

OFFICE OF  
GENERAL COUNSEL

## BEFORE THE FEDERAL ELECTION COMMISSION

2019 DEC 13 PM 1:02

Foundation for Accountability and Civic Trust  
1717 K Street NW, Suite 900  
Washington, D.C. 20006

v.

MUR No. 7670

John Hickenlooper  
Hickenlooper for Colorado  
PO Box 18886  
Denver, CO 80218

**COMPLAINT**

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that John Hickenlooper and Hickenlooper for Colorado have violated 11 CFR § 110.3(d) by transferring and accepting assets from a nonfederal campaign committee.

In late August 2019, John Hickenlooper released a 90-second advertisement announcing his campaign for United States Senate in 2020. This advertisement contained multiple scenes utilizing footage originally created and paid for by Hickenlooper's 2014 gubernatorial campaign. Under Federal law, federal campaign committees are prohibited from accepting "[t]ransfers of funds or assets from a candidate's campaign committee or account for nonfederal election."<sup>1</sup>

As the information below demonstrates, it appears Hickenlooper for Colorado has and is using a video asset of Hickenlooper's 2014 gubernatorial campaign in violation of 11 CFR § 110.3(d). The Commission should immediately investigate and impose all appropriate sanctions for any such violations.

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<sup>1</sup> 11 CFR § 110.3(d). In addition, federal campaign committees are prohibited from accepting contributions from corporate entities, such as an incorporated media vendor. *See* 11 CFR § 114.2(d).

**(i) Hickenlooper for Colorado is currently utilizing assets (video footage) from Hickenlooper's 2014 nonfederal campaign committee.**

In 2014, Hickenlooper's gubernatorial campaign released television advertisements entitled "Hot Seat," "Restaurant," and "Under Water." These videos contained footage of Hickenlooper inside the Wynkoop Brewing Company interacting with customers and in a factory interacting with employees.<sup>2</sup>

Then on August 22, 2019, Hickenlooper released an approximately 90-second video advertisement announcing his candidacy for United States Senate in 2020.<sup>3</sup> It included several identical scenes from the Wynkoop Brewing Company and from a factory.<sup>4</sup> The same people, in the same clothing, at the same locations, doing the same activities are depicted in both advertisements.<sup>5</sup> Hickenlooper's federal Senate campaign advertisement clearly used footage created and produced for Hickenlooper's nonfederal 2014 gubernatorial campaign.<sup>6</sup>

This footage was an asset of the 2014 gubernatorial campaign committee. Filming campaign advertisements requires camera crews, equipment, participants, coordination, and planning, all of which require expenditures of campaign funds. As such, footage from these commercials is valuable to the campaign for which it is prepared. Furthermore, the video footage is an asset with copyright protections. Not having to pay for the expenses associated with filming new footage is a contribution to the 2019-2020 campaign.

**(ii) Hickenlooper for Colorado did not report any disbursements to the gubernatorial campaign for the assets transferred from his nonfederal campaign committee.**

Hickenlooper for Colorado apparently accepted a prohibited contribution from his nonfederal campaign committee in violation of federal law. Candidates for federal office may only accept contributions that do not violate the limit and source prohibitions of federal law.<sup>7</sup>

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<sup>2</sup> John Hickenlooper, *Restaurant* (Sept. 9, 2014); See also Eli Stokols, *Hickenlooper Features Wynkoop, Familiar Themes in Campaign's First TV Ad*, KDVR, Sept. 9, 2014, <https://kdvr.com/2014/09/09/hickenlooper-features-wynkoop-familiar-themes-in-campaigns-first-tv-ad/>; John Hickenlooper, *Under Water* (2014); John Hickenlooper, *Hot Seat*, (2014).

<sup>3</sup> Jeff Zeleny et al., *Former Colorado Gov. John Hickenlooper Launches Campaign for Senate*, CNN, Aug. 22, 2019, <https://www.cnn.com/2019/08/22/politics/hickenlooper-senate-colorado/index.html>; John Hickenlooper, *Not Done Fighting* (Aug. 22, 2019).

<sup>4</sup> John Hickenlooper, *Not Done Fighting* (Aug. 22, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> See Exhibit A.

<sup>7</sup> 52 U.S.C. §§ 30101, 30118.

Contributions are broadly defined to include monetary donations, gifts, and loans, but also “anything of value . . . for the purpose of influencing any election for Federal office.”<sup>8</sup> In addition to this broad definition, the regulations also specify that federal candidate campaign committees are prohibited from accepting contributions from a nonfederal candidate campaign committee:

“Transfers of funds or assets from a candidate’s campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited.”<sup>9</sup>

The video footage is an asset with copyright protection and thus, an “item of value” and an “asset.”<sup>10</sup> The transfer of the video asset to the federal campaign is prohibited.

It is important to note the campaign may attempt to argue the video is “publicly available,” but this is entirely irrelevant and simply a misstatement of the law. First, the law prohibits a transfer of “assets” – there is no exception for whether the transfer is accomplished privately or publicly.<sup>11</sup> Such a distinction would make the prohibition completely irrelevant. Moreover, the commonly known “public information exemption” only applies to coordination between candidates and outside groups, and it simply does not apply to transfer of assets.<sup>12</sup>

Second, even if the video is posted on a website,<sup>13</sup> a person or campaign cannot simply take whatever they want from websites on the internet because content posted is an asset and protected by copyright laws. For instance, in this case the video is posted on the advertising and

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<sup>8</sup> 52 U.S.C. § 30101(8)(A).

<sup>9</sup> 11 CFR § 110.3(d).

<sup>10</sup> See “asset.” Merriam-Webster Online Dictionary 2019, available at: <https://www.merriam-webster.com/dictionary/asset> (Nov. 22, 2019) (defining “asset” as an “item of value owned”); 11 C.F.R. § 100.51(a) (“The term contribution includes payment, services, or other things of value . . .”); 11 C.F.R. § 100.52(d)(1) (stating that in-kind contributions include “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”).

<sup>11</sup> 11 CFR § 110.3(d).

<sup>12</sup> The commonly known “public information safe harbor” does not apply to any transfer of assets, but rather is under a different section of law that is only applicable to coordination between candidates and outside groups. Under that coordination section, there are some narrow factual cases where the law specifies that factual scenario “is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source.” 11 C.F.R. 109.21(d)(2), (3), (4), (5). It is important to note that a “video” is an “asset,” and not “information.” Thus, the even in a coordination analysis, “public information safe harbor” would not apply to this type of asset. Additionally, the “public information safe harbor” does not apply to a contribution by a transfer of assets.

<sup>13</sup> See Putnam Partners LLC, available at: <https://www.putnampartners.net/political-campaigns>.

marketing company's website that produced the video.<sup>14</sup> Hickenlooper is not allowed to simply take this video because either: (1) Hickenlooper's campaign owns the video and copyright, and the production company only has permission to use the video for marketing and cannot transfer the copyright to the federal campaign; (2) the production company owns the video and copyright and allowing the federal campaign to use the video is a campaign contribution; or (3) the campaign has illegally taken the video.

Despite the fact that his Senate campaign announcement utilized footage from his gubernatorial campaign, Hickenlooper for Colorado's public reports show that it did not make any disbursements to his nonfederal gubernatorial campaign committee for the cost of the footage.<sup>15</sup> Nor does it show any contribution from Putnam Partners LLC or disbursements to Putnam Partners LLC.<sup>16</sup> Additionally, Hickenlooper was a candidate for President of the United States from March 4, 2019 to August 15, 2019.<sup>17</sup> His presidential campaign also did not report any disbursements to his gubernatorial campaign for the footage.<sup>18</sup> Likewise, Hickenlooper's federal "Leadership PAC" has not reported any disbursements for the footage.<sup>19</sup>

### **REQUEST FOR RELIEF**

Upon information and belief, there is reason to believe that (i) Hickenlooper for Colorado accepted illegal contributions from Hickenlooper's nonfederal campaign committee and (ii)

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<sup>14</sup> Putnam Partners LLC, available at <https://www.putnampartners.net/case-study/john-hickenlooper-governor>.

<sup>15</sup> See Hickenlooper for Colorado, 2020 Cycle Disbursements (Date: Oct. 15, 2019). Text from: *Disbursements*. Available at: <https://www.fec.gov/data/committee/C00716720/?tab=spending#total-disbursements>.

<sup>16</sup> See Hickenlooper For Colorado, Individual Contributions Search, Federal Election Commission (Accessed Dec. 10, 2019), Available at [https://www.fec.gov/data/receipts/individual-contributions/?committee\\_id=C00716720&contributor\\_name=putnam%2C+mark&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/receipts/individual-contributions/?committee_id=C00716720&contributor_name=putnam%2C+mark&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020); Hickenlooper For Colorado, Disbursements Search, Federal Election Commission (Accessed Dec. 10, 2019), Available at [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00716720&recipient\\_name=putnam+partners&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00716720&recipient_name=putnam+partners&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020); Hickenlooper For Colorado, Individual Contributions Search, Federal Election Commission (Accessed Dec. 10, 2019), Available at [https://www.fec.gov/data/receipts/individual-contributions/?committee\\_id=C00716720&contributor\\_name=putnam+partners&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/receipts/individual-contributions/?committee_id=C00716720&contributor_name=putnam+partners&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020).

<sup>17</sup> Julie Turkewitz, *John Hickenlooper Says He Is Running in 2020, Citing a 'Crisis of Division,'* NY TIMES, Mar. 4, 2019, <https://www.nytimes.com/2019/03/04/us/john-hickenlooper-2020.html>; Matt Stevens and Matt Flegenheimer, *John Hickenlooper, Ending Presidential Bid, Will Give Senate 'Serious Thought'*, NY TIMES, Aug. 15, 2019, <https://www.nytimes.com/2019/08/15/us/politics/john-hickenlooper-drop-out-senate.html>.

<sup>18</sup> See Hickenlooper 2020, Disbursements Search, [Federal Election Commission](https://www.fec.gov/), Accessed 11/26/19.

<sup>19</sup> See Giddy Up PAC, Disbursements Search, [Federal Election Commission](https://www.fec.gov/), Accessed 11/26/19.

Hickenlooper for Colorado did not report paying his gubernatorial campaign for the assets transferred from his nonfederal campaign committee. Therefore, the Commission should conduct an immediate investigation into whether Hickenlooper for Colorado violated 11 CFR § 110.3(d) and assess any appropriate penalties and remedial action.

Respectfully submitted,

*Karnold*

Kendra Arnold, Executive Director  
Foundation for Accountability & Civic Trust  
1717 K Street NW, Suite 900  
Washington, D.C. 20006

STATE OF IOWA

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) ss.

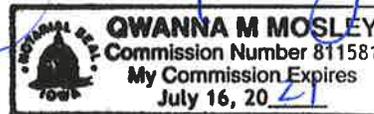
COUNTY OF POLK

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Subscribed and sworn to before me on December 11<sup>th</sup>, 2019.

*Qwana Mosley*

Notary Public in and for the State of Iowa



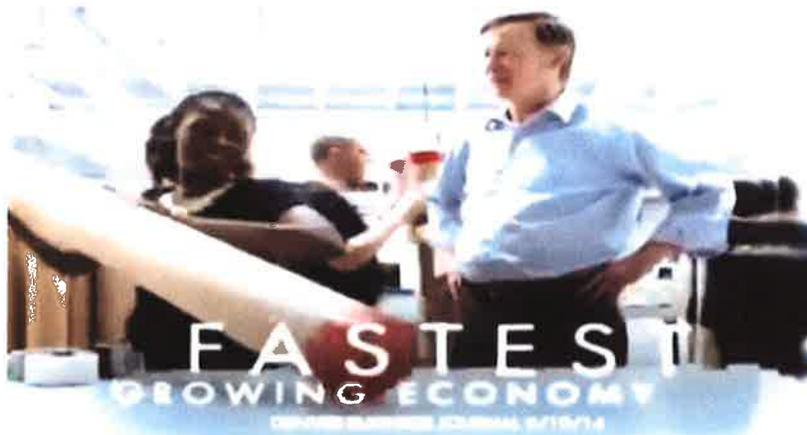
Complaint re Hickenlooper

## EXHIBIT A

### 2014 Nonfederal Campaign Advertisements



("Restaurant," John Hickenlooper, 2014, Min. 0:15)



("Recovery," John Hickenlooper, 2014, Min. 0:14)



("Recovery," John Hickenlooper, 2014, Min. 0:18)

Complaint re Hickenlooper

**2019 Federal Campaign Advertisement**



by prescription drug costs.

("Not Done Fighting," John Hickenlooper, 8/22/19, Min. 0:45)



by prescription drug costs.

("Not Done Fighting," John Hickenlooper, 8/22/19, Min. 0:47)



at building a better future.

("Not Done Fighting," John Hickenlooper, 8/22/19, Min. 0:51)