



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 12, 2022

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel Baer

Denver, CO 802

RE: MUR 7719

Dear Mr. Baer:

On November 29, 2022, the Federal Election Commission reviewed the allegations in your complaint received March 12, 2020, and on the basis of the information provided in the complaint, and information provided by respondents, decided to exercise its prosecutorial discretion to dismiss the allegations as to Cory Gardner, Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer, and Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer. Accordingly, on November 29, 2022, the Commission closed the file in this matter.

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), effective September 1, 2016. A copy of the General Counsel's Report, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Roy Q. Lockett

BY: Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7719

Respondents: Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer
Cory Gardner

Complaint Receipt Date: March 12, 2020

Response Dates: April 1, 2020; May 4, 2020

EPS Rating:

Alleged Statutory and Regulatory Violations: 52 U.S.C. §§ 30104(b); 30118(a)
11 C.F.R. § 114.2(f)

The Complaint alleges that Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer (“SLF”), an independent expenditure-only political committee (“IEOPC”), along with Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer (the “Committee”), the authorized committee of 2020 Senate candidate Cory Gardner, violated the Federal Election Campaign Act of 1971, as amended, in connection with a bulk text message that SLF sent to an unknown number of recipients to solicit contributions to Gardner.¹ SLF paid \$5,031.06 to send the bulk text message, which contains a link to an SLF WinRed page entitled “Help Defend Cory Gardner!” (“SLF’s Gardner WinRed Page”) through which one can contribute to the Committee.² Earmarked contributions made via SLF’s Gardner WinRed Page go to the Committee through WinRed without being received by SLF.³

¹ Compl. at 1-2 (Mar. 12, 2020).

² *Id.* at 2; *Help Defend Cory Gardner!*, WINRED, https://secure.winred.com/Republican/support-cory-gardner/?recurring=true&amount=25&utm_medium=p2p&utm_source=SDL-B2&utm_campaign=20200216_SDL-B2_Gardner (last visited Sept. 29, 2022) (“SLF’s Gardner WinRed Page”); SLF, 48-Hour Report of Independent Expenditures (Feb. 11, 2020) (disclosing a \$5,031.06 disbursement to Targeted Victory LLC for “online advertising” supporting Gardner); SLF Resp. at 3 (May 4, 2020) (stating that the disbursement to Targeted Victory LLC was for the bulk text message).

³ SLF Resp. at 2.

1 The Complaint alleges that SLF, an entity that is permitted to accept and reports accepting
2 corporate contributions, violated 11 C.F.R. § 114.2(f), which prohibits corporations or labor
3 organizations from facilitating the making of contributions to federal candidates or political
4 committees.⁴ Second, the Complaint alleges that SLF made, and Gardner and the Committee
5 knowingly accepted, and the Committee and SLF failed to report, prohibited in-kind contributions
6 from SLF to Gardner and the Committee in the form of the cost of the bulk text message and SLF's
7 Gardner WinRed Page.⁵

8 Respondents deny the allegations.⁶ SLF acknowledges soliciting contributions to the
9 Committee as alleged, but argues that the corporate facilitation regulation does not apply to IEOPCs
10 but rather is limited to actions taken directly by corporations and labor organizations.⁷ SLF also
11 argues that the costs associated with the bulk text message were not in-kind contributions because
12 SLF did not coordinate with Gardner or the Committee, and that SLF properly reported these costs
13 as independent expenditures.⁸ Gardner and the Committee argue that the Complaint does not
14 contain any information indicating that they coordinated with SLF regarding the bulk text message
15 or the establishment of SLF's Gardner WinRed Page.⁹

16 Based on its experience and expertise, the Commission has established an Enforcement
17 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
18 assess whether particular matters warrant further administrative enforcement proceedings. These
19 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity

⁴ Compl. at 4-5.

⁵ *Id.* at 1-2.

⁶ SFL Resp. at 1; Gardner & Committee Resp. at 1-2 (Apr. 1, 2020).

⁷ SLF Resp. at 1, 4-5.

⁸ *Id.* at 1, 3-4.

⁹ Gardner & Committee Resp. at 2.

1 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
2 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
3 potential violations and other developments in the law. This matter is rated as low priority for
4 Commission action after application of these pre-established criteria. Given that low rating, the
5 speculative nature of the allegations, and the low dollar amount involved, we recommend that the
6 Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to
7 determine the proper ordering of its priorities and use of agency resources.¹⁰ We also recommend
8 that the Commission close the file as to all Respondents and send the appropriate letters.


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10 Lisa J. Stevenson
11 Acting General Counsel
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15 Charles Kitcher
16 Associate General Counsel
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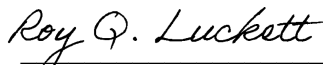
18 Sept. 29, 2022
19

20 Date

21 BY:



22 Claudio J. Pavia
23 Deputy Associate General Counsel

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25 Roy Q. Lockett
26 Acting Assistant General Counsel

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28 Ray Wolcott
29 Attorney
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¹⁰ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).