



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 2022

BY EMAIL ONLY

jlopez@elias.law

Jaquelyn Lopez, Esq.
Elias Law Group LLP
10 G St NE, Suite 600
Washington DC 20002

RE: MUR 7727
Sara Gideon
Sara Gideon for Main and Lisa Lunn in her
official capacity as treasurer

Dear Ms. Lopez:

On April 23, 2020, the Federal Election Commission notified your clients, Sara Gideon and Sara Gideon for Maine and Lisa Lunn in her official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On March 8, 2022, the Commission found no reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive contribution. On May 11, 2022, the Commission found no reason to believe Sara Gideon violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive contribution. Accordingly, the Commission closed its file in this matter on May 11, 2022.

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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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 Sara
21 Gideon and the 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).

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

12 In February and March 2020, Majority Forward aired the Advertisement, titled “Twenty
13 Years.”⁸ The Advertisement is 30 seconds long and consists of a mock town-hall meeting in
14 which several individuals ask questions of an absent Senator Collins regarding her voting record
15 against lowering drug costs, about Collins accepting money from the pharmaceutical and

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.

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>).

- 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. 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?” 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>

- 3 Majority Forward allegedly spent \$500,000 to run the Advertisement on television.¹²
- 4 The Majority Forward Response acknowledges that they “ran” the Advertisement, but does not

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

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

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 III. LEGAL ANALYSIS

14 The Act defines “contribution” to include “any gift, subscription, loan, advance, or deposit of
15 money or anything of value made by any person for the purpose of influencing any election for

<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...”).

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 *Id.* 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.

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

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

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

13 A. Payment

14 The payment prong is satisfied when a person, other than the candidate, authorized
15 committee, or political party committee pays for the communication.²⁵ In this matter, the

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.

²⁵ 11 C.F.R § 109.21(a)(1).

1 payment prong of the coordinated communication test is satisfied because Majority Forward is a
2 third-party payor.²⁶

3 B. Content

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

8 The Advertisement is a “public communication” because it aired on television.²⁸ The
9 Advertisement does not appear to meet the republication content standard, defined as
10 “disseminat[ing], distribut[ing], or republish[ing] in whole or in part, campaign materials
11 prepared by a candidate or the candidate’s authorized committee.”²⁹ Although the Committee
12 webpage and the Advertisement share similar themes concerning Susan Collins’s stance on
13 prescription drug cost and receipt of money from the drug and insurance industries, that is the
14 only overlap between the two communications. Respondents note that these topics are well-
15 known criticisms of Collins during the 2020 Senate campaign in Maine and point to other
16 sources of such information.³⁰ The Complaint does not allege nor does the Advertisement
17 appear to feature any video footage, images or any other campaign materials besides the thematic

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.

³⁰ Majority Forward Resp. at 4, 7.

1 similarities.³¹ The Advertisement also covers a different topic, Susan Collins’s failure to hold a
2 town hall meeting, which is not addressed on the Committee’s webpage or PDF document.³²
3 The alleged thematic similarities of the two communications at issue is insufficient to satisfy the
4 republication content standard.³³

5 The Complaint also alleges that the Advertisement expressly advocates the election or
6 defeat of a clearly identified candidate for federal office and is the functional equivalent of
7 express advocacy.³⁴ The Respondents argue the Advertisement could be interpreted as
8 demanding that Susan Collins hold a town hall meeting rather than advocating for her defeat at
9 the polls.³⁵ The Respondents further contend that the Advertisement does not use any of the
10 words or phrases that urge the election or defeat of a clearly identifiable candidate,³⁶ nor does it
11 contain any slogans or words which in context can have no other reasonable meaning than to
12 urge the election or defeat of a clearly identified candidate.³⁷ Because the conduct prong does

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 also 11 C.F.R. § 109.21(c)(3), (c)(5).

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

³⁶ Majority Forward Resp. at 6.

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”).

1 not appear to be satisfied,³⁸ as discussed below, it is not necessary to determine whether the
2 Advertisement expressly advocates or is the functional equivalent of express advocacy.

3 C. Conduct

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

15 The relevant Commission Explanation and Justification (“E&J”) on coordination explains
16 that “[a] request or suggestion encompasses the most direct form of coordination, given that the
17 candidate or political party committee communicates desires to another person who effectuates

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 also* 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 *Id.* at 1, 3, 11.

1 them.”⁴⁴ The Commission went on to clarify that the “request or suggestion” definition “is
2 intended to cover requests or suggestions made to a select audience but not those offered to the
3 public generally.”⁴⁵ The E&J juxtaposes two scenarios: (1) a request that is posted on a
4 webpage that is available to the general public, which does not trigger the conduct standard;
5 and (2) a request posted through an intranet service or sent via electronic mail directly to a
6 discrete group of recipients, which constitutes a request to a select audience and thereby satisfies
7 the conduct standard.⁴⁶ The Commission has analyzed previous cases alleging “request or
8 suggestion” based on similar facts using this framework, concluding that information on public
9 website does not satisfy the meaning of “request or suggest” under the conduct standard.⁴⁷

10 Consistent with other factually similar cases, it does not appear that the alleged activities
11 of the Respondents in connection with the Advertisement satisfy the “request or suggestion”
12 conduct standard.⁴⁸ Nor does the available information suggest that any of the other conduct
13 standards are satisfied here.⁴⁹ Since it appears that none of the conduct standards are satisfied,
14 the Advertisement does not constitute a coordinated communication under the Commission’s
15 test.

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).

1 Finally, we turn to the Complaint's separate allegation that Majority Forward
2 impermissibly republished Gideon campaign materials.⁵⁰ As discussed above, the available
3 information does not support a finding that Majority Forward republished Gideon campaign
4 materials.⁵¹

5 Therefore, the Commission finds no reason to believe that Majority Forward made, and
6 that Sara Gideon and the Committee received, excessive in-kind contributions, and closes the
7 file.

⁵⁰ Compl. at 15.

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