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BEFORE THE FEDERAL ELECTION COMMISSION

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

v.

MUR No. **7760**

John Hickenlooper
Hickenlooper for Colorado
FEC ID: C00716720
PO Box 18886
Denver, CO 80218

and

SMP (also known as Senate Majority PAC)
FEC ID: C00484624
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. This complaint is submitted, 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 John Hickenlooper, and his campaign committee, Hickenlooper for Colorado, and the super PAC Senate Majority PAC (SMP).¹

¹ This complaint is submitted pursuant to 52 U.S.C. § 30109(a)(1). SMP also uses the name and is commonly referred to as Senate Majority PAC. For instance, its website is senatemajoritypac.com and disclaimer states:



Federal law prohibits candidates from coordinating with super PACs on advertising and separately prohibits super PACs from republishing campaign materials. The facts indicate this is exactly what happened here: On June 13, 2020, Hickenlooper for Colorado posted written materials for an advertisement on a website called [getthefacts.co](https://www.getthefacts.co)—a website separate from his campaign one that evidently has another purpose.² The request for the advertisement was identified by Hickenlooper’s use of code langue, i.e. “Coloradans Need to Know,” which other candidates have successfully used to request an outside group run an ad.³ And Hickenlooper’s request was successful—just 12 days later the super PAC ran the ad, republishing both the campaign’s written materials and Hickenlooper’s b-roll video.⁴ Thus, there is reason to believe the Hickenlooper 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 immediately take enforcement actions to address these apparent violations.

I. Facts.

On June 13, 2020, Hickenlooper’s campaign posted written campaign materials to www.getthefacts.co.⁵ This is not Hickenlooper’s campaign webpage, but a completely separate webpage with what appears to be a distinct purpose other than the campaign’s normal communication with citizens and media. Exactly as other candidates have successfully done before,⁶ Hickenlooper used specific code language to identify the request or suggestion for an outside group to run the ad, i.e. “Coloradans Need to Know”:⁷

² Hickenlooper for Colorado, <https://www.getthefacts.co>, last accessed July 1, 2020 (attached as Exhibit A).

³ See, e.g., Sara Gideon, Federal Election Commission, MUR 7727 (“What Mainers Need to Know”); Theresa Greenfield, Federal Election Commission, MUR 7717 (“Iowa voters need to hear about . . .”); Gary Peters, Federal Election Commission, MUR 7666 (“What Michiganders Need to Know”); see also 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/>; Maggie Severns, *Democratic Candidates Writing Instructions to Super PACs on Their Websites*, Politico (July 15, 2016).

⁴ Senate Majority PAC ad, released June 25, 2020, available at: <https://host2.advertisinganalyticsllc.com/admo/viewer/2339525>.

⁵ Hickenlooper for Colorado, <https://www.getthefacts.co>, last accessed July 1, 2020 (attached as Exhibit A).

⁶ See, e.g., Sara Gideon, Federal Election Commission, MUR 7727 (“What Mainers Need to Know”); Theresa Greenfield, Federal Election Commission, MUR 7717 (“Iowa voters need to hear about . . .”); Gary Peters, Federal Election Commission, MUR 7666 (“What Michiganders Need to Know”); see also, 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/>; Maggie Severns, *Democratic Candidates Writing Instructions to Super PACs on Their Websites*, Politico (July 15, 2016).

⁷ Hickenlooper for Colorado, <https://www.getthefacts.co>, last accessed July 1, 2020 (attached as Exhibit A).



Using Twitter, both a Hickenlooper campaign staffer and the DSCC Communication’s director publicized the existence of the getthefacts.co website:⁸



Twelve days later, on June 25, 2020, Senate Majority PAC began running a television advertisement, republishing both the written materials posted by Hickenlooper’s campaign and video used

⁸ Lauren Passalacqua, Twitter, June 13, 2020, available at: <https://twitter.com/laurenvpass/status/1271874926052589580>; Melissa Miller, Twitter, June 10, 2020, available at: <https://twitter.com/Meliss1001/status/1270872176338460672>.

by Hickenlooper's campaign in an earlier advertisement.⁹ The substance of the ad was entirely based upon Hickenlooper's "Coloradans Need to Know" post, with 60% of the messaging narration directly from it:¹⁰







Ad Time (30 seconds)	Senate Majority PAC's AD Narration	Hickenlooper's "Coloradans Need to Know" Website
0:00 - 0:03 (3 seconds)	"Cory Gardner votes 98% of the time with Donald Trump."	"Senator Cory Gardner stands with Trump 100% of the time – not Colorado."
0:07 - 0:15 (8 seconds)	"So it's no surprise they're attacking John Hickenlooper. That's why a Republican dark money group filed the ethics complaints to begin with."	"Republicans have attacked Hickenlooper for his trips to bring business to Colorado."
0:15-0:18 (3 seconds)	"But 95 of the 97 Republican charges were dismissed."	"Republicans made 97 allegations, 95 of them were dismissed."
0:18-0:22 (4 seconds)	"And the Denver Post said Hickenlooper made 'an honest mistake.'"	"In a recent editorial, the Denver Post called Hickenlooper 'an ethical public servant' who made 'an honest mistake.'"

The visual portion of the ad consisted of several clips from Hickenlooper's b-roll video. For instance, the images on the left are from Hickenlooper's earlier campaign ad and the images on the right are from the Senate Majority PAC ad:¹¹

⁹ The footage at issue was originally created and paid for by Hickenlooper's 2014 gubernatorial campaign. However, in August 2019, Hickenlooper released a 90-second advertisement announcing his campaign for U.S. Senate in 2020, which contained multiple scenes utilizing the gubernatorial campaign footage. Under Federal law, federal campaign committees are prohibited from accepting "[t]ransfers of funds or assets from a candidate's campaign committee or account for nonfederal election." 11 CFR § 110.3(d). In addition, federal campaign committees are prohibited from accepting contributions from corporate entities, such as an incorporated media vendor. *See* 11 CFR § 114.2(d). Thus, similar to super PACs being prohibited from republishing campaign materials, a federal campaign is prohibited from republishing state campaign materials. Allowing either to do so eviscerates the contribution prohibitions and limits. Hickenlooper for Colorado's use of this video footage is the subject of pending Federal Election Commission, Matter Under Review # 7670. For ease of reference, the video footage is called Hickenlooper's b-roll video.

¹⁰ Senate Majority PAC ad, released June 25, 2020, available at: <https://host2.advertisinganalyticsllc.com/admo/viewer/2339525>; Hickenlooper for Colorado, <https://www.getthefacts.co>, last accessed July 1, 2020 (attached as Exhibit A).

¹¹ Senate Majority PAC ad, released June 25, 2020, available at: <https://host2.advertisinganalyticsllc.com/admo/viewer/2339525>; Hickenlooper for Colorado, *Not Done Fighting*, Aug. 22, 2019, available at <https://www.youtube.com/watch?v=-63689Ahyuk>.

Hickenlooper Campaign Ad (8/22/19)	Senate Majority PAC Ad
 <p>We've gotta help families who are crushed</p>	 <p>John Hickenlooper</p>
 <p>by prescription drug costs.</p>	 <p>John Hickenlooper He'll beat Cory Gardner. Stand up for Colorado.</p>
 <p>And everybody ought to have a shot</p>	 <p>John Hickenlooper He'll beat Cory Gardner. Stand up for Colorado.</p>

When the messaging and video are examined together, 25 seconds of the 30 second super PAC ad is from campaign materials.¹²

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.¹³ Federal candidates are also prohibited from accepting contributions from entities that accept contributions from corporations or labor organizations.¹⁴ On the other hand, individuals, groups, and organizations are also prohibited from making any illegal contribution.¹⁵ Contributions are broadly defined to include cash donations, but also “anything of value . . . for the purpose of influencing any election for Federal office.”¹⁶

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[.]¹⁷

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).¹⁸

¹² *Id.*; Hickenlooper for Colorado, <https://www.getthefacts.co>, last accessed July 1, 2020 (attached as Exhibit A).

¹³ 52 U.S.C. §§ 30116, 30118.

¹⁴ 52 U.S.C. §§ 30101, 30118.

¹⁵ *See, e.g.*, 52 U.S.C. § 30116(a)(7)(B).

¹⁶ 52 U.S.C. § 30101(8)(A).

¹⁷ 52 U.S.C. § 30116(a)(7)(B).

¹⁸ 11 C.F.R. § 109.21.

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 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 109.37.¹⁹

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

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 Hickenlooper or his campaign’s written campaign materials and video materials.²² Specifically, Senate Majority PAC’s advertisement clearly republished (1) Hickenlooper for Colorado’s written campaign materials, and (2) Hickenlooper’s b-roll video used in a prior campaign ad. As shown above, when the narration and video are viewed together the ad is almost entirely made from Hickenlooper or Hickenlooper for Colorado’s materials.

Federal law does not allow for any use of campaign materials by a super PAC and no exceptions are even remotely applicable in this case.²³ Unlike the coordination analysis below, there is no

¹⁹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.23(a).

²⁰ 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).

²¹ 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>).

²² 11 C.F.R. § 109.23.

²³ Even if republication is only a small portion of an advertisement, it is a prohibited in-kind contribution. 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

requirement the candidate knew of or requested the dissemination, distribution, or republication. Moreover, a super PAC is not allowed to reproduce a campaign's materials regardless of the source from which it obtained the materials. Thus, it is irrelevant whether Senate Majority PAC obtained the written materials and video from a website or YouTube page.²⁴ Senate Majority PAC is prohibited from reproducing **any** materials prepared by Hickenlooper or Hickenlooper's authorized committee and doing so is an illegal in-kind contribution to him.

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

There is reason to believe Hickenlooper and Hickenlooper for Colorado solicited and accepted an illegal contribution from Senate Majority PAC, and Senate Majority PAC made an illegal contribution to Hickenlooper for Colorado, by coordinating communications. 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 "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.²⁵ The "request or suggestion" conduct standard does not have a "safe harbor" for information obtained from a publicly available source.

footage from the campaign's YouTube page and used it in an advertisement). Only the exceptions expressly listed permit republication of campaign materials, and none of the five narrow circumstances are even remotely applicable here. *See* 11 C.F.R. § 109.23. The exceptions 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).

²⁴ 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.

²⁵ 11 C.F.R. § 109.21.

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.”²⁶ Here, the ad’s disclaimer states it was paid for by Senate Majority PAC. Thus, the communication itself satisfies this prong.

2. Content Standard. The “content” standard is satisfied when 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”²⁷ or expressly advocates for the election or defeat of a clearly identified candidate for Federal office.²⁸ Both of these standards are demonstrated by the advertisement itself: The advertisement republishes candidate or campaign materials as discussed above and contains information that can only be understood to be providing information to convince a citizen to vote for Hickenlooper.²⁹

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.”³⁰ This is demonstrated by Hickenlooper for Colorado creating a separate webpage from its campaign webpage—a webpage that was intended for another purpose than the campaign’s webpage of communicating with voters and media. The getthefacts.co webpage used the same language that other candidates have successfully used to request or suggest an ad, i.e. “Coloradans Need to Know.” Both a campaign staffer and a DSCC employee publicized the separate website’s existence using a tweet. Within twelve days, the super PAC had created and began running the advertisement, republishing both campaign materials and Hickenlooper’s b-roll video. The short time between the “Coloradans Need to Know” post and the ad running demonstrate the purpose of the website was for the ad, and also indicates there was likely some other communication between the super PAC and campaign.

Additionally, the coordination between the Hickenlooper campaign and Senate Majority PAC would not be excused if they used a public avenue to transfer campaign materials. The “publicly-available-information safe harbor” also does not apply generally to the “request or suggestion” conduct standard.

²⁶ *Id.*

²⁷ 11 C.F.R. § 109.21(c)(2).

²⁸ 11 C.F.R. § 109.21(c)(3).

²⁹ The advertisement also “is the functional equivalent of express advocacy.” 11 C.F.R. § 109.21(c)(5). The advertisement on its face is “an appeal to vote for or against a clearly identified Federal candidate.” *Id.*

³⁰ 11 C.F.R. § 109.21(d)(1).

The language of the “request or suggestion” conduct standard does **not** state it is not satisfied if the “information material to the creation, production, or distribution of the communication was obtained from a publicly available source.”³¹ This is unlike every other conduct standard, which does explicitly provide for a publicly-available-information safe harbor.³² 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.³³

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.”³⁴ 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.”³⁵ The request or suggestion standard is different than the other four because it simply is the request or ask, whereas the other four require 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.

³¹ 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.”).

³² *Id.*

³³ 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).

³⁴ Coordinated Communications, 71 Fed. Reg. 33190, 33205 (June 8, 2006).

³⁵ *Id.*

In addition to the fact that it could not technically apply, the Commission 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.”³⁶ 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 video.³⁷ 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.”³⁸ As discussed above, the Commission recognized “information” was not appropriately applied to a “request or suggestion” because they are not the same thing.³⁹ The law generally recognizes the difference between “information” and “assets,” including “campaign materials.”⁴⁰ The written content and video were prepared and paid for by

³⁶ *Id.*

³⁷ *See, e.g.*, 11 C.F.R. § 109.21(d)(2).

³⁸ *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.

³⁹ 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 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.”).

⁴⁰ 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,

Hickenlooper's current or prior campaign and have copyright protections, and thus would be an "item of value" or an "asset."⁴¹

In this case, the "request or suggestion" was evident in the format in which it was made, which is not "information." Because Hickenlooper knew to use the code word "Coloradans Need to Know" also indicates there was other communications instructing him to use this language. Senate Majority PAC acted on the this "request or suggestion" using candidate and campaign assets, which is not "information." Thus, the "publicly-available-information safe harbor" does not apply in this case.

The advertisement was paid for by Senate Majority PAC, the content of the advertisement included a substantive message written by the Hickenlooper campaign and republished Hickenlooper's b-roll video, Hickenlooper made the "request or suggestion" using known code words, and just days elapsed between the "request or suggestion" and the ad airing—all demonstrate the coordination in this case.

IV. Conclusion

There is reason to believe Hickenlooper and Hickenlooper for Colorado are coordinating with Senate Majority PAC based on (1) Hickenlooper posting a "request or suggestion" for an ad using known language to instruct and provide content for an advertisement; and (2) Senate Majority PAC responding by running an advertisement with the requested content and Hickenlooper's b-roll video in twelve days of the request. Additionally, there is reason to believe Senate Majority PAC republished candidate and campaign materials based on the content of the advertisement. If so, this conduct resulted in an illegal in-kind contribution to Hickenlooper's campaign. If the Commission does not act and punish such a clear violation, candidates will continue to coordinate with outside groups in violation of federal law. FACT respectfully requests the Commission immediately investigate and hold the Respondents accountable.

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).

⁴¹ "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").

Respectfully submitted,

K Arnold

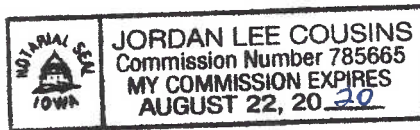
Kendra Arnold, Executive Director
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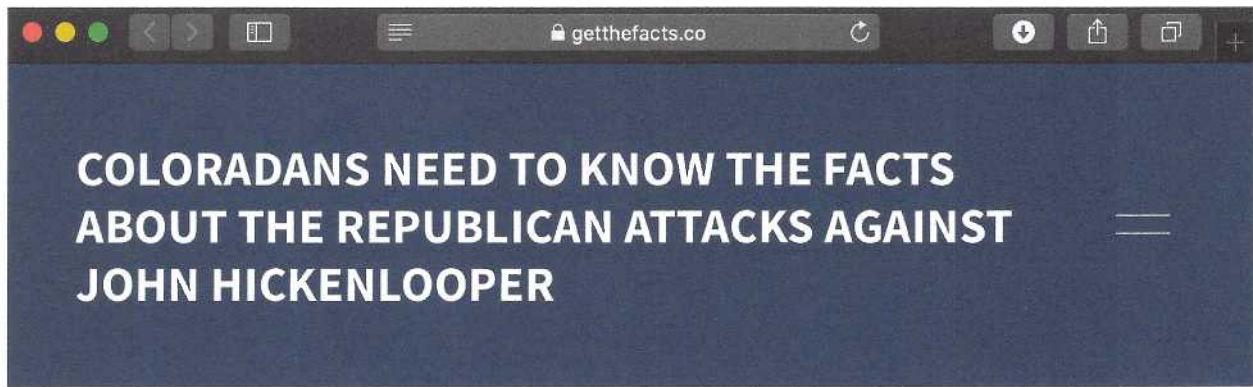
STATE OF IOWA)
) ss.
COUNTY OF POLK)

Subscribed and sworn to before me on July 7th, 2020.

