

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7727

DATE COMPLAINT FILED: 4/16/2020

DATE OF NOTIFICATION: 4/23/2020

LAST RESPONSE RECEIVED: 6/09/2020

DATE ACTIVATED: 7/22/2020

EXPIRATION OF SOL: Earliest 2/1/2025

Latest 3/1/2025

ELECTION CYCLE: 2020

COMPLAINANT:Kendra Arnold/Foundation for Accountability
and Civic Trust (FACT)**RESPONDENTS:**Sara Gideon
Sara Gideon for Maine and Lisa Lunn
in her official capacity as treasurer
Majority Forward**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30116(a) and (f)

11 C.F.R. § 100.22

11 C.F.R. § 100.26

11 C.F.R. § 109.21

11 C.F.R. § 109.23

11 C.F.R. § 110.2(b)

11 C.F.R. § 110.9

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Majority Forward, a 501(c)(4) non-profit organization, made an in-kind contribution to Sara Gideon and Sara Gideon for Maine and Lisa Lunn in her official capacity as treasurer (the "Committee"), Gideon's authorized committee in the 2020 U.S. Senate election in Maine, by coordinating an advertisement (the "Advertisement") with Gideon and the

1 Committee in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹
2 The Complaint also alleges that Majority Forward made an impermissible contribution to the
3 Committee by republishing Gideon campaign materials.² The Respondents deny coordinating
4 with each other and contend that the Advertisement did not republish Gideon campaign
5 materials.³

6 As discussed below, the facts are insufficient to support a reasonable inference that
7 Majority Forward coordinated with the Committee or republished Gideon campaign materials.
8 Therefore, we recommend that the Commission dismiss the allegations that Majority Forward
9 made, and that the Committee received, an excessive in-kind contribution, and close the file.

10 **II. FACTUAL BACKGROUND**

11 Sara Gideon is a candidate for U.S. Senate in Maine and Sara Gideon for Maine is her
12 authorized committee.⁴ Majority Forward is a non-profit organization organized under
13 Section 501(c)(4) of the Internal Revenue Code.⁵

14 The Complaint alleges that in January 2020, the Committee posted material on its website
15 titled “Important Update: What Mainers Need to Know.” This included: (1) a link to a
16 Committee webpage with a few sentences about incumbent U.S. Senator Susan Collins⁶
17 accepting contributions from drug and insurance companies and her refusal to support a bill that

¹ Compl. at 1-2 (Apr. 16, 2020).

² *Id.* at 2.

³ Sara Gideon and the Committee Resp. at 1 (June 9, 2020); Majority Forward Resp. at 1 (June 9, 2020).

⁴ Sara Gideon Amended Statement of Candidacy (July 15, 2020); Sara Gideon for Maine Amended Statement of Organization (July 15, 2020).

⁵ Majority Forward Resp. at 2.

⁶ Senator Collins is Gideon’s opponent in the 2020 general election.

1 would lower the cost of prescription drugs; and (2) a link to a PDF document titled “Susan
2 Collins – She’s Not For You Anymore” listing more specific talking points about Collins’s
3 position on prescription drug costs.⁷

4 In February and March 2020, Majority Forward aired the Advertisement, titled “Twenty
5 Years.”⁸ The Advertisement is 30 seconds long and consists of a mock town-hall meeting in
6 which several individuals ask questions of an absent Senator Collins regarding her voting record
7 against lowering drug costs, about Collins accepting money from the pharmaceutical and
8 insurance industries, and questioning why Collins has not held a town hall meeting in 20 years.⁹
9 The Committee’s webpage and the Advertisement are set forth below.

⁷ Compl. at 4-6.

⁸ See Compl. at 7; *see also* Majority Forward Resp. at 2; Open Secrets Ad Data Database (showing NAB political advertising agreement forms between Majority Forward and various Maine broadcasters to air ads related to Susan Collins, at <https://www.opensecrets.org/ad-data/search?ad-data-q=%22susan+collins%22+AND+%22Majority+forward%22>).

⁹ Majority Forward “Twenty Years,” uploaded Feb. 18, 2020, available at <https://www.youtube.com/watch?v=bA2Ao9zzAK8&feature=youtu.be>.

Committee Webpage ¹⁰	The Advertisement ¹¹
<p>Important Update: What Mainers Need to Know. Susan Collins: She's Not for You Anymore. <i>Instead of working for Maine people, Susan Collins has become part of Washington, taking millions of dollars from special interest drug companies, insurance companies, and Wall Street and then working for them in the Senate. Susan Collins – she's not for you anymore.</i> H.R. 3 2/5/20: A major bill just passed the House of Representatives that would significantly lower the cost of prescription drugs. The only things standing in the way now are Mitch McConnell ... and Susan Collins. Public finance records show that Susan Collins has taken \$1.4 million dollars for drug and insurance companies. The pharmaceutical industry is "strongly opposed" to the bill so it's no surprise Collins refuses to support it. Even though it could save Mainers thousands of dollars a year. Susan Collins. She's not for you anymore.</p> <p>Click here for more information.</p>	<p>Town Hall Participant 1: "Senator Collins, why did you vote against lowering prescription drug costs?" Screen: Senator Susan Collins. Town Hall Participant 2: "Prescription drug costs..." Town Hall Participant 3: "Prescription drug costs..." Town Hall Participant 4: "Was it because you were taking so much money from the drug companies?" Town Hall Participant 5: "Senator Collins, Why haven't you had a town hall in 20 years?"</p> <p>(Pan to front of auditorium and an empty stage with podium labeled "Senator Susan Collins").</p> <p>Narrator: Maybe to avoid questions like these. Collins voted to allow drug companies to drive up the cost of prescription drugs leaving Mainers to pay the price. Screen: Collins raked in \$1.4 Million from Drug and Insurance Industries. – Center for Responsive Politics. Narrator: If she won't hear us at a town hall, she'll hear us in November.</p>

- 1 Majority Forward allegedly spent \$500,000 to run the Advertisement on television.¹²
- 2 The Majority Forward Response acknowledges that they "ran" the Advertisement, but does not

¹⁰ Compl. at 5.

¹¹ Majority Forward "Twenty Years," uploaded Feb. 18, 2020, available at <https://www.youtube.com/watch?v=bA2Ao9zzAK8&feature=youtu.be>.

¹² Compl. at 7, citing Caitlin Andrews and Jessica Piper, *Susan Collins Hits Gideon on Corporate Money as Senate Race Heats Up*, BANGOR DAILY NEWS, Feb. 20, 2020, available at <https://bangordailynews.com/2020/02/20/politics/dailybrief/susan-collins-hits-gideon-on-corporate-money-as-senate-race-heats-up/> ("Just this week, Majority Forward, a nonprofit 'dark money' group affiliated with a PAC that supports Democrats in Senate races, is out with a new, half-million dollar TV ad buy...").

1 include any information on amounts spent.¹³ The “Important Update: What Mainers Need to
2 Know” link and corresponding Committee webpage were allegedly removed in early April 2020
3 after Majority Forward ran the Advertisement.¹⁴

4 The Complaint alleges that Sara Gideon and the Committee used “code words” on the
5 Committee webpage to “request or suggest” that Majority Forward run a specific advertisement
6 on their behalf.¹⁵ According to the Complaint, Majority Forward republished the written
7 campaign materials and information on the Committee webpage through the airing of the
8 Advertisement.¹⁶ The Complaint alleges that the short time between the date the campaign
9 webpage went live, the dates the Advertisement aired on television, and then the prompt removal
10 of the webpage all confirm that this was a coordinated request.¹⁷ The Respondents assert that the
11 Commission’s coordinated communication regulations do not apply to publicly available
12 information on a website.¹⁸

¹³ Majority Forward Resp. at 2.

¹⁴ Compl. at 4 (citing the Wayback Machine demonstrating the presence and then absence of the “voters need to know” message).

¹⁵ *Id.* at 1.

¹⁶ Compl. at 15.

¹⁷ *Id.* at 11-12. The Complaint further alleges that the methodology of the request is identical to that of several other candidates and is therefore part of a broader common scheme of how committees make prohibited requests of outside organizations. *See* Compl. at 6, citing MUR 7717 (Theresa Greenfield) and MUR 7666 (Gary Peters) (alleging the candidate committees in these cases used the identical “code language” and identically formatted PDF documents to request advertisements from outside organizations including Majority Forward) all filed by Complainant in MUR 7727). Sara Gideon and the Committee are also the subjects of a recent Complaint in MUR 7797 alleging that they used social media to make a specific request to SMP, an outside organization, to run an advertisement filed by Complainant in MUR 7727).

