

OFFICE OF  
GENERAL COUNSEL

## BEFORE THE FEDERAL ELECTION COMMISSION

2020 MAR 11 AM 11:36

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

v.

MUR No. 7717

Theresa Greenfield  
Theresa Greenfield for Iowa  
FEC ID: C00708164  
PO Box 685  
Des Moines, IA 50303

and

SMP (also known as Senate Majority PAC)  
FEC ID: C00484642  
700 13th Street, NW  
Suite 600  
Washington, DC 20005

**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 submitted,<sup>1</sup> upon information and belief, to request the Federal Election Commission (FEC) investigate and take appropriate enforcement actions to address apparent violations of the Federal Election Campaign Act by Theresa Greenfield, her campaign committee, Theresa Greenfield for Iowa, and the super PAC, Senate Majority PAC (SMP).<sup>2</sup>

There are several candidates who have used a specific format to request outside organizations run specific advertisements on their behalf. It is clear and public knowledge that candidates make the request by using identified language and posting specific documents on their

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<sup>1</sup> This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1).

<sup>2</sup> SMP also uses the name and is commonly referred to as Senate Majority PAC.

website. The campaign often posts photographs and video simultaneously with the request for the outside organization to use in the advertisement.

In February 2020, Theresa Greenfield for Iowa updated its website, using the precise format to provide information for an advertisement and along with campaign video to be used in it. Just weeks later, Senate Majority PAC released an advertisement containing the information and video from Greenfield's campaign, reportedly spending over \$1 million on distribution.

Under federal law, Senate candidates are prohibited from coordinating with super PACs such as Senate Majority PAC on advertisements. Senate Majority PAC is also prohibited from republishing campaign materials, including photographs and video from a campaign committee. The source of the campaign material is irrelevant and thus, it is immaterial whether the super PAC obtained it from the campaign's website or YouTube channel. As a result, there is reason to believe the Greenfield campaign solicited, and Senate Majority PAC made, an illegal in-kind contribution in the form of a television advertisement. We request the Commission investigate and take appropriate enforcement actions to address these apparent violations.

## I. Facts

Several federal candidates have used their campaign websites to request outside organizations, with which they are prohibited from coordinating, produce and run television advertisements on their behalf.<sup>3</sup> The requests are conveyed in a specific format, i.e. using a campaign webpage entitled "Important Update," identifying the information with specific "code words" such as "Iowa voters need to hear about," and linking to a PDF document that is designed to provide the information and citations for the substance of the advertisement, which all appear to be the same format.<sup>4</sup> The campaigns often provide photographs or video to be used in the advertisement.<sup>5</sup> The purpose and effect are clear: to give specific instructions, information, and

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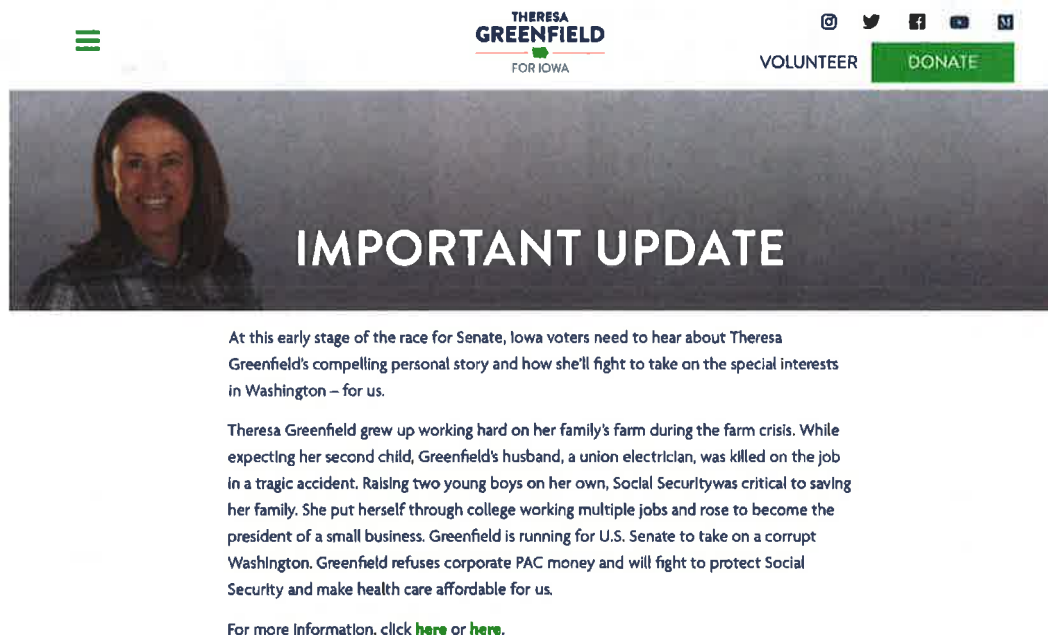
<sup>3</sup> See, e.g., Ryan Lovelace, 'Dark Money' Ad Raises Questions Over Peters Campaign for Senate, Washington Times, Nov. 18, 2019, available at: <https://www.washingtontimes.com/news/2019/nov/18/dark-money-ad-raises-questions-over-gary-peters-ca/>; see also Maggie Severns, *Democratic Candidates Writing Instructions to Super PACs on Their Websites*, Politico (July 15, 2016).

<sup>4</sup> *Id.*; see also, e.g., Gary Peters, Federal Election Commission, MUR 7666 (using an "Important Update" webpage with the language "What Michiganders Need to Know," which links to a PDF document).

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

graphic campaign materials to outside organizations to run advertisements beneficial to their campaign.

In the first week of February 2020, Greenfield made such a request that followed this exact format. The “Important Update” page on her website conveyed the content for an advertisement:



It contained two links: (1) to a PDF document with content information and citations (in the same format used by other candidates);<sup>6</sup> and (2) to b-roll video footage to be used in the advertisement.<sup>7</sup>

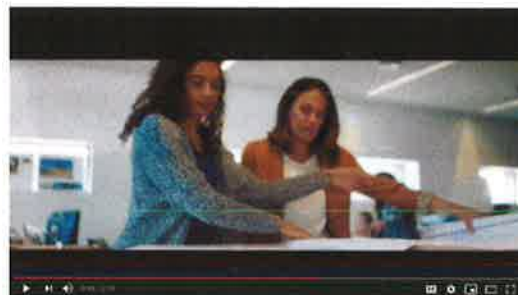
On February 25, 2020, Senate Majority PAC began running television and digital advertisements that apparently both answered Greenfield's request and republished campaign materials.<sup>8</sup> Approximately seventy percent of the substance of the advertisement was information

<sup>6</sup> “Important Update,” Theresa Greenfield For Iowa, available at: <https://greenfieldforiowa.com/important-update/>; “Theresa Greenfield Background,” Theresa Greenfield For Iowa, available at: <https://live-theresa-greenfield.pantheonsite.io/wp-content/uploads/2020/02/Greenfield-Background.pdf> (attached as Exhibit B).

<sup>7</sup> “Important Update,” Theresa Greenfield For Iowa, available at: <https://greenfieldforiowa.com/important-update/>; “Heartland,” Theresa Greenfield For Iowa, Youtube, Jan. 27, 2020, available at: [https://www.youtube.com/watch?v=MqW\\_QMPsAAQ](https://www.youtube.com/watch?v=MqW_QMPsAAQ).

<sup>8</sup> Alex Rogers, *Super PAC Spending More Than \$1 Million Backing Challenger to Ernst*, CNN, Feb. 24, 2020, available at <https://www.cnn.com/2020/02/24/politics/iowa-senate-democrat-ad/index.html>.

from Greenfield's PDF document.<sup>9</sup> The advertisement also republished a campaign photograph and campaign video, which made up approximately thirty percent of the advertisement's visual content.<sup>10</sup> For instance, the image on the left is from Greenfield's campaign video and the image on the right is from Senate Majority PAC's commercial:<sup>11</sup>



Senate Majority PAC reportedly was spending more than \$1 million to run Greenfield's advertisements.

## II. Law

Under federal law, candidates for federal office are subject to regulations that limit or prohibit contributions from and interactions with individuals, groups, and organizations. Among these regulations, federal candidates are prohibited from soliciting or accepting contributions from an individual or a non-multicandidate PAC in excess of \$2,800, from a multicandidate PAC in excess of \$5,000, or from any corporation or labor organization in any amount.<sup>12</sup> Federal candidates are also prohibited from accepting contributions from entities that accept contributions from corporations or labor organizations.<sup>13</sup> On the other hand, individuals, groups, and

<sup>9</sup> "Tough," Senate Majority PAC Ad, Feb. 23, 2020, available at: <https://www.youtube.com/watch?v=kSIz2gLoRtY>; "Theresa Greenfield Background," Theresa Greenfield For Iowa, available at: <https://live-theresa-greenfield.pantheonsite.io/wp-content/uploads/2020/02/Greenfield-Background.pdf>.

<sup>10</sup> Exhibit A; "Tough," Senate Majority PAC Ad, Feb. 23, 2020, available at: <https://www.youtube.com/watch?v=kSIz2gLoRtY>; "Heartland," Theresa Greenfield For Iowa Youtube, Jan. 27, 2020, available at: [https://www.youtube.com/watch?v=MqW\\_QMPsAAQ](https://www.youtube.com/watch?v=MqW_QMPsAAQ); Theresa Greenfield, Instagram Photo, Dec. 11, 2019, available at: [https://www.instagram.com/p/B58jvZegQ\\_v/](https://www.instagram.com/p/B58jvZegQ_v/).

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

<sup>12</sup> 52 U.S.C. §§ 30116, 30118.

<sup>13</sup> 52 U.S.C. §§ 30101, 30118.

organizations are also prohibited from making any illegal contribution.<sup>14</sup> Contributions are broadly defined to include cash donations, but also “anything of value . . . for the purpose of influencing any election for Federal office.”<sup>15</sup>

Additionally, federal law sets forth three specific expenditures that are defined as contributions:

(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for the purpose of this paragraph[.]<sup>16</sup>

Under subsection (i), to determine whether a communication was made in cooperation with a candidate, a three-part test applies: (1) the communication is paid for by a third-party; (2) the communication satisfies a “content” standard of 11 C.F.R. § 109.21(c); and (3) the communication satisfies one of the “conduct” standards of 11 C.F.R. § 109.21(d).<sup>17</sup>

Under subsection (iii), to determine whether a communication was a dissemination, distribution, or republication of campaign materials, the general rule applies:

a. General Rule. The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material

<sup>14</sup> See, e.g., 52 U.S.C. § 30116(a)(7)(B).

<sup>15</sup> 52 U.S.C. § 30101(8)(A).

<sup>16</sup> 52 U.S.C. § 30116(a)(7)(B).

<sup>17</sup> 11 C.F.R. § 109.21.

does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.<sup>18</sup>

Any republication of photographs or video prepared by a campaign is a contribution,<sup>19</sup> even if the campaign materials are only a small part of a larger advertisement.<sup>20</sup> Whether the photographs and video were obtained from a publicly available source is “not relevant to the analysis of whether it was republished under 11 C.F.R. § 109.23.”<sup>21</sup>

The contributions specified in subsections (i) and (iii) are separate and distinct ways to make an illegal contribution.

### III. Cause of Action

#### A. Illegal Contribution of Dissemination, Distribution, or Republication of Campaign Materials (52 U.S.C. § 30116(a)(7)(B)(iii))

There is reason to believe Senate Majority PAC made an illegal contribution by financing “the dissemination, distribution, or republication, in whole or part” of Theresa Greenfield for

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<sup>18</sup> 11 C.F.R. § 109.23(a).

<sup>19</sup> There are five narrow exceptions, which are:

1. The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;
2. The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;
3. The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;
4. The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; or
5. A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.

11 C.F.R. § 109.23. *See also*, Federal Election Commission, First General Counsel's Report, MUR 6357 (Aug. 31, 2011) (finding the use of a video clip does not fall under the exception 11 C.F.R. § 109.23(b)(4) of consisting of a brief quote).

<sup>20</sup> *See, e.g.*, Federal Election Commission, *First General Counsel's Report*, MUR 6357, at 5-11 (finding an outside group republished campaign materials and made an in-kind contribution to the campaign when it obtained campaign video footage from the campaign's YouTube page and used it in an advertisement).

<sup>21</sup> Federal Election Commission, Ellen L. Weintraub, Cynthia L. Bauerly, and Steven T. Walther, *Statement of Reasons*, MUR 6357, at 3, Feb. 27, 2012 (available at <https://www.fec.gov/files/legal/murs/6357/12044312290.pdf>).

Iowa campaign materials in excess of \$1 million.<sup>22</sup> Specifically, Senate Majority PAC's advertisement clearly republished photograph and video clips provided by the Theresa Greenfield for Iowa campaign. Moreover, the majority of the advertisement's content was directly obtained from Greenfield's written and graphic campaign materials.

Under federal law, Senate Majority PAC is prohibited from reproducing any graphic materials prepared by a candidate's authorized committee. Republishing campaign materials is a contribution to the candidate, even if the republication is only a small portion of a larger advertisement.<sup>23</sup> The law does not allow for any use of campaign materials by an outside organization and there are no exceptions applicable in this case.<sup>24</sup> Moreover, Senate Majority PAC is not allowed to reproduce the campaign's photograph and video regardless of the source and thus, it is irrelevant where Senate Majority PAC obtained the video.<sup>25</sup> Senate Majority PAC simply republished Greenfield's campaign materials, which is an illegal contribution.

**B. Illegal Contribution of Coordinated Communication (52 U.S.C. § 30116(a)(7)(B)(i)).**

There is reason to believe Greenfield and Theresa Greenfield for Iowa solicited and accepted an illegal contribution from Senate Majority PAC by coordinating communications valued at over \$1 million. Facts demonstrating coordination are: Greenfield made the request for the advertisement in a known format designated to convey the request, the request was acted on within a short amount of time, and the advertisement conveyed the requested information and republished the provided campaign materials.

Specifically, a communication is coordinated with a candidate, an authorized committee, or a political party committee when (1) it is paid for by an outside entity; (2) it satisfies a

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<sup>22</sup> 11 C.F.R. § 109.23.

<sup>23</sup> See, e.g., First General Counsel's Report, Federal Election Commission, MUR 6357, at 5-11 (finding an outside group republished campaign materials and made an in-kind contribution to the campaign when it obtained campaign video footage from the campaign's YouTube page and used it in an advertisement).

<sup>24</sup> Only the narrow exceptions expressly listed permit republication of campaign materials, and none of the five narrow circumstances are even remotely applicable in this case. See 11 C.F.R. § 109.23. See also, Federal Election Commission, First General Counsel's Report, MUR 6357 (Aug. 31, 2011) (finding the use of a video clip does not fall under the exception 11 C.F.R. § 109.23(b)(4) of consisting of a brief quote).

<sup>25</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.23(a); see also, Federal Election Commission, Ellen L. Weintraub, Cynthia L. Bauerly, and Steven T. Walther, *Statement of Reasons*, MUR 6357, at 3, Feb. 27, 2012.

“content standard” of 11 C.F.R. § 109.21(c), i.e. expressly advocates for the election or defeat of a clearly identified candidate for Federal office or republishes campaign materials; and (3) satisfies a “conduct standard” of 11 C.F.R. § 109.21(d), i.e. the communication is created, produced, or distributed at the “request or suggestion” of a candidate.<sup>26</sup> The “request or suggestion” conduct standard does not have a “safe harbor” for requests made publicly or information obtained from a publicly available source.

**1. Payment Standard.** The “payment” standard is satisfied when a communication is paid for by an entity “other than that candidate, authorized committee, or political party committee.”<sup>27</sup> Here, the advertisement disclaimer states, “Paid for by SMP.” Thus, from the face of the communication, it is clear the advertisement was paid for by Senate Majority PAC, and not Theresa Greenfield for Iowa.

**2. Content Standard.** The advertisement meets multiple “content” standards under 11 C.F.R. § 109.21: (c)(2) the communication is a public communication that “disseminates, distributes or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee;”<sup>28</sup> (c)(3) is a public communication that expressly advocates for the election or defeat of a clearly identified candidate for Federal office;<sup>29</sup> and (c)(5) “is the functional equivalent of express advocacy.”<sup>30</sup> All three of these standards are demonstrated by the advertisement: The advertisement republishes campaign materials, i.e. a photograph and video clips owned by the Theresa Greenfield for Iowa campaign.<sup>31</sup> The photograph and videos were owned by the candidate or campaign with legal intellectual property protections, which could not be used without permission. The advertisement contains information conveying positive facts about the candidate and information the campaign specifically identified as important for voters to know. Thus, the communication can only be understood to be providing information to convince

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<sup>26</sup> 11 C.F.R. § 109.21.

<sup>27</sup> *Id.*

<sup>28</sup> 11 C.F.R. § 109.21(c)(2).

<sup>29</sup> 11 C.F.R. § 109.21(c)(3).

<sup>30</sup> 11 C.F.R. § 109.21(c)(5). The advertisements are clearly “an appeal to vote for or against a clearly identified Federal candidate.”

<sup>31</sup> 11 C.F.R. § 109.21(c)(2).



a citizen to vote for Greenfield and is clearly “an appeal to vote for or against a clearly identified Federal candidate.”

**3. Conduct Standard.** The communication meets the “conduct” standard of 11 C.F.R. § 109.21(d): “The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee.”<sup>32</sup> Evidenced by the campaign making the request in the known format along with providing campaign assets for the television commercial, the advertisement is clearly in response to a request by Greenfield to disseminate, distribute, and republish the substantive message and campaign materials.

It is public knowledge that candidates are communicating with super PACs through designed webpages that use a specific format and language. Greenfield’s “request or suggestion” followed the known and specific method to request a super PAC run advertisements: the “Important Update” title of the webpage, the “code language” to identify the substance and media market for the advertisement, a specific formatted PDF research document with particular substantive points and citations, and a link to campaign video to be used. Greenfield’s webpage is exactly like those used by other candidates who have successfully requested or suggested outside groups run specific advertisements on their behalf. She should not now be permitted to claim this was not a request or suggestion.

Moreover, Senate Majority PAC’s advertisement clearly responded to Greenfield’s request. Within weeks, it had created and began running an ad that precisely conveyed the substantive information identified by the Greenfield campaign and republished the Greenfield campaign’s photograph and videos. The only reason this exact advertisement was run is because the Greenfield campaign requested it and provided the photograph and video. The close proximity in time between the campaign providing the instruction and materials and the super PAC running the advertisement also demonstrates this was a “request or suggestion.”

Additionally, the coordination between the Greenfield campaign and Senate Majority PAC is not excused because a public avenue was used to make the “request or suggestion” and to transfer campaign materials. The “publicly-available-information safe harbor” does not generally apply to the “request or suggestion” conduct standard. The language of the “request or suggestion” conduct standard does **not** state it is not satisfied if the “information material to the creation,

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<sup>32</sup> 11 C.F.R. § 109.21(d)(1).

production, or distribution of the communication was obtained from a publicly available source.”<sup>33</sup> This is unlike every other conduct standard, which does explicitly provide for a publicly-available-information safe harbor.<sup>34</sup> To interpret the “request or suggestion” standard as not applying if information was obtained from a publicly available source is directly contrary to the plain language of the regulation, and unreasonable and contrary to the statute.<sup>35</sup>

The 2006 E&J notes the Commission decided that the publicly-available-information-safe-harbor “more appropriately applies to only four of the five conduct standards, and is being added to the paragraphs currently containing those four conduct standards.”<sup>36</sup> The “request or suggestion” conduct standard is only applicable to a candidate’s request or suggestion that a communication be created, produced, or distributed, whereas the four standards to which the publicly-available-information-safe-harbor was added “all concern conduct that conveys material information that is subsequently used to create a communication.”<sup>37</sup> The request or suggestion standard is different than the other four because it simply is the request or ask, whereas the other four require

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<sup>33</sup> Compare 11 C.F.R. § 109.21(d)(1) (stating in full: “Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section: 1. REQUEST OR SUGGESTION. i. The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or ii. The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion.”), with 11 C.F.R. § 109.21(d)(2) (“This paragraph, (d)(2), 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)(3) (“This paragraph, (d)(3), 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)(4) (“This paragraph, (d)(4)(iii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source.”), and 11 C.F.R. § 109.21(d)(5) (“This paragraph, (d)(5)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source.”).

<sup>34</sup> *Id.*

<sup>35</sup> Compare Coordinated Communications, 71 Fed. Reg. 33190, 33204-05 (June 8, 2006) (explaining the plain language of the statute did not contain an exception for the use of publicly available information and it would be inappropriate to include this type of exception); with FEC, Factual and Legal Analysis, Shaheen for Senate, MUR 6821 (Dec. 2, 2015) (stating “that a communication resulting from a general request to the public or the use of publicly available information, including information contained on a candidate’s website, does not satisfy the content standard.”) and FEC, First General Counsel’s Report, MUR 7136 (Oct. 24, 2017) (same).

<sup>36</sup> Coordinated Communications, 71 Fed. Reg. 33190, 33205 (June 8, 2006).

<sup>37</sup> *Id.*

conveyance of **information** material to the creation of the communication. Thus, by its plain language a “request or suggestion” is not “information” and the publicly-available-information-safe-harbor could not apply.

In addition to the fact that it was not technically applicable, it was noted that one concern commentators expressed was if the publicly-available-information-safe-harbor was added to the “request or suggestion” conduct standard, it may allow for a loophole that could be exploited by precluding “certain communications from satisfying the coordinated communications test simply because a portion of a given communication was based on publicly available information, even if a candidate privately conveyed a request that a communication be made.”<sup>38</sup> The choice not to apply the publicly-available-information safe harbor to the request or suggestion conduct standard was to make the regulation stronger—it was intended to prevent any argument the communication was based upon some information or statement that was publicly available—it did not allow for a request or suggestion to be made publicly. In fact, the concerns addressed ensured that no part of the ask could be made publicly. The language of the statute prevails—the request or suggestion conduct standard does not contain a safe harbor for publicly available information.

Moreover, the “publicly-available-**information** safe harbor” states it only applies to “information”—not a “request or suggestion” and not the transfer of other types of campaign assets and materials, i.e. campaign written materials and photographs.<sup>39</sup> Although the “request or suggestion conduct standard” does **not** include the public information safe harbor, the conduct standards that do state: “This paragraph . . . is not satisfied if the **information** material to the creation, production, or distribution of the communication was obtained from a publicly available source.”<sup>40</sup> As discussed above, the Commission recognized “information” was not appropriately applied to a “request or suggestion” because they are not the same thing.<sup>41</sup> The law also generally

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<sup>38</sup> *Id.*

<sup>39</sup> *See, e.g.*, 11 C.F.R. § 109.21(d)(2).

<sup>40</sup> *See, e.g.*, 11 C.F.R. § 109.21(d)(2) (emphasis added). Information is defined as “(1) knowledge obtained from investigation, study, or instruction; (2) intelligence, news; (3) facts, data.” “Information,” Merriam-Webster Online Dictionary 2019, available at <https://www.merriam-webster.com/dictionary/information>, last accessed Dec. 18, 2019.

<sup>41</sup> Coordinated Communications, 71 Fed. Reg. 33190, 33204-05 (June 8, 2006) (explaining the plain language of the statute did not contain an exception for the use of publicly available information and it would be inappropriate to include this type of exception: “Moreover, the four conduct standards that are being revised to include a safe harbor for the use of publicly available information all concern conduct that conveys material

recognizes the difference between “information” and “assets,” including “campaign materials.”<sup>42</sup> The written content and photographs were prepared and paid for by Greenfield’s campaign and have copyright protections, and thus would be an “item of value” or an “asset.”<sup>43</sup>

The “request or suggestion” was evident in the format in which it was made, which is not “information.” Because Greenfield knew to use this format, it also indicates other communications occurred. Senate Majority PAC acted on the “request or suggestion” and created an advertisement using campaign assets, which is not “information.” Thus, the “publicly-available-information safe harbor” does not apply either in this case.

The advertisement was paid for by Senate Majority PAC, the content of the advertisement was the substantive message identified by the Greenfield campaign and republished campaign photograph and videos shortly after the campaign made them available, and Greenfield or Theresa Greenfield for Iowa made a “request or suggestion” using the known format to do so, all demonstrating the coordination in this case.

#### IV. Conclusion

Based on the format of the post, timing of the advertisement, and the advertisements content of messaging and use of campaign photograph and videos, there is information to believe Greenfield is coordinating with Senate Majority PAC. If so, it would constitute an illegal in-kind

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information that is subsequently used to create a communication, whereas the “request or suggestion” conduct standard concerns only a candidate’s or political party’s request or suggestion that a communication be created, produced or distributed, and is not dependent upon the nature of information conveyed.”).

<sup>42</sup> For example, where the “publicly-available-information safe harbor” applies, the regulations states it is in the context of “decisions,” “discussion,” or knowledge of common employees or vendors—all applications are to conveyance of knowledge or facts. *Compare* 11 C.F.R. § 109.21(d) (applying the “publicly-available-information safe harbor” to “decisions,” “discussion,” and knowledge of a common employee or vendor), *with* 11 C.F.R. § 109.21(d)(6) (providing certain conduct standards are only satisfied “that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished”). On the other hand, the regulations distinguish “information” from “campaign materials” that are prepared by the campaign. *Id.* The content standards are based upon republication of campaign materials and the conduct standards are based upon the communication of information. *See* 11 C.F.R. § 109.21(d)(6).

<sup>43</sup> “Asset,” Merriam-Webster Online Dictionary 2019, available at: <https://www.merriam-webster.com/dictionary/asset>, last accessed Dec. 19, 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 provisions of goods or services” including “securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists”).

contribution to Greenfield’s campaign. Further, Senate Majority PAC has republished Greenfield’s campaign photograph and videos, which alone is an illegal in-kind contribution. We request the Commission immediately investigate and if a violation is found, act immediately to impose appropriate penalties and deter other candidates and outside groups.

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 )  
 ) ss.  
COUNTY OF POLK )

Subscribed and sworn to before me on March 9th, 2020.



*Sarah Van Dorn*  
Notary Public in and for the State of Iowa



Greenfield Campaign Photos/B-Roll	SMP Ad
 <p data-bbox="418 531 553 575">Instagram</p>	 <p data-bbox="873 516 1344 531">Video frame showing a family with a baby.</p>
 <p data-bbox="428 863 542 911">Youtube</p>	 <p data-bbox="849 863 1365 884">Video frame showing two women at a table.</p>
 <p data-bbox="428 1205 542 1247">Youtube</p>	 <p data-bbox="833 1192 1382 1205">Video frame showing two women at a desk. Text overlay: THERESA GREENFIELD FOR SENATE</p>
 <p data-bbox="428 1562 542 1604">Youtube</p>	 <p data-bbox="833 1541 1377 1562">Video frame showing a man and woman at a table. Text overlay: THERESA GREENFIELD FOR SENATE</p>



Youtube





## THERESA GREENFIELD BACKGROUND

*Theresa Greenfield grew up working hard on her family's farm during the farm crisis. While expecting her second child, Greenfield's husband, a union electrician, was killed on the job in a tragic accident. Raising two young boys on her own, Social Security was critical to saving her family. She put herself through college working multiple jobs and rose to become the president of a small business. Greenfield is running for U.S. Senate to take on a corrupt Washington. Greenfield refuses corporate PAC money and will fight to protect Social Security and make health care affordable for us.*

### THERESA GREENFIELD GREW UP WORKING HARD ON HER FAMILY'S FARM DURING THE FARM CRISIS

**Greenfield Grew Up On A Family Farm.** "But Democrats are impressed by Greenfield's retail political skills and say her background as a businesswoman who grew up on a family farm positions her well in the state." [Politico, [6/24/19](#)]

**Greenfield Worked Hard On Her Family's Farm, Flagging, Tanking And Mapping The Fields As Well As Feeding Hogs And Bailing Hay.** "I'm Theresa Greenfield and I remember, flagging, tanking, and mapping the fields. And at 16 negotiating with other farmers. One farmer even refused to deal with me, because I was a girl. My dad wouldn't stand for it. He said there are no boy jobs or girl jobs, just jobs that need to get done. Growing up on a family farm in a small town of 500 you had to pull your own weight but we also had to look out for each other. Our family our friends our communities we sure did during the farm crisis. It was all hands on deck. Feeding the hogs, bailing the hay, but also working off the farm at a local panning factory and as a waitress just to survive. I learned if you worked hard you got a fair shot. And I sure did. I'm a proud farm kid with farm kid values." [YouTube, Theresa Greenfield for Iowa, [6/3/19](#)] (VIDEO)

### WHILE EXPECTING HER SECOND CHILD, GREENFIELD'S HUSBAND, A UNION ELECTRICIAN, WAS KILLED ON THE JOB IN A TRAGIC ACCIDENT

**Greenfield's First Husband Was A Journeyman Lineman And IBEW Union Member Who Was Killed On The Job.** "Her first husband was a journeyman lineman and IBEW (electrical workers union) member who was killed on the job. At the time of his death, Greenfield was just 24 years old with a one-year-old son and four months pregnant with another. Social security, workers' compensation and help from her family kept her on her feet during that time, allowing her to go back to college to train for a new career track to take care of her family." [Iowa Starting Line, [2/3/18](#)]

**Greenfield Was Just 24 Years Old With A One-Year-Old Son And Another Child On The Way When Her First Husband Passed Away.** "Her first husband was a journeyman lineman and IBEW (electrical workers union) member who was killed on the job. At the time of his death, Greenfield was just 24 years old with a one-year-old son and four months pregnant with another. Social security, workers' compensation and help from her family kept her on her feet during that time, allowing her to go back to college to train for a new career track to take care of her family." [Iowa Starting Line, [2/3/18](#)]

### RAISING TWO YOUNG BOYS ON HER OWN, SOCIAL SECURITY WAS CRITICAL TO SAVING HER FAMILY

**Social Security Helped Greenfield's Family Stay On Their Feet.** "Her first husband was a journeyman lineman and IBEW (electrical workers union) member who was killed on the job. At the time of his death, Greenfield was just 24 years old with a one-year-old son and four months pregnant with another. Social security, workers' compensation and help from her family kept her on her feet during that time, allowing her to go back to college to train for a new career track to take care of her family." [Iowa Starting Line, [2/3/18](#)]

**Greenfield: "One Of The Things That Saved Our Family Was Social Security."** "Greenfield tied her life story to larger political issues in the video. She recounts being a young mother when her first husband died in an electrical accident while working for the Interstate Power Company in Minnesota. At the time, she had a 13-month-old boy, and was pregnant with her second son. 'One of the things that saved our family was Social Security,' Greenfield said." [Little Village Mag, [6/3/19](#)]

### SHE PUT HERSELF THROUGH COLLEGE WORKING MULTIPLE JOBS AND ROSE TO BECOME THE PRESIDENT OF A SMALL BUSINESS

**Greenfield Put Herself Through School With Help Of Financial Aid And Multiple Part-Time Jobs.** "From the Greenfield campaign's June 5 news release: [...] When the farm crisis of the 1980s hit rural families like Theresa's, she

did not give up on her dream to attend college. With the help of financial aid and multiple part-time jobs, she put herself through school. Theresa married and as she and her husband were expecting their second child, he was killed in an accident at his job as a union electrical worker. Theresa set out on a path to provide for her two boys as a single mom." [Bleeding Heartland, [6/6/19](#)]

**Greenfield Worked Her Way From An Urban Planner At A Home-Building Company To President Of A Real Estate Firm.** "But Greenfield has been impressing people in recent months. [...] Most importantly, she's impressed Democratic primary voters with her speeches and her own personal story at events around the district. Raised on a farm in Minnesota, she's worked her way from an urban planner at a home-building company to the president of a real estate firm." [Iowa Starting Line, [2/3/18](#)]

**2017: Greenfield Was President Of A Family-Owned Real Estate Firm In Iowa.** "Theresa Greenfield, the president of a family-owned real estate firm, announced her candidacy on Wednesday, joining a field that includes two other Des Moines-area businesswomen. [...] She's now president of Colby Interests, a Windsor Heights-based real-estate firm. She previously was the president of a homebuilding company that went out of business in the 2008 recession and prior to that worked as an urban planner." [Des Moines Register, [7/5/17](#)]

**GREENFIELD IS RUNNING FOR U.S. SENATE TO TAKE ON A CORRUPT WASHINGTON. GREENFIELD REFUSES CORPORATE PAC MONEY AND WILL FIGHT TO PROTECT SOCIAL SECURITY AND MAKE HEALTH CARE AFFORDABLE FOR US**

**Greenfield Pledged Not To Take Corporate PAC Money In Her Campaign For U.S. Senate.** "Democratic U.S. Senate hopeful Theresa Greenfield, who has pledged not to take corporate political action committee (PAC) money, has been endorsed by End Citizens United. The PAC, which raised \$44 million in the last election cycle, said Greenfield's pledge highlights her commitment to reforming a broken system and taking on special interests." [Sioux City Journal, [7/10/19](#)]

**On Campaign Trail, Greenfield Pledged To Work Hard To Sustain Social Security.** "'I want you and grannies and young widows all over the state to know that I'm going to work hard to sustain Social Security and Medicare, because I know that it keeps people out of poverty, and gives them the opportunity to get on with their life like like it did for me,' Greenfield told the Adair County Democrats." [Roll Call, [8/30/19](#)]

**On Campaign Trail, Greenfield Pledged To Fight To Ensure Affordable Health Care.** "Democrat Theresa Greenfield launched her Iowa Senate bid to unseat Sen. Joni Ernst (R-Iowa) on Monday, a race her party views as a top pick-up opportunity. [...] 'In the Senate, I'll give the breaks to working folks by fighting to invest in improving education, supporting small business, and ensuring affordable health care for all Iowans. I'm a proud farm kid with farm kid values, and I'm running for U.S. Senate because I'll never forget who I am, where I'm from, or who I'm fighting for.'" [The Hill, [6/4/19](#)]

Peters for Michigan

Home Page

Available at: [petersformichigan.com](https://petersformichigan.com) Last accessed: March 4, 2020



#### ABOUT GARY

Senator Gary Peters grew up in Michigan where his father, a WWII veteran, worked as a public school teacher. His mother worked as a nurse's aide and union steward with the SEIU. Gary saw how hard his parents worked to provide for him and his two sisters, and they instilled in him the importance of determination, fairness, and integrity.

Gary is a graduate of Alma College. While raising a family and working a full-time job, he took night classes and earned an M.A. in Philosophy from Michigan State University, a J.D. from Wayne State

Peters for Michigan  
Important Update

Available at: <https://petersformichigan.com/what-michiganders-need-to-know/>

Last Accessed: March 4, 2020



**February 28, 2020** — What Michiganders in Detroit, Flint, and Lansing should know:

John James is Betsy DeVos' handpicked candidate for Senate – John James stands to benefit from **nearly one million dollars** from the DeVos family towards a Super PAC set up to attack Gary Peters; and says Betsy DeVos is doing a **"very, very good"** job as Secretary of Education. He supports her agenda, even though she proposed cutting \$9 billion dollars in funding for education – including over \$100 million for Michigan's neighborhood public schools. On whether **Michigan local schools** have gotten better, DeVos has **said**: "I don't know. Overall, I — I can't say overall."

For more information, click [HERE](#).



Link at "For more information, click [HERE](https://petersformichigan.com/wp-content/uploads/2020/02/John-James-Devos.pdf)." <https://petersformichigan.com/wp-content/uploads/2020/02/John-James-Devos.pdf>

## JOHN JAMES IS BETSY DEVOS'S HANDPICKED CANDIDATE FOR SENATE; JOHN JAMES WILL BENEFIT FROM NEARLY ONE MILLION DOLLARS FROM THE DEVOS FAMILY

**Detroit News Headline: "Devos Family Pumps \$800,000 Into Super PAC Targeting Peters."** [Detroit News, [2/13/20](#)]

**Democrats Said The Devos Contributions Show Peters' Opponent Will Stand With Secretary Devos And Her Family.** "Democrats alleged the contributions show Peters' GOP opponent, Farmington Hills businessman John James, will stand with U.S. Secretary of Education Betsy DeVos and her family. But Republicans countered that the contributions revealed key donors see how vulnerable Peters is this year in his re-election bid." [Detroit News, [2/13/20](#)]

**Devos Family Members Were The Only Contributors To The Pro-James Super PAC Better Future MI Fund.** "Better Future MI Fund formed Oct. 31, according to a filing with the Federal Election Commission. The super PAC had to file its first campaign finance disclosure, covering the last two months of 2019, on Jan. 31. The super PAC's only contributors were, at that point, from six members of the DeVos family. Daniel and Pamela DeVos, listed as executives with RDV Corp., each contributed \$200,000. Cheri DeVos and her husband, Steve Ehmann, each gave \$100,000. And Doug and Maria DeVos each gave \$100,000." [Detroit News, [2/13/20](#)]

## DEVOS' FAMILY HAS ALSO Poured IN MONEY DIRECTLY TO JAMES' CAMPAIGN AND TO ANOTHER SUPER PAC THAT BACKED HIM IN 2018

**As Of June 2019, The DeVos Family Had Donated \$30,800 To The James Campaign During The 2020 Cycle.**

CONTRIBUTOR NAME	RECIPIENT	ELECTION	STATE	DATE	AMOUNT
Devos, Suzanne Cheryl	John James for Senate, Inc.	Primary	MI	6/30/19	\$2,800
Devos, Suzanne Cheryl	John James for Senate, Inc.	General	MI	6/30/19	-\$2,800
Devos, Suzanne Cheryl	John James for Senate, Inc.	Primary	MI	6/30/19	\$5,600
Devos, Pamela Ms.	John James for Senate, Inc.	Primary	MI	6/30/19	\$2,800
Devos, Pamela Ms.	John James for Senate, Inc.	General	MI	6/30/19	-\$2,800
Devos, Pamela Ms.	John James for Senate, Inc.	Primary	MI	6/30/19	\$5,600
Devos, Nicholas Mr.	John James for Senate, Inc.	Primary	MI	6/30/19	\$2,800
Devos, Maria	John James for Senate, Inc.	Primary	MI	6/30/19	\$2,800
Devos, Maria	John James for Senate, Inc.	General	MI	6/30/19	-\$2,800
Devos, Maria	John James for Senate, Inc.	Primary	MI	6/30/19	\$5,600
Devos, Douglas L	John James for Senate, Inc.	Primary	MI	6/30/19	\$2,800
Devos, Douglas L	John James for Senate, Inc.	General	MI	6/30/19	-\$2,800
Devos, Douglas L	John James for Senate, Inc.	Primary	MI	6/30/19	\$5,600
Devos, Daniel G Mr.	John James for Senate, Inc.	Primary	MI	6/30/19	\$2,800
Devos, Daniel G Mr.	John James for Senate, Inc.	General	MI	6/30/19	-\$2,800
Devos, Daniel G Mr.	John James for Senate, Inc.	Primary	MI	6/30/19	\$5,600
<b>TOTAL:</b>					<b>\$30,800</b>

[FEC, Accessed [8/14/19](#)]

**The DeVos Family Donated \$41,800 To The James Campaign In The 2018 Cycle.**

CONTRIBUTOR NAME	RECIPIENT	ELECTION	STATE	DATE	AMOUNT
Devos, Pamela	John James for Senate, Inc.	General	MI	11/5/18	\$2,700
Devos, Nicholas	John James for Senate, Inc.	General	MI	11/5/18	\$2,500

Devos, Dalton C	John James for Senate, Inc.	General	MI	11/5/18	\$2,700
Devos, David	John James for Senate, Inc.	General	MI	10/28/18	\$500
Devos, Suzanne Cheryl	John James for Senate, Inc.	General	MI	6/26/18	\$2,700
Devos, Rick	John James for Senate, Inc.	Primary	MI	6/26/18	\$2,700
Devos, Richard M Sr	John James for Senate, Inc.	General	MI	6/26/18	\$2,700
Devos, Melissa	John James for Senate, Inc.	Primary	MI	6/26/18	\$2,700
Devos, Maria	John James for Senate, Inc.	General	MI	6/26/18	\$2,700
Devos, Douglass L	John James for Senate, Inc.	General	MI	6/26/18	\$2,700
Devos, Daniel G Mr.	John James for Senate, Inc.	General	MI	6/26/18	\$2,700
Devos, Dalton C	John James for Senate, Inc.	Primary	MI	6/26/18	\$1,000
Devos, Suzanne Cheryl	John James for Senate, Inc.	Primary	MI	12/31/17	\$2,700
Devos, Richard M	John James for Senate, Inc.	Primary	MI	12/31/17	\$2,700
Devos, Maria	John James for Senate, Inc.	Primary	MI	12/31/17	\$2,700
Devos, Douglass	John James for Senate, Inc.	Primary	MI	12/31/17	\$2,700
Devos, Daniel G Mr	John James for Senate, Inc.	Primary	MI	12/31/17	\$2,700
<b>TOTAL:</b>					<b>\$41,800</b>

[FEC, accessed [7/16/18](#)]

#### Outsider PAC Took \$25,000 From Jerry Tubergen, President Of RDV Corp.

CONTRIBUTOR	RECIPIENT	STATE	EMPLOYER	RECIPIENT DATE	AMOUNT
Jerry Tubergen	Outsider PAC	MI	RDV Corporation	8/27/2018	\$50,000
Jerry Tubergen	Outsider PAC	MI	RDV Corporation	7/3/2018	\$25,000

[FEC, accessed [7/16/19](#)]

**Outsider PAC Received Donations Jerry Tubergen, President Of RDV Corp., Which Had “Ties To The DeVos Family.”** “Outsider PAC also received \$50,000 from the DeVos-owned Alticor Inc., and \$25,000 from Jerry Tubergen, president of RDV Corp., which has ties to the DeVos family.” [Detroit News, [8/16/18](#)]

- **RDV Corp. Manages The DeVos' Clans Multi-Billion Dollar Fortune.** “RDV Corp. manages the multibillion-dollar fortune of the multigenerational DeVos clan. RDV owns assets including stakes in companies. It also has units that handle daily needs of family members: staffing, real-estate holdings, yachts and more.” [Wall Street Journal, [11/8/17](#)]

**Outsider PAC Received Donations From The DeVos Owned Alticor Inc”** “Outsider PAC also received \$50,000 from the DeVos-owned Alticor Inc., and \$25,000 from Jerry Tubergen, president of RDV Corp., which has ties to the DeVos family.” [Detroit News, [8/16/18](#)]

#### Alticor Inc. Donated \$100,000 To Outsider PAC, A Political Action Committee Started To Support James.

CONTRIBUTOR	RECIPIENT	STATE	RECIPIENT DATE	RECIPIENT DATE
Alticor Inc.	Outsider PAC	MI	10/22/2018	\$50,000
Alticor Inc.	Outsider PAC	MI	7/13/2018	\$50,000

[FEC, accessed [7/16/19](#)]

## JAMES SAYS BETSY DEVOS IS DOING A “VERY, VERY GOOD” JOB AS SECRETARY OF EDUCATION

**As Secretary Of Education, James Said “The Job Betsy Devos Is Doing In Public Education Is Very, Very Good.”** [Twitter, @MichiganDems, [6/7/19](#)] (0:38)

**James: “I Think That The Job Betsy Devos Is Doing In The Department Of Education I Think Is Very, Very Good.”**  
 JAMES: “I totally support charter schools. And I think that the job Betsy DeVos is doing in the Department of Education I think is very, very good. I personally believe that when you give parents a choice, you give kids a chance. And I think a lot of the Department of Education responsibilities should be pushed down to the state and local level, but since it’s there, having somebody who understands that the best schooling and education decisions are made by the parents, um, empowering the teachers.” [Howell, Michigan; Howell Concerts at the Courthouse, [7/13/18](#)]

## JAMES SUPPORTS DEVOS’ RECORD, EVEN THOUGH SHE PROPOSED CUTTING \$9 BILLION DOLLARS FOR EDUCATION INCLUDING OVER \$100 MILLION FOR MICHIGAN PUBLIC SCHOOLS

**Washington Post: Devos Sought To Cut Education Department Funding By \$9 Billion.** “DeVos had sought to cut Education Department funding by \$9 billion — about 13 percent. She wanted to eliminate money for after-school programs for needy youth and ax a grant program that helps low-income students go to college in favor of spending more than \$1 billion to promote charter schools, magnet schools and private school vouchers. Her proposal also outlined cuts to the Office for Civil Rights.” [Washington Post, [3/24/18](#)]

**The Devos-Trump Budget Would Have Cut At Least \$120 Million From Michigan Schools.** “Trump would cut \$9 billion or 13 percent from the U.S. Department of Education. A total of \$1.4 billion in new money is being funneled into school choice, including \$250 million for a new private school choice program, which probably will provide for vouchers. [...] The cuts include \$2.25 billion for teacher training from the Supporting Effective Instruction program, known as Title IIA, and \$1.2 billion from the 21st Century Community Learning Centers program for before and after school programs. Michigan schools stand to lose more than \$120 million from these programs alone.” [M-Live, [3/29/17](#)]

**Detroit Free Press Headline: “Cut To After-School Programs Would Be ‘Devastating.’”** [Detroit Free Press, [6/2/17](#)]

- **Detroit Free Press: The Devos-Trump Budget Left Before-School And After-School Programs “On The Chopping Block.”** “The Trump administration has left programs like this one hovering on the chopping block. His recent budget proposal calls for eliminating \$1.1 billion that funds the 21st Century Community Learning Centers that provide before-school, after-school and summer programs that are targeted at low-income, low-performing students nationwide.” [Detroit Free Press, [6/2/17](#)]
- **In Michigan, More Than 26,000 Students Were Served In The After-School Program During The 2015-2016 School Year.** “In Michigan, more than 26,000 students were served in the program during the 2015-16 school year, according to an evaluation of the program released in March by researchers at Michigan State University.” [Detroit Free Press, [6/2/17](#)]

## ON WHETHER MICHIGAN LOCAL SCHOOLS HAVE GOTTEN BETTER, DEVOS HAS SAID: “I DON’T KNOW. OVERALL, I—I CAN’T SAY OVERALL THAT THEY HAVE ALL GOTTEN BETTER”

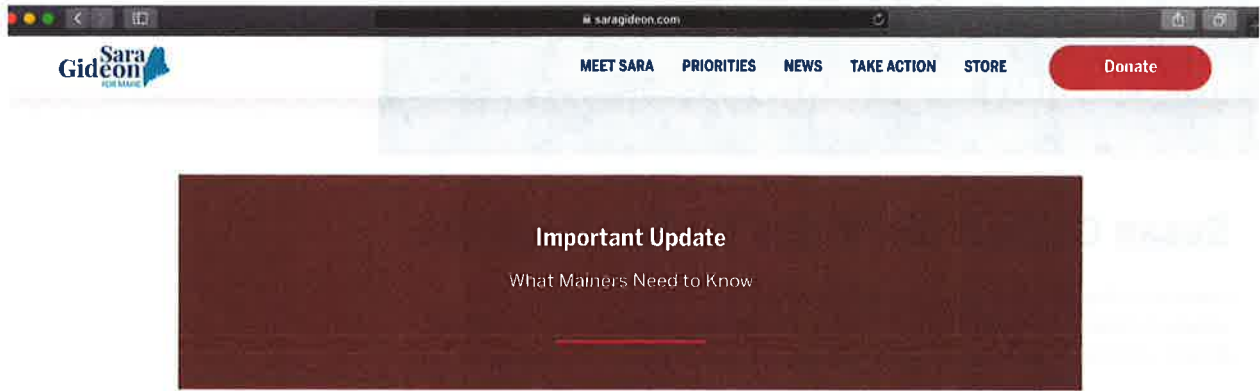
**Detroit Free Press Headline: “Betsy Devos Flubs Question On Michigan Schools On ‘60 Minutes’”** [Detroit Free Press, [3/12/18](#)]

- **DeVos: “I Don’t Know. Overall, I, I Can’t Say Overall.”** “But ‘have the public schools in Michigan gotten better?’ Stahl asked again. ‘I don’t know. Overall, I, I can’t say overall...’ DeVos responded.” [Detroit Free Press, [3/12/18](#)]

**New York Times Headline: “Devos Has Not ‘Intentionally’ Visited A Struggling Michigan Public School”** [New York Times, [3/12/18](#)]

- **When Devos Was Asked If She Visited Really Bad Schools To Figure Out What’s Happening In Them, Devos Said She Has “Not Intentionally Visited Schools That Are Underperforming.”** “In the ‘60 Minutes’ interview, Stahl also asked DeVos if she has seen the ‘really bad schools’ and attempted to try and figure out what’s happening in them. DeVos said she has ‘not intentionally visited schools that are underperforming.’ ‘Maybe you should,’ Stahl said. ‘Maybe I should,’ DeVos replied. ‘Yes.’” [Detroit News, [3/12/18](#)]

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**SARA'S PRIORITIES**

**“ It’ll always be clear who I’m  
working for: the people of**





Sara Gideon for Maine, Important Update What Mainers Need to Know, available at: <https://saragideon.com/update/>, last accessed Jan. 15, 2020



IMPORTANT UPDATE

## What Mainers Need to Know

### Susan Collins: She's Not for You Anymore

*Instead of working for Maine people, Susan Collins has become part of Washington, taking millions of dollars from special interests like drug companies, insurance companies and Wall Street and then working for them in the Senate. Susan Collins – she's not for you anymore.*

#### CHAPTER #2: Pay for Delay

1/10/20

Drug and insurance companies have given Susan Collins more than \$1.4 million dollars.

And Susan Collins twice voted to allow secret deals for drug companies that delay access to cheaper generic drugs – these schemes have forced Mainers to pay 10 times more for brand name drugs than they would for their generic equivalents and have resulted in billions in additional profits for the drug companies.

Susan Collins. She's not for you anymore.

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## SUSAN COLLINS – SHE’S NOT FOR YOU ANYMORE

### SUSAN COLLINS TWICE VOTED AGAINST CRACKING DOWN ON SECRET “PAY-FOR-DELAY” AGREEMENTS THAT DELAY ACCESS TO CHEAPER GENERIC PRESCRIPTION DRUGS

#### 2010: SUSAN COLLINS VOTED TO REMOVE A PROVISION BANNING “PAY-FOR-DELAY” AGREEMENTS FROM AN APPROPRIATIONS BILL

**7/29/10: Susan Collins Voted For An Amendment That Would Have Removed A Provision Prohibiting So-Called “Pay-For-Delay” Agreements From An Underlying Appropriations Bill.** On July 29, 2010, Susan Collins voted for an “Amendment that would remove a provision to prohibit brand-name drug companies from paying generic-drug companies to delay introducing cheaper generic drugs into the market.” The Senate Appropriations Committee rejected the amendment by a vote of 15 to 15. The underlying bill was the Fiscal Year 2011 Financial Services and General Government Appropriations Act. [CQ, [7/29/10](#); S. 3677, [7/29/10](#)]

- **New York Times Editorial: The Amendment Would Have Removed A Provision From The Underlying Bill That Would Have “Greatly Curtail[ed] Pay-For-Delay Practices.”** “The bill pending in the Senate, which was incorporated into a general government appropriations bill, is similar to legislation already approved by the House. It would greatly curtail pay-for-delay practices by presuming that such agreements are illegal and anticompetitive while leaving an opportunity for the affected companies to overcome that presumption in court. On the merits, the bill deserves passage. But the proposal barely survived a challenge in the Senate Appropriations Committee when an amendment that would have dropped it from the broader bill failed to win a majority; it lost on a 15-to-15 tie.” [Editorial, New York Times, [8/9/10](#)]
- **Washington Drug Letter: The Provision Banned “Pay-For-Delay” Agreements Between Generic And Brand-Name Pharmaceutical Companies Under Which Generic Manufacturers Agreed To Delay Or Limit Research, Development, Manufacturing, Or Sales Of Their Generic Drugs.** “But less than a week later, the Senate Appropriations Committee included Kohl’s bill in the Fiscal 2011 Financial Services and General Government Appropriations Act. Kohl’s provision, opposed by the brand and generics industries, would amend the FTC Act by banning agreements between brand and generic companies in which an ANDA filer receives anything of value or agrees to limit or forego research, development, manufacturing or sales of its generic drug for any period.” [Washington Drug Letter, [8/2/10](#)]

#### 2012: SUSAN COLLINS VOTED AGAINST AN AMENDMENT THAT WOULD HAVE CRACKED DOWN ON “PAY-FOR-DELAY” AGREEMENTS

**5/24/12: Susan Collins Voted Against An Amendment That Would Have “Ensured That Anti-Competitive ‘Pay-For-Delay’ Settlements Between Brand-Name And Generic Pharmaceutical Manufacturers Do Not Block Generic Drugs From Entering The Market.”** On May 24, 2012, Susan Collins voted against an amendment that would have “provide[d] substantial savings in health care costs to the Federal government and consumers by fostering competition among generic pharmaceutical manufacturers and ensuring that anti-competitive ‘pay-for-delay’ settlements between

brand-name and generic pharmaceutical manufacturers do not block generic drugs from entering the market." The amendment was rejected 28-67. [CQ, [5/24/12](#); S.Amdt. 2111 to S. 3187, Vote 105, [5/24/12](#)]

- **Amendment "Would Have Prevented Generic Pharmaceutical Companies From Reaching Pay-For-Delay Settlements With Makers Of Brand-Name Drugs Under Which They Were Paid To Put Off The Introduction Of Generic Versions Of Brand-Name Drugs."** "SENATE Vote 1: Generic drugs: The Senate has rejected an amendment sponsored by Sen. Jeff Bingaman, D-N.M., to the Food and Drug Administration Safety and Innovation Act (S. 3187). The amendment would have prevented generic pharmaceutical companies from reaching pay-for-delay settlements with makers of brand-name drugs under which they were paid to put off the introduction of generic versions of brand-name drugs. The vote, Thursday, was 28 yeas to 67 nays." [Tusla World, [5/27/12](#)]

## **SECRET "PAY-FOR-DELAY" DEALS DELAYED THE INTRODUCTION OF CHEAPER GENERIC DRUGS...**

**NBC: "Pay-For-Delay" Agreements "Allow Drug Manufacturers In Some Instances To Pay Competitors Not To Manufacture Generic Versions Of Their Products."** "Known as 'reverse settlement payments,' or 'pay-to-delay' deals, the financial arrangements are a unique but common practice in the pharmaceutical industry. Essentially, they allow drug manufacturers in some instances to pay competitors not to manufacture generic versions of their products, thereby ensuring that they maintain patent protection for as long as possible." [NBC, [8/13/15](#)]

## **...HAVE COST CONSUMERS BILLIONS IN HIGHER DRUG COSTS...**

**2013: Federal Trade Commission Estimated That "Pay-For-Delay" Agreements Cost Consumers And Health Insurance Plans \$3.5 Billion Annually.** "In 2013, the U.S. Supreme Court ruled that a brand-name drug manufacturer could be sued for violating antitrust laws if it engaged in pay-for-delay agreements, but that regulators could pursue such cases only on a case-by-case basis. At the time, the FTC said such agreements cost consumers and health plans \$3.5 billion annually." [Los Angeles Times, [7/29/19](#)]

**2013: Consumer Advocacy Groups CalPIRG And Community Catalyst Estimated That Brand-Name Drugs Impacted By "Pay-For-Delay" Deals Cost 10 Times More Than Their Generic Equivalents.** "On average, brand-name drugs affected by pay-for-delay deals cost 10 times more than generic versions, according to a 2013 report from consumer advocacy groups CalPIRG and Community Catalyst that analyzed information about 20 medications. Brand-name drugmakers made an estimated \$98 billion in total sales of those drugs while generic versions were delayed, the report said." [Los Angeles Times, [7/29/19](#)]

**2019: California Attorney General Xavier Becerra Said "Pay-For-Delay" Agreements Caused Consumers To "Pay As Much As 90% More For Drugs Shielded From Competition" Under The Deals.** "Under such 'pay-for-delay' agreements, drugmakers could maintain a monopoly on branded medications after their patents expired, [California Attorney General Xavier] Becerra said. The practices caused consumers 'to pay as much as 90% more for drugs shielded from competition,' his office added." [CNN, [7/29/19](#)]

## **...WHILE MAKING THOSE SAME DRUG COMPANIES BILLIONS OF DOLLARS OFF THE SCHEMES**

**2013: In A Study Of 20 Drugs Impacted By "Pay-For-Delay" Agreements, Brand-Name Manufacturers Made \$98 Billion In Total Sales While The Generic Versions Were Delayed.** "On average, brand-name drugs affected by pay-for-delay deals cost 10 times more than generic versions, according to a 2013 report from consumer advocacy groups CalPIRG and Community Catalyst that analyzed information about 20 medications. Brand-name drugmakers made an estimated \$98 billion in total sales of those drugs while generic versions were delayed, the report said." [Los Angeles Times, [7/29/19](#)]

## **SUSAN COLLINS HAS TAKEN MORE THAN \$1.4 MILLION FROM DRUG AND INSURANCE COMPANIES WHILE THE COST OF PRESCRIPTION DRUGS HAS SKYROCKETED**

### **1995-2019: SUSAN COLLINS HAS TAKEN MORE THAN \$1.4 MILLION FROM DRUG COMPANIES AND THE INSURANCE INDUSTRY...**

**1995-2019: Susan Collins Has Accepted \$413,999 From The Pharmaceutical/Health Products Industry And \$1,026,460 From The Insurance Industry.** [Open Secrets, accessed [1/10/20](#)]