Jordan Cousins

Notary Public in and for the State of Iowa





June 13, 2020

Republicans have attacked John Hickenlooper for his trips to bring business to Colorado, here is what voters need to know if they do so again: 95 of their 97 allegations were dismissed and the Denver Post called the other two "relatively minor," an "honest mistake." He testified fully. They call him "an ethical public servant." But the Republicans are attacking Hickenlooper because they know he's the only one who can beat Cory Gardner, who stands with Trump 100% of the time – not Colorado.

Get the facts:

Republicans have attacked Hickenlooper for his trips to bring business to Colorado.

- Colorado Politics reported that a national Republican group with ties to Mitch McConnell is behind the attacks: "A vice president for America Rising began filing open records requests in March 2018, when Hickenlooper was still in office, to obtain his travel records. The results of those open records requests formed the basis for the ethics complaint, filed by the Public Trust Institute, which was formed two days before the complaints were filed by former Republican Speaker of the House Frank McNulty."
- Colorado Public Radio also detailed how America Rising targeted John. "A separate document implies that an employee of America Rising Corp., an opposition research group, conducted the original public records research for the complaint against Hickenlooper."
- According to the Colorado Independent Ethics Commission there are allowances to the gift ban that include: "Travel to conventions or meetings when the offer is made ex officio, is related to the person's official duties, is of benefit to the state, the individual is representing the state, or the state

pays dues to the sponsoring organization (other exceptions may apply depending on circumstances); Gifts from relatives and friends.”

- U.S. News and World Report said “Take Colorado, which ranks No. 1 in the ‘economy’ category for the second year in a row. When Democrat John Hickenlooper first took office in 2011, Colorado ranked 26th in unemployment and 40th in job growth.”

Republicans made 97 allegations, 95 of them were dismissed.

- The Denver Post reported back when the complaints were first filed, “The 189-page complaint by the newly formed Public Trust Institute — a nonprofit run by former House Speaker Frank McNulty — lays out nearly 100 questionable flights Hickenlooper has taken since September 2011,” referring to an exhibit in the complaint.
 - October 12, 2018: Exhibit CC Listed 97 Allegations Of Private Aircraft Travel. [Independent Ethics Commission, Case No. 18-22, Exhibit CC Working Copy of Private Aircraft Travel, p. 158, [10/12/18](#)]
- The Independent Ethics Commission wrote in a Stipulated Dismissal of Facts: “Complainant and Respondent hereby submit the following stipulated dismissal of claims, which are not factually or legally warranted based on facts disclosed in the pleadings, the IEC Report of Investigation (“RoI”) and associated documents, or both.”
- The Colorado Sun reported that McNulty made many “allegations not corroborated” by the report.
- A Denver Post editorial wrote: “If former House Speaker Frank McNulty and state Sen. John Cooke aren’t embarrassed by the thorough debunking of the ethics complaints they filed against Gov. John Hickenlooper, they should be. As far as we are concerned, both men staked their reputations on accusations that it turns out were easily refuted...At best it represents lazy reporting or perhaps willful disregard of the truth. At its worst, they were politically motivated lies.”

In a recent editorial, the Denver Post called Hickenlooper “an ethical public servant” who made “an honest mistake.”

- A Denver Post editorial said, “we don’t believe Hickenlooper was trying to undermine the system, or disrespect the commission, or avoid accountability. In fact, the governor has been extremely transparent.”
- They also noted “there is ample evidence that he tried to comply with the spirit and letter of the law,” and “we consider both of those infractions to be relatively minor violations of the ethics laws.”
- They further noted, Hickenlooper was “an ethical public servant” who made “an honest mistake.”

Senator Cory Gardner stands with Trump 100% of the time – not Colorado.

- President Trump said Gardner Had “Been With Us 100%.”

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