¹⁸ Sara Gideon and the Committee Resp. at 3; Majority Forward Resp. at 3.

1 **III. LEGAL ANALYSIS**

2 The Act defines “contribution” to include “any gift, subscription, loan, advance, or deposit of
3 money or anything of value made by any person for the purpose of influencing any election for
4 Federal office.”¹⁹ “Anything of value” includes in-kind contributions.²⁰ When a person makes an
5 expenditure in cooperation, consultation, or in concert with, or at the request or suggestion of, a
6 candidate or the candidate’s authorized committee or their agents, it is treated as an in-kind
7 contribution.²¹ The Act prohibits any person from making, and any candidate or committee from
8 knowingly accepting, an excessive contribution.²² For the 2020 election cycle, contributions by
9 persons other than multicandidate committees to any candidate and his or her authorized political
10 committees are limited to \$2,800 per election.²³

11 A communication is “coordinated” with a candidate, an authorized committee, a political
12 party committee, or agent thereof, and is treated as an in-kind contribution, if the communication
13 meets a three-part test: (1) payment for the communication by a third party; (2) satisfaction of
14 one of five “content” standards of 11 C.F.R. § 109.21(c); and (3) satisfaction of one of six
15 “conduct” standards of 11 C.F.R. § 109.21(d).²⁴

¹⁹ See 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

²⁰ 11 C.F.R. § 100.52(d)(1).

²¹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

²² 52 U.S.C. §§ 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

²³ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

²⁴ 11 C.F.R. § 109.21.

1 A. Payment

2 The payment prong is satisfied when a person, other than the candidate, authorized
3 committee, or political party committee pays for the communication.²⁵ In this matter, the
4 payment prong of the coordinated communication test is satisfied because Majority Forward is a
5 third-party payor.²⁶

6 B. Content

7 The Complaint asserts that the content prong is satisfied because the Advertisement is a
8 public communication that republishes campaign materials, expressly advocates the election or
9 defeat of a clearly identified candidate for Federal office, and is the functional equivalent of
10 express advocacy.²⁷

11 The Advertisement is a “public communication” because it aired on television.²⁸ The
12 Advertisement does not appear to meet the republication content standard, defined as
13 “disseminat[ing], distribut[ing], or republish[ing] in whole or in part, campaign materials
14 prepared by a candidate or the candidate’s authorized committee.”²⁹ Although the Committee
15 webpage and the Advertisement share similar themes concerning Susan Collins’s stance on
16 prescription drug cost and receipt of money from the drug and insurance industries, that is the
17 only overlap between the two communications. Respondents note that these topics are well-

²⁵ 11 C.F.R. § 109.21(a)(1).

²⁶ Majority Forward Resp. at 2.

²⁷ Compl. at 10-11. *See* 11 C.F.R. § 109.21(c)(2), (c)(3), (c)(5).

²⁸ *See* 11 C.F.R. § 100.26 (definition of “public communication” includes communications by means of any broadcast, cable and satellite communication).

²⁹ 11 C.F.R. § 109.21(c)(2). *See* 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii). None of the exceptions listed under 11 C.F.R. § 109.23(b) apply in this case.

1 known criticisms of Collins during the 2020 Senate campaign in Maine and point to other
2 sources of such information.³⁰ The Complaint does not allege nor does the Advertisement
3 appear to feature any video footage, images or any other campaign materials besides the thematic
4 similarities.³¹ The Advertisement also covers a different topic, Susan Collins's failure to hold a
5 town hall meeting, which is not addressed on the Committee's webpage or PDF document.³²
6 The alleged thematic similarities of the two communications at issue is insufficient to satisfy the
7 republication content standard.³³

8 The Complaint also alleges that the Advertisement expressly advocates the election or
9 defeat of a clearly identified candidate for federal office and is the functional equivalent of
10 express advocacy.³⁴ The Respondents argue the Advertisement could be interpreted as
11 demanding that Susan Collins hold a town hall meeting rather than advocating for her defeat at
12 the polls.³⁵ The Respondents further contend that the Advertisement does not use any of the
13 words or phrases that urge the election or defeat of a clearly identifiable candidate,³⁶ nor does it
14 contain any slogans or words which in context can have no other reasonable meaning than to

³⁰ Majority Forward Resp. at 4, 7.

³¹ *Id.* at 7.

