

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7803

DATE COMPLAINT FILED: Sept. 24, 2020

DATE OF NOTIFICATION: Sept. 29, 2020

LAST RESPONSE RECEIVED: Nov. 6, 2020

DATE ACTIVATED: Feb. 2, 2021

EXPIRATION OF SOL:

July 15, 2024-April 15, 2025

ELECTION CYCLE: 2020

COMPLAINANT:

Maine Democratic Party

RESPONDENTS:

Susan Collins

Collins for Senator and Elizabeth McCandless
in her official capacity as treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30104(i)

52 U.S.C. § 30116(a)(8)

11 C.F.R. § 104.22

11 C.F.R. § 110.6

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Susan Collins and Collins for Senator and Elizabeth McCandless in her official capacity as treasurer (the “Committee”) failed to disclose certain contributions to the Committee as having been earmarked and bundled through the National Association of Broadcasters Political Action Committee (“NABPAC”), a lobbyist/registrant PAC, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹

¹ Compl. at 3-6 (Sept. 24, 2020).

Respondents admit making a “highly technical reporting mistake.”² After the Complaint was filed, Respondents filed the missing bundling reports and corrected their Quarterly Reports to indicate that those contributions were earmarked through a conduit, and forwarded by a Lobbyist/Registrant PAC.³ As discussed below, we recommend that the Commission dismiss the violations as a matter of prosecutorial discretion, but caution the Committee and close the file.

II. FACTUAL BACKGROUND

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

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

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).

⁶ Compl. at 3-5.

⁷ *Id.* at 8.

⁸ *Id.* at 6.

forwarding to the Committee in 2020 and the contributions the Committee reported receiving on its original 2020 April Quarterly Report.⁹

The Committee acknowledges that it originally reported all of the contributions on Schedule A, but failed to disclose that the contributions were earmarked through and bundled by NABPAC.¹⁰ After the Complaint was filed, the Committee filed amended Quarterly Reports disclosing the earmarked nature of the contributions.¹¹ The Committee also filed Form 3Ls disclosing the total contributions it received through NABPAC.¹² According to Respondents, after taking these steps, “the public record is accurate and complete.”¹³ With regard to the alleged \$10,400 reporting discrepancy, the Committee responds that NABPAC forwarded \$10,400 comprised of contributions that were in excess of the respective contributors’ contribution limits; the Committee refunded those contributions and did not originally disclose them.¹⁴ After the Complaint was filed, the Committee disclosed the receipt of \$10,400 in excessive contributions and disclosed that it had refunded them.¹⁵ Respondents state that the violations have been cured and request dismissal of the allegations.¹⁶

⁹ Compl. 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 *Id.*

¹⁴ *Id.* at note 2.

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

¹⁶ *Id.*

1 **III. LEGAL ANALYSIS**

2 For purposes of the Act, all contributions made by a person, either directly or indirectly,
 3 on behalf of a particular candidate, including contributions which are in any way earmarked or
 4 otherwise directed through an intermediary or conduit to such candidate, shall be treated as
 5 contributions from such person to such candidate.¹⁷ Commission regulations define the term
 6 “earmarked” as “a designation, instruction, or encumbrance, whether direct or indirect, express
 7 or implied, oral or written, which results in all or any part of a contribution or expenditure being
 8 made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized
 9 committee.”¹⁸ The intermediary must report the original source and the intended recipient of an
 10 earmarked contribution to both the Commission and the intended recipient.¹⁹ The report by the
 11 conduit or intermediary shall contain the name and mailing address of each contributor, and for
 12 each earmarked contribution in excess of \$200, the contributor’s occupation and name of his or
 13 her employer.²⁰

14 When a candidate committee receives an earmarked contribution, through an allowable
 15 conduit, each individual contribution should be itemized when the individual’s total
 16 contributions to the committee aggregate over \$200 per election cycle.²¹ This itemization must

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).

²⁰ 11 C.F.R. § 110.6(c)(1).

²¹ 11 C.F.R. § 110.6(c)(2).

include the full name, address, occupation, and employer of the individual contributor along with the date the contribution was received by the conduit.²²

A committee must file Form 3L if it has received two or more bundled contributions forwarded by or received and credited to a person reasonably known by the reporting committee to be a lobbyist/registrant or lobbyist/registrant PAC aggregated in excess of that calendar year's bundling disclosure threshold during the covered period.²³ The lobbyist bundling disclosure threshold was \$18,700 in 2019 and \$19,000 in 2020.²⁴ Reporting committees must file Form 3L at the end of each "covered period" which is determined based on whether the reporting committee files campaign finance reports on a semi-annual, quarterly, or monthly basis.²⁵

The available information indicates that the Committee failed to properly disclose that the contributions it received through NABPAC were earmarked for the Committee and that the Committee failed to file the required Form 3L in 2019 indicating that NABPAC had bundled \$19,300 in contributions. In response to the Complaint dated September 29, 2020, the Committee amended its 2019 July Quarterly and 2020 April Quarterly Reports disclosing the earmarked nature of the contributions and filed the required 2019 3L report, all on November 5, 2020.²⁶

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).

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

This is the first enforcement matter before the Commission involving the bundling disclosure provisions.²⁷ However, the Commission has considered a limited number of cases dealing with earmarked contributions. In MUR 6134 (Cranley for Congress), the Commission found reason to believe that the candidate committee violated 52 U.S.C. § 30104(b) by failing to properly disclose \$508,122 in earmarked contributions.²⁸ Similarly, in MUR 6624 (Gould for Congress), the Commission found reason to believe that the candidate committee violated 52 U.S.C. § 30104(b) by failing to properly disclose \$162,098 in earmarked contributions.²⁹ The amount in violation in both MUR 6134 and 6624 is far greater than, and thus distinguishable from, the \$19,300 the Committee failed to earmark in 2019 and the \$8,800 it failed to earmark in 2020.³⁰

In light of the modest amount of contributions not properly disclosed by the Committee, barely surpassing the Form 3L disclosure threshold in 2019,³¹ and the Committee's remedial

\$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).

³⁰ The violation here consisted of 29 contributions not properly reported in 2019 and 2020. *See* Compl. at 3-5. This activity does not meet a RAD referral threshold for OGC or ADRO. *See* 2019-2020 RAD Review and Referral Procedures (Standard 23) at 159-160.

³¹ *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 Rept. 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).

actions 37 days after notification of the Complaint, we recommend that the Commission dismiss the allegations as a matter of prosecutorial discretion, but caution the Committee.³²

IV. RECOMMENDATIONS

1. 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 send a letter of caution;
2. Dismiss the allegation that Susan Collins and Collins for Senator and Elizabