FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 2021

VIA ELECTRONIC MAIL ONLY
lisa@mainedems.org

Lisa Roberts
Maine Democratic Party
320 Water Street, 3rd Floor
Augusta, ME 04330

RE: MUR 7803
Susan Collins and Collins for Senator and Elizabeth McCandless in her official capacity as treasurer

Dear Ms. Roberts:

On September 2, 2021, the Federal Election Commission reviewed the allegations in your complaint dated September 24, 2020, and on the basis of the information provided in your complaint, and information provided by the respondent, determined to dismiss the allegation that Susan Collins and Collins for Senator and Elizabeth McCandless in her official capacity as treasurer violated 52 U.S.C. § 30116(a)(8) and 11 C.F.R. § 110.6(c)(2) by failing to report a conduit that forwarded earmarked contributions and 52 U.S.C. § 30104(i) and 11 C.F.R. § 104.22(b) by failing to file reports disclosing bundled contributions. Accordingly, on September 2, 2021, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

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

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

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Peter G. Blumberg

BY: Peter G. Blumberg
Acting Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Susan Collins **MUR 7803**
4 Collins for Senator and Elizabeth McCandless
5 in her official capacity as treasurer
6
7 **I. INTRODUCTION**

8 The Complaint alleges that Susan Collins and Collins for Senator and Elizabeth
9 McCandless in her official capacity as treasurer (the "Committee") failed to disclose certain
10 contributions to the Committee as having been earmarked and bundled through the National
11 Association of Broadcasters Political Action Committee ("NABPAC"), a lobbyist/registrant
12 PAC, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").[1]
13 Respondents admit making a "highly technical reporting mistake."[2] After the Complaint was
14 filed, Respondents filed the missing bundling reports and corrected their Quarterly Reports to
15 indicate that those contributions were earmarked through a conduit, and forwarded by a
16 Lobbyist/Registrant PAC.[3] As discussed below, the Commission dismisses the violations as a
17 matter of prosecutorial discretion and closes the file.

18 **II. FACTUAL BACKGROUND**

19 Collins was a candidate for U.S. Senate in Maine in 2020 and Collins for Senator is her
20 authorized committee.[4] NABPAC is a lobbyist/registrant PAC.[5]

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[1] Compl. at 3-6 (Sept. 24, 2020).

[2] Susan Collins and Collins for Senator Resp. ("Resp.") at 1 (Nov. 6, 2020).

[3] *Id.*

[4] Susan Collins Amended Statement of Candidacy (Oct. 9, 2019); Collins for Senator Amended Statement of Org. (Nov. 4, 2020).

[5] NABPAC Amended Statement of Org. (Apr. 9, 2020).

1 The Complaint alleges that the Committee failed to disclose the earmarked and bundled
2 nature of $19,300 in contributions disclosed on the Committee's 2019 July Quarterly Report and
3 $19,200 in contributions disclosed on its 2020 April Quarterly Report.[6] First, the Committee
4 failed to include on Schedule A the required reference in memo text to NABPAC as the conduit
5 for the contributions.[7] Second, the Committee failed to file a Form 3L disclosing the total
6 amount of bundled contributions the Committee received through NABPAC.[8] The Complaint
7 also alleges a $10,400 reporting discrepancy between the contributions NABPAC disclosed
8 forwarding to the Committee in 2020 and the contributions the Committee reported receiving on
9 its original 2020 April Quarterly Report.[9]

10 The Committee acknowledges that it originally reported all of the contributions on
11 Schedule A, but failed to disclose that the contributions were earmarked through and bundled by
12 NABPAC.[10] After the Complaint was filed, the Committee filed amended Quarterly Reports
13 disclosing the earmarked nature of the contributions.[11] The Committee also filed Form 3Ls
14 disclosing the total contributions it received through NABPAC.[12] According to Respondents,
15 after taking these steps, "the public record is accurate and complete."[13] With regard to the

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[6] Compl. at 3-5.

[7] *Id.* at 8.

