

**BEFORE THE
FEDERAL ELECTION COMMISSION**

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

Complainant,

v.

1820 PAC
PO Box 15283
Washington, DC 20003

Thomas Datwyler, Treasurer
499 S. Capitol St. SW #407
Washington, DC 20003

Senator Susan Collins
PO Box 1096
Bangor, ME 04402

Collins for Senator and Elizabeth McCandless, Treasurer
PO Box 1096
Bangor, ME 04402

Respondents.

COMPLAINT

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against 1820 PAC and its treasurer, Thomas Datwyler, in his official capacity; Senator Susan Collins; and Collins for Senator and its treasurer, Elizabeth McCandless, in her official capacity (together, “Respondents”) for violations of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (“Commission”) regulations. According to publicly available information, 1820 PAC made an almost \$300,000 impermissible in-kind contribution to the campaign committee of U.S. Senator Susan Collins by producing and airing a television

advertisement that republishes material that was originally prepared by Collins' campaign. The Act and FEC regulations recognize that if a third-party entity pays to distribute materials, such as photos or video, prepared by a candidate's campaign, the candidate directly benefits from the payment made by the third-party entity. Accordingly, the Act treats the republication of a candidate's campaign materials as a contribution to the candidate. This rule is designed in large part to prevent Super PACs like 1820 PAC, which may raise unlimited contributions from sources that are ordinarily prohibited under the Act, from using their funds to subsidize candidate communications. 1820 PAC paid to produce and air a television advertisement that is almost entirely comprised of footage from the Collins for Senator YouTube page. The payment by 1820 PAC for this advertisement is a blatant violation of the FEC's republication rule and a prohibited in-kind contribution from 1820 PAC to Collins for Senator. Given the egregious nature of this violation, the Commission should immediately investigate and prevent 1820 PAC from committing future violations.

FACTUAL BACKGROUND

Senator Collins is currently running for re-election to the U.S. Senate in Maine.¹ Her principal campaign committee is Collins for Senator.² On July 18, 2019, Collins for Senator posted a six-minute video on its public YouTube account entitled "Susan Collins - 2019 4k footage."³ There is no text or spoken audio associated with the video - it consists of brief clips of Collins in various environments interacting with constituents.

¹ Susan M. Collins, FEC Form 2, <https://docquery.fec.gov/pdf/144/201907089150456144/201907089150456144.pdf>.

² *Id.*

³ "Susan Collins - 2019 4k footage," Collins4Senator, YouTube (Jul. 18, 2019) <https://www.youtube.com/watch?v=h0mT9P9tAFc>.

1820 PAC is an independent-expenditure only political committee (a “Super PAC”), which was established on March 1, 2019.⁴ On September 13, 2019, 1820 PAC uploaded a 30-second advertisement supporting Senator Collins onto its YouTube page, titled “Maine Tradition.”⁵ The first 22 seconds of the 30-second ad consists entirely of footage that also appears in the YouTube video on Collins for Senator’s YouTube page.⁶ On September 17, 2019, 1820 PAC filed a 48-hour report disclosing a \$276,780.00 independent expenditure for “Media Placement” in support of Susan Collins.⁷ On September 16, 2019, 1820 PAC began running an advertisement on WMTW TV in Westbrook, Maine that is described as “pro Susan Collins,” “ranked most bipartisan, delivered affordable healthcare to veterans, protected jobs,” a description that matches the content of “Maine Tradition.”⁸

LEGAL ANALYSIS

1820 PAC made an almost \$300,000 illegal contribution to Senator Collins’ campaign by paying for a television advertisement that republished Collins’ campaign material. Under Commission regulations, “[t]he financing of the dissemination, distribution, or republication, in whole and in part . . .” of campaign materials prepared by a candidate or the candidate’s authorized committee is considered a contribution from the entity making the expenditure to the candidate who prepared the material “. . . for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.”⁹ The candidate who prepared

⁴ 1820 PAC, FEC Form 1 Statement of Organization (filed March 1, 2019)

<https://docquery.fec.gov/pdf/465/201903019145599465/201903019145599465.pdf>.

⁵ “Maine Tradition,” 1820 PAC, YouTube, https://www.youtube.com/watch?v=58R8_j_Bn6k.

⁶ *See id.*

⁷ 1820 PAC, 24/28 Hour Report of Independent Expenditures (filed Sept. 16, 2019)

<https://docquery.fec.gov/pdf/905/201909169163326905/201909169163326905.pdf>.

⁸ Agreement Form for Non-Candidate/Issue Advertisements, WMTW TV, Westbrook, Me (Sept. 16, 2019) (attached as Exhibit A).

⁹ 11 C.F.R. § 109.23(a). There are several exceptions to this rule, which are not applicable in this situation: (1) republication by the candidate or candidate committee who prepared the material; (2) republication of material by an opponent of the candidate who prepared the material; (3) republication by the press; (4) republication of a brief

the material receives, and is required to report, an in-kind contribution if the candidate or its agents coordinated with the entity that republished the materials, for example by requesting or suggesting that the entity pay to distribute the campaign materials.¹⁰

The Commission has dismissed allegations that third parties republished campaign materials without reporting the communications as in-kind contributions when the campaign materials at issue were incidental to the communication, in particular where campaign materials “comprise only a small portion” of the communication in question.¹¹ The sponsor of an advertisement may “incorporate *as background footage brief segments* of video footage posted on publicly accessible websites by authorized committees of federal candidates.”¹² Ultimately, the purpose of the republication provision is to “capture situations where third parties, in essence, subsidize a candidate’s campaign by expanding the distribution of communications whose content, format, and overall message are devised by the candidate.”¹³

Far from utilizing “brief segments” of “background footage,” the 1820 PAC advertisement consists almost entirely of footage created and disseminated by Collins’ campaign.¹⁴ With the exception of 8 seconds at the end, the visual content of the advertisement is completely comprised of republished materials prepared and distributed by Collins for Senator. By making expenditures to disseminate an advertisement, over seventy percent of which is

quote of materials that demonstrate a candidate’s position; and (5) republication by a national or state party committee as a coordinated expenditure. *Id.* § 109.23(b).

¹⁰ *Id.*; 11 C.F.R. § 109.21(d)(6).

¹¹ Statement of Reasons of Comm’r. Hans A. von Spakovsky and Ellen L. Weintraub, Matter Under Review 5743 (EMILY’s List), at 4. *See also* FEC Matter Under Review 6840 (All Citizens for Mississippi) (dismissing a complaint where a campaign photograph constituted just one-sixth of the advertisement’s dimensions).

¹² Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunger and Lee E. Goodman, FEC Matters Under Review 6603, 6777, 6801, 6870, 6902 (emphasis added).

¹³ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Peterson, at 4, FEC Matter Under Review 6357.

¹⁴ “Maine Tradition,” 1820 PAC, YouTube, https://www.youtube.com/watch?v=58R8_j_Bn6k.

footage created by the Collins' campaign, 1820 PAC essentially paid to air Collins' own advertisement. The narrow exceptions to the republication rule clearly do not apply to this situation where a PAC has created and is distributing a communication almost entirely comprised of footage that the campaign created. The entire cost the ad - including over \$275,000 in media placement costs¹⁵ - is therefore an impermissible contribution to the Collins campaign.

REQUESTED ACTION

In light of the foregoing, the Commission should immediately investigate whether 1820 PAC made as much as \$275,000 in impermissible contributions to Collins for Senator by republishing campaign material. The Commission should further investigate whether Senator Collins and Collins for Senator may have coordinated with 1820 PAC, which would mean that they accepted an impermissible contribution in violation of the Act and Commission regulations. If a violation is found, we respectfully request that the Commission enjoin Respondents from further violations, and fine Respondents the maximum amount permitted by law.

Sincerely,

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

SUBSCRIBED AND SWORN to before me this ____ day of September, 2019.

¹⁵ 1820 PAC, 24/28 Hour Report of Independent Expenditures (filed Sept. 16, 2019)
<https://docquery.fec.gov/pdf/905/201909169163326905/201909169163326905.pdf>.

Notary Public

My Commission Expires:
