, 424 U.S. at 79. To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or *the major purpose of which is the nomination or election of a candidate.*” *Id.* (emphasis added).

<sup>28</sup>                  See, e.g., Gideon Leadership PAC, 2016 October Quarterly Report, Maine Ethics Commission, Campaign Finance, <https://mainecampaignfinance.com/ReportOutputFiles/02/FS129547.pdf>.

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- 1 Accordingly, the Commission finds no reason to believe that the State PAC violated 52 U.S.C.
- 2 §§ 30103 and 30104.