[8] *Id*. at 6.

[9] *Id*. at 5.

[10] Resp. at 1.

[11] *Id.*; *see also* Collins for Senator, Amended 2019 July Quarterly Report at 280-292 (Nov. 5, 2020); Collins for Senator Amended 2020 April Quarterly Report at 301, 382, 457, 824, 974, 1052, 1053, 1304-1309, 1394, 2059, 2404-2405 (Nov. 5, 2020).

[12] Resp. at 1; *see also* Collins for Senator, 2019 Quarterly Semi-Annual Lobbyist Bundling Report (Nov. 5, 2020); Collins for Senator, 2020 Quarterly Semi-Annual Lobbyist Bundling Report (Nov. 5, 2020).

[13] Resp. at 1.

1 alleged $10,400 reporting discrepancy, the Committee responds that NABPAC forwarded
2 $10,400 comprised of contributions that were in excess of the respective contributors'
3 contribution limits; the Committee refunded those contributions and did not originally disclose
4 them.[14] After the Complaint was filed, the Committee disclosed the receipt of $10,400 in
5 excessive contributions and disclosed that it had refunded them.[15] Respondents state that the
6 violations have been cured and request dismissal of the allegations.[16]

7 **III. LEGAL ANALYSIS**

8 For purposes of the Act, all contributions made by a person, either directly or indirectly,
9 on behalf of a particular candidate, including contributions which are in any way earmarked or
10 otherwise directed through an intermediary or conduit to such candidate, shall be treated as
11 contributions from such person to such candidate.[17] Commission regulations define the term
12 "earmarked" as "a designation, instruction, or encumbrance, whether direct or indirect, express
13 or implied, oral or written, which results in all or any part of a contribution or expenditure being
14 made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized
15 committee."[18] The intermediary must report the original source and the intended recipient of an
16 earmarked contribution to both the Commission and the intended recipient.[19] The report by the
17 conduit or intermediary shall contain the name and mailing address of each contributor, and for

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[14] *Id.* at note 2.

[15] *Id; see also* Collins for Senator Amended 2020 April Quarterly Report at 2685, 2688 (Nov. 5, 2020).

[16] Resp. at 1.

[17] 52 U.S.C. § 30116(a)(8).

[18] 11 C.F.R. § 110.6(b)(1).

[19] 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1).

1 each earmarked contribution in excess of $200, the contributor's occupation and name of his or
2 her employer.[20]

3 When a candidate committee receives an earmarked contribution, through an allowable
4 conduit, each individual contribution should be itemized when the individual's total
5 contributions to the committee aggregate over $200 per election cycle.[21] This itemization must
6 include the full name, address, occupation, and employer of the individual contributor along with
7 the date the contribution was received by the conduit.[22]

8 A committee must file Form 3L if it has received two or more bundled contributions
9 forwarded by or received and credited to a person reasonably known by the reporting committee
10 to be a lobbyist/registrant or lobbyist/registrant PAC aggregated in excess of that calendar year's
11 bundling disclosure threshold during the covered period.[23] The lobbyist bundling disclosure
12 threshold was $18,700 in 2019 and $19,000 in 2020.[24] Reporting committees must file Form 3L
13 at the end of each "covered period" which is determined based on whether the reporting
14 committee files campaign finance reports on a semi-annual, quarterly, or monthly basis.[25]

15 The available information indicates that the Committee failed to properly disclose that the
16 contributions it received through NABPAC were earmarked for the Committee and that the

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[20] 11 C.F.R. § 110.6(c)(2).

[21] *Id.*

[22] *Id.*

[23] 52 U.S.C. § 30104(i); 11 C.F.R. § 104.22(b).

[24] Lobbyist Bundling Disclosure Threshold for 2019, 84 Fed. Reg. 2506 (Feb. 7, 2019); Lobbyist Bundling Disclosure Threshold for 2020, 85 Fed. Reg. 8774 (Feb. 20, 2020).