³² *Id.*

³³ See Factual and Legal Analysis at 5-7, MUR 7080 (Babeu, *et al.*) (finding no reason to believe a third party payor republished campaign materials where the third party communication and candidate committee website featured similar issues and discussed the same topic but used significantly different language); see also Factual and Legal Analysis at 10-11, MUR 6502 (Nebraska Democratic Party) (finding no republication of campaign materials where communications shared similar themes found in campaign materials but used different language); Factual and Legal Analysis at 9, MUR 6821 (Shaheen for Senate) (dismissing allegations of coordination based on thematic similarities); Factual and Legal Analysis at 5, MUR 5963 (Club for Growth PAC) (same).

³⁴ Compl. at 10-11. See 11 C.F.R. § 109.21(c)(3), (c)(5).

³⁵ Majority Forward Resp. at 6. See 11 C.F.R. § 100.22 (definition of expressly advocating).

³⁶ Majority Forward Resp. at 6.

1 urge the election or defeat of a clearly identified candidate.³⁷ The tag line at the end of the
2 Advertisement, “If she won’t hear us at a town hall, she’ll hear us in November [.]” presents a
3 closer question on express advocacy than Respondents contend, as it references the November
4 election, albeit conditionally.³⁸ However, because the conduct prong does not appear to be
5 satisfied,³⁹ as discussed below, it is not necessary to determine whether the Advertisement
6 expressly advocates or is the functional equivalent of express advocacy.

7 C. Conduct

8 The Complaint alleges that the Committee’s conduct satisfied the “request or suggestion”
9 conduct prong that the communication was created, produced, or distributed at the request or
10 suggestion of a candidate, authorized committee, or political party committee.⁴⁰ According to
11 the Complaint, the Committee webpage uses code language, such as “Mainers Need to Know,”
12 to identify the request, content for the advertisement, and media market in which to run the
13 advertisement.”⁴¹ Both Respondents deny that the Advertisement was coordinated and
14 specifically assert that there was no “request or suggestion.”⁴² The Complaint itself does not

³⁷ See 11 C.F.R. § 100.22(a) (expressly advocating includes, among other things, phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “vote against Old Hickory”).

³⁸ See 11 C.F.R. § 100.22(b) (express advocacy includes communications containing an “electoral portion” that is “unmistakable, unambiguous, and suggestive of only one meaning” and about which “reasonable minds could not differ as to whether it encourages actions to elect or defeat” a clearly identified candidate when taken as a whole and with limited reference to external events, such as the proximity to the election).

³⁹ The Advertisement does not meet the other two content standards, electioneering communication and communication referring to a clearly identified House or Senate candidate disseminated in the candidate’s jurisdiction within 90 days before an election. See 11 C.F.R § 109.21(c)(1) and (c)(4).

⁴⁰ Compl. at 1. See 11 C.F.R. § 109.21(d)(1)(i).

⁴¹ Compl. at 1.

⁴² Majority Forward Resp. at 1, 3-5; Gideon and Committee Resp. at 1, 3-5.

1 identify any communication between the Respondents.⁴³ Rather, it relies on the public messages
2 and code language placed on the Committee webpage as evidence of coordination.⁴⁴

3 The code language on the webpage along with the specific formatting of the PDF
4 document could be seen as a roadmap for third parties wishing to make ads that are critical of
5 Gideon's opponent. The information and the way that it was posted communicates how the
6 Committee wished their opponent be presented in terms of messaging, and Majority Forward
7 created and distributed the Advertisement that closely followed the roadmap. Yet, there is no
8 record of any direct request by the Committee to Majority Forward or any other contacts related
9 to the Advertisement at issue, which is required under coordination.

10 The relevant Commission Explanation and Justification ("E&J") on coordination explains
11 that "[a] request or suggestion encompasses the most direct form of coordination, given that the
12 candidate or political party committee communicates desires to another person who effectuates
13 them."⁴⁵ The Commission went on to clarify that the "request or suggestion" definition "is
14 intended to cover requests or suggestions made to a select audience but not those offered to the
15 public generally."⁴⁶ The E&J juxtaposes two scenarios: (1) a request that is posted on a
16 webpage that is available to the general public, which does not trigger the conduct standard;
17 and (2) a request posted through an intranet service or sent via electronic mail directly to a
18 discrete group of recipients, which constitutes a request to a select audience and thereby satisfies

⁴³ Compl. at 1-30.

⁴⁴ Compl. at 1, 3, 11.

⁴⁵ Coordinated and Independent Expenditures Explanation and Justification, 68 Fed. Reg. 421, 432 (Jan. 8, 2003).

⁴⁶ *Id.*

1 the conduct standard.⁴⁷ The Commission has analyzed previous cases alleging “request or
 2 suggestion” based on similar facts using this framework, concluding that information on public
 3 website does not satisfy the meaning of “request or suggest” under the conduct standard.⁴⁸

4 Consistent with other factually similar cases, it does not appear that the alleged activities
 5 of the Respondents in connection with the Advertisement satisfy the “request or suggestion”
 6 conduct standard.⁴⁹ Nor does the available information suggest that any of the other conduct
 7 standards are satisfied here.⁵⁰ Since it appears that none of the conduct standards are satisfied,
 8 the Advertisement does not constitute a coordinated communication under the Commission’s
 9 test.

10 Finally, as to the Complaint’s separate allegation that Majority Forward impermissibly
 11 republished Gideon campaign materials,⁵¹ the Commission’s regulations provide that, even when
 12 there is no evidence of coordination, “[t]he financing of the dissemination, distribution, or
 13 republication, in whole or in part, of any ... campaign materials prepared by the candidate [or]
 14 the candidate’s authorized committee ... shall be considered a contribution for the purposes of

⁴⁷ *Id.*

⁴⁸ See Factual and Legal Analysis at 9, MUR 6821 (Shaheen for Senate, *et al.*); see also Factual and Legal Analysis at 9-10, MUR 7124 (McGinty for Senate, *et al.*); First Gen. Counsel’s Rept., MURs 7666 and 7675 (Peters for Michigan, *et al.*) (recommending that the Commission dismiss the coordination allegations because the facts do not indicate a “request or suggestion”) The instant matter is distinguishable from MUR 7700 (VoteVets) a matter in which the First General Counsel’s Report analyzes the messaging between a candidate committee and a third-party spender as meeting the “request or suggestion” conduct standard. In that matter, a tweet by an agent of the candidate’s campaign specified the mode of communication, the message, the timing, and directed it to a likely payor, thus constituting a “targeted request to a select audience” rather than the general public messaging on the Gideon website.

⁴⁹ *Id.*

⁵⁰ The alleged activities of the Respondents in connection with the Advertisement do not meet the other conduct standards: material involvement, substantial discussion, common vendor, former employee or independent contractor, or dissemination, distribution or republication of campaign material. See 11 C.F.R § 109.21(d)(2) - (6).

⁵¹ Compl. at 15.

1 contribution limitations and reporting responsibilities of the person making the expenditure.”⁵²
2 As discussed above, the available information does not support a finding that Majority Forward
3 republished Gideon campaign materials.⁵³

4 We therefore recommend that the Commission dismiss the allegations that Majority
5 Forward made, and that the Committee received, excessive in-kind contributions, and close the
6 file.

7 **IV. RECOMMENDATIONS**

- 8 1. Dismiss the allegation that Majority Forward violated 52 U.S.C. § 30116(a) and
9 11 C.F.R. § 110.2(b) by making an excessive contribution;
- 10 2. Dismiss the allegation that Sara Gideon for Maine and Lisa Lunn in her official
11 capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by
12 knowingly accepting an excessive contribution;
- 13 3. Approve the attached Factual and Legal Analysis;
- 14 4. Close the file; and
- 15
16
17

⁵² 11 C.F.R. § 109.23(a); *see* 52 U.S.C. § 30116(a)(7)(B)(iii). The candidate who produced the campaign materials does not need to report receiving an in-kind contribution unless the republication of her campaign materials is a coordinated communication. 11 C.F.R. § 109.23(a).

⁵³ *See supra* at 7-8 (republication content standard does not appear to be met).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Sara Gideon MUR 7727
4 Sara Gideon for Maine and Lisa Lunn
5 in her official capacity as treasurer
6 Majority Forward
7

8 **I. INTRODUCTION**

9 The Complaint alleges that Majority Forward, a 501(c)(4) non-profit organization, made
10 an in-kind contribution to Sara Gideon and Sara Gideon for Maine and Lisa Lunn in her official
11 capacity as treasurer (the “Committee”), Gideon’s authorized committee in the 2020 U.S. Senate
12 election in Maine, by coordinating an advertisement (the “Advertisement”) with Gideon and the
13 Committee in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹
14 The Complaint also alleges that Majority Forward made an impermissible contribution to the
15 Committee by republishing Gideon campaign materials.² The Respondents deny coordinating
16 with each other and contend that the Advertisement did not republish Gideon campaign
17 materials.³

18 As discussed below, the facts are insufficient to support a reasonable inference that
19 Majority Forward coordinated with the Committee or republished Gideon campaign materials.
20 Therefore, the Commission finds no reason to believe that Majority Forward made, and that the
21 Committee received, an excessive in-kind contribution, and closes the file.

¹ Compl. at 1-2 (Apr. 16, 2020).

² *Id.* at 2.

³ Sara Gideon and the Committee Resp. at 1 (June 9, 2020); Majority Forward Resp. at 1 (June 9, 2020).

MUR 7727 (Sara Gideon, *et al.*)
Factual and Legal Analysis
Page 2 of 10

1 **II. FACTUAL BACKGROUND**

2 Sara Gideon is a candidate for U.S. Senate in Maine and Sara Gideon for Maine is her
3 authorized committee.⁴ Majority Forward is a non-profit organization organized under
4 Section 501(c)(4) of the Internal Revenue Code.⁵

5 The Complaint alleges that in January 2020, the Committee posted material on its website
6 titled “Important Update: What Mainers Need to Know.” This included: (1) a link to a
7 Committee webpage with a few sentences about incumbent U.S. Senator Susan Collins⁶
8 accepting contributions from drug and insurance companies and her refusal to support a bill that
9 would lower the cost of prescription drugs; and (2) a link to a PDF document titled “Susan
10 Collins – She’s Not For You Anymore” listing more specific talking points about Collins’s
11 position on prescription drug costs.⁷

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- 1 insurance industries, and questioning why Collins has not held a town hall meeting in 20 years.⁹
- 2 The Committee’s webpage and the Advertisement are set forth below.

Committee Webpage ¹⁰	The Advertisement ¹¹
<p>Important Update: What Mainers Need to Know.</p> <p>Susan Collins: She’s Not for You Anymore. <i>Instead of working for Maine people, Susan Collins has become part of Washington, taking millions of dollars from special interest drug companies, insurance companies, and Wall Street and then working for them in the Senate. Susan Collins – she’s not for you anymore.</i></p> <p>H.R. 3 2/5/20: A major bill just passed the House of Representatives that would significantly lower the cost of prescription drugs. The only things standing in the way now are Mitch McConnell ... and Susan Collins. Public finance records show that Susan Collins has taken \$1.4 million dollars for drug and insurance companies. The pharmaceutical industry is “strongly opposed” to the bill so it’s no surprise Collins refuses to support it. Even though it could save Mainers thousands of dollars a year. Susan Collins. She’s not for you anymore.</p> <p>Click here for more information.</p>	<p>Town Hall Participant 1: “Senator Collins, why did you vote against lowering prescription drug costs?”</p> <p>Screen: Senator Susan Collins.</p> <p>Town Hall Participant 2: “Prescription drug costs...”</p> <p>Town Hall Participant 3: “Prescription drug costs...”</p> <p>Town Hall Participant 4: “Was it because you were taking so much money from the drug companies?”</p> <p>Town Hall Participant 5: “Senator Collins, Why haven’t you had a town hall in 20 years?”</p> <p>(Pan to front of auditorium and an empty stage with podium labeled “Senator Susan Collins”).</p> <p>Narrator: Maybe to avoid questions like these. Collins voted to allow drug companies to drive up the cost of prescription drugs leaving Mainers to pay the price.</p> <p>Screen: Collins raked in \$1.4 Million from Drug and Insurance Industries. – Center for Responsive Politics.</p> <p>Narrator: If she won’t hear us at a town hall, she’ll hear us in November.</p>

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9 persons other than multicandidate committees to any candidate and his or her authorized political
10 committees are limited to \$2,800 per election.²³

11 A communication is “coordinated” with a candidate, an authorized committee, a political
12 party committee, or agent thereof, and is treated as an in-kind contribution, if the communication
13 meets a three-part test: (1) payment for the communication by a third party; (2) satisfaction of
14 one of five “content” standards of 11 C.F.R. § 109.21(c); and (3) satisfaction of one of six
15 “conduct” standards of 11 C.F.R. § 109.21(d).²⁴

¹⁹ See 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

²⁰ 11 C.F.R. § 100.52(d)(1).

²¹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

²² 52 U.S.C. §§ 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

²³ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

²⁴ 11 C.F.R. § 109.21.

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1 A. Payment

2 The payment prong is satisfied when a person, other than the candidate, authorized
3 committee, or political party committee pays for the communication.²⁵ In this matter, the
4 payment prong of the coordinated communication test is satisfied because Majority Forward is a
5 third-party payor.²⁶

6 B. Content

7 The Complaint asserts that the content prong is satisfied because the Advertisement is a
8 public communication that republishes campaign materials, expressly advocates the election or
9 defeat of a clearly identified candidate for Federal office, and is the functional equivalent of
10 express advocacy.²⁷

11 The Advertisement is a “public communication” because it aired on television.²⁸ The
12 Advertisement does not appear to meet the republication content standard, defined as
13 “disseminat[ing], distribut[ing], or republish[ing] in whole or in part, campaign materials
14 prepared by a candidate or the candidate’s authorized committee.”²⁹ Although the Committee
15 webpage and the Advertisement share similar themes concerning Susan Collins’s stance on
16 prescription drug cost and receipt of money from the drug and insurance industries, that is the
17 only overlap between the two communications. Respondents note that these topics are well-

²⁵ 11 C.F.R. § 109.21(a)(1).

²⁶ Majority Forward Resp. at 2.

²⁷ Compl. at 10-11. *See* 11 C.F.R. § 109.21(c)(2), (c)(3), (c)(5).

²⁸ *See* 11 C.F.R. § 100.26 (definition of “public communication” includes communications by means of any broadcast, cable and satellite communication).

²⁹ 11 C.F.R. § 109.21(c)(2). *See* 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii). None of the exceptions listed under 11 C.F.R. § 109.23(b) apply in this case.

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1 known criticisms of Collins during the 2020 Senate campaign in Maine and point to other
2 sources of such information.³⁰ The Complaint does not allege nor does the Advertisement
3 appear to feature any video footage, images or any other campaign materials besides the thematic
4 similarities.³¹ The Advertisement also covers a different topic, Susan Collins's failure to hold a
5 town hall meeting, which is not addressed on the Committee's webpage or PDF document.³²
6 The alleged thematic similarities of the two communications at issue is insufficient to satisfy the
7 republication content standard.³³

8 The Complaint also alleges that the Advertisement expressly advocates the election or
9 defeat of a clearly identified candidate for federal office and is the functional equivalent of
10 express advocacy.³⁴ The Respondents argue the Advertisement could be interpreted as
11 demanding that Susan Collins hold a town hall meeting rather than advocating for her defeat at
12 the polls.³⁵ The Respondents further contend that the Advertisement does not use any of the
13 words or phrases that urge the election or defeat of a clearly identifiable candidate,³⁶ nor does it
14 contain any slogans or words which in context can have no other reasonable meaning than to

³⁰ Majority Forward Resp. at 4, 7.

³¹ *Id.* at 7.

³² *Id.*

³³ See Factual and Legal Analysis at 5-7, MUR 7080 (Babeu, *et al.*) (finding no reason to believe a third party payor republished campaign materials where the third party communication and candidate committee website featured similar issues and discussed the same topic but used significantly different language); see also Factual and Legal Analysis at 10-11, MUR 6502 (Nebraska Democratic Party) (finding no republication of campaign materials where communications shared similar themes found in campaign materials but used different language); Factual and Legal Analysis at 9, MUR 6821 (Shaheen for Senate) (dismissing allegations of coordination based on thematic similarities); Factual and Legal Analysis at 5, MUR 5963 (Club for Growth PAC) (same).

³⁴ Compl. at 10-11. See 11 C.F.R. § 109.21(c)(3), (c)(5).

³⁵ Majority Forward Resp. at 6. See 11 C.F.R. § 100.22 (definition of expressly advocating).

³⁶ Majority Forward Resp. at 6.

1 urge the election or defeat of a clearly identified candidate.³⁷ Because the conduct prong does
2 not appear to be satisfied,³⁸ as discussed below, it is not necessary to determine whether the
3 Advertisement expressly advocates or is the functional equivalent of express advocacy.

4 C. Conduct

5 The Complaint alleges that the Committee’s conduct satisfied the “request or suggestion”
6 conduct prong that the communication was created, produced, or distributed at the request or
7 suggestion of a candidate, authorized committee, or political party committee.³⁹ According to
8 the Complaint, the Committee webpage uses code language, such as “Mainers Need to Know,”
9 to identify the request, content for the advertisement, and media market in which to run the
10 advertisement.”⁴⁰ Both Respondents deny that the Advertisement was coordinated and
11 specifically assert that there was no “request or suggestion.”⁴¹ The Complaint itself does not
12 identify any communication between the Respondents.⁴² Rather, it relies on the public messages
13 and language placed on the Committee webpage as evidence of coordination.⁴³ There is,
14 however, no record of any direct request by the Committee to Majority Forward or any other
15 contacts related to the Advertisement at issue, which is required under coordination.

³⁷ See 11 C.F.R. § 100.22(a) (expressly advocating includes, among other things, phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “vote against Old Hickory”).

³⁸ The Advertisement does not meet the other two content standards, electioneering communication and communication referring to a clearly identified House or Senate candidate disseminated in the candidate’s jurisdiction within 90 days before an election. See 11 C.F.R § 109.21(c)(1) and (c)(4).

³⁹ Compl. at 1. See 11 C.F.R. § 109.21(d)(1)(i).

⁴⁰ Compl. at 1.

⁴¹ Majority Forward Resp. at 1, 3-5; Gideon and Committee Resp. at 1, 3-5.

⁴² Compl. at 1-30.

⁴³ Compl. at 1, 3, 11.

1 The relevant Commission Explanation and Justification (“E&J”) on coordination explains
2 that “[a] request or suggestion encompasses the most direct form of coordination, given that the
3 candidate or political party committee communicates desires to another person who effectuates
4 them.”⁴⁴ The Commission went on to clarify that the “request or suggestion” definition “is
5 intended to cover requests or suggestions made to a select audience but not those offered to the
6 public generally.”⁴⁵ The E&J juxtaposes two scenarios: (1) a request that is posted on a
7 webpage that is available to the general public, which does not trigger the conduct standard;
8 and (2) a request posted through an intranet service or sent via electronic mail directly to a
9 discrete group of recipients, which constitutes a request to a select audience and thereby satisfies
10 the conduct standard.⁴⁶ The Commission has analyzed previous cases alleging “request or
11 suggestion” based on similar facts using this framework, concluding that information on public
12 website does not satisfy the meaning of “request or suggest” under the conduct standard.⁴⁷

13 Consistent with other factually similar cases, it does not appear that the alleged activities
14 of the Respondents in connection with the Advertisement satisfy the “request or suggestion”
15 conduct standard.⁴⁸ Nor does the available information suggest that any of the other conduct
16 standards are satisfied here.⁴⁹ Since it appears that none of the conduct standards are satisfied,

⁴⁴ Coordinated and Independent Expenditures Explanation and Justification, 68 Fed. Reg. 421, 432 (Jan. 8, 2003).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See* Factual and Legal Analysis at 9, MUR 6821 (Shaheen for Senate, *et al.*); *see also* Factual and Legal Analysis at 9-10, MUR 7124 (McGinty for Senate, *et al.*).

⁴⁸ *Id.*

⁴⁹ The alleged activities of the Respondents in connection with the Advertisement do not meet the other conduct standards: material involvement, substantial discussion, common vendor, former employee or independent contractor, or dissemination, distribution or republication of campaign material. *See* 11 C.F.R § 109.21(d)(2) - (6).

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1 the Advertisement does not constitute a coordinated communication under the Commission's
2 test.

3 Finally, Approve the Factual and Legal Analysis, as recommended in the
4 First General Counsel's Report dated October 19, 2020, subject to
5 the edits last circulated by Chairman Dickerson's Office on March
6 1, 2022 at 3:36 p.m. we turn to the Complaint's separate allegation that Majority Forward
7 impermissibly republished Gideon campaign materials.⁵⁰ As discussed above, the available
8 information does not support a finding that Majority Forward republished Gideon campaign
9 materials.⁵¹

10 Therefore the Commission finds no reason to believe that Majority Forward made, and
11 that the Committee received, excessive in-kind contributions, and closes the file.

⁵⁰ Compl. at 15.

⁵¹ *See supra* at 6-7 (republishing content standard does not appear to be met).