[25] *See* 11 C.F.R. §§ 104.22(a)(5); 104.22(e). The Commission's Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to the Committee stating that the Committee may have failed to file required Form 3L covering the second half of 2020, after the contributions at issue in this matter. Collins for Senator, RFAI (Feb. 19, 2021).

1 Committee failed to file the required Form 3L in 2019 indicating that NABPAC had bundled
2 $19,300 in contributions. In response to the Complaint dated September 29, 2020, the
3 Committee amended its 2019 July Quarterly and 2020 April Quarterly Reports disclosing the
4 earmarked nature of the contributions and filed the required 2019 3L report, all on November 5,
5 2020.[26]

6 This is the first enforcement matter before the Commission involving the bundling
7 disclosure provisions.[27] However, the Commission has considered a limited number of cases
8 dealing with earmarked contributions. In MUR 6134 (Cranley for Congress), the Commission
9 found reason to believe that the candidate committee violated 52 U.S.C. § 30104(b) by failing to
10 properly disclose $508,122 in earmarked contributions.[28] Similarly, in MUR 6624 (Gould for
11 Congress), the Commission found reason to believe that the candidate committee violated
12 52 U.S.C. § 30104(b) by failing to properly disclose $162,098 in earmarked contributions.[29] The
13 amount in violation in both MUR 6134 and 6624 is far greater than, and thus distinguishable

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[26] *See* Collins for Senator, Amended 2019 July Quarterly Report (Nov. 5, 2020); Collins for Senator Amended 2020 April Quarterly Report (Nov. 5, 2020); Collins for Senator 2019 Quarterly Semi-Annual Lobbyist Bundling Report (Nov. 5, 2020). The Committee also filed a Form 3L for 2020 on November 5, 2020. *See* Collins for Senator, 2020 Quarterly Semi-Annual Lobbyist Bundling Report (Nov. 5, 2020). In 2020, $10,400 of the $19,200 contributions the Committee received through NABPAC were refunded for exceeding those contributors' contribution limits. The excessive contributions were refunded between one and 30 days of receipt, within the refund timeframe set forth at 11 C.F.R. § 103.3(b)(3). Therefore, the Committee only received $8,800 in bundled contributions through NABPAC and it appears that the Committee was not required to file a Form 3L in 2020 because the bundled contributions were well under the 2020 lobbyist bundling disclosure threshold. *See* Lobbyist Bundling Disclosure Threshold for 2020, 85 Fed. Reg. 8774 (Feb. 20, 2020).

[27] Section 204(a) of the Honest Leadership and Open Government Act of 2007, amended section 30104 by adding subsection (i)—disclosure of bundled contributions. This amendment went into effect for reports filed after May 18, 2009. Explanation and Justification, Regulations on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants, 74 Fed. Reg. 7285, 7286 (Feb. 17, 2009).

[28] Conciliation Agreement ¶20, MUR 6134 (Cranley for Congress).

[29] Factual & Legal Analysis at 4, 6, MUR 6624 (Gould for Congress).

1 from, the $19,300 the Committee failed to earmark in 2019 and the $8,800 it failed to earmark in
2 2020.

3 In light of the modest amount of contributions not properly disclosed by the Committee,
4 barely surpassing the Form 3L disclosure threshold in 2019,[30] and the Committee's remedial
5 actions 37 days after notification of the Complaint, the Commission dismisses the allegations as
6 a matter of prosecutorial discretion.[31]

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[30] *See* Factual & Legal Analysis at 6, MUR 6163 (Houghton Co. Dem. Comm.) (dismissing allegation that Committee triggered political committee status by exceeding the threshold by $482 because such a "modest amount" would not warrant the further use of Commission resources); First General Counsel's Rpt. at 3-4, MUR 6205 (Fort Bend Democrats) (EPS dismissal where the federal portion of the expenses was "modest" and may have exceeded the $1,000 political committee threshold for expenditures by approximately $500).

[31] *See Heckler v. Chaney*, 470 U.S. 821 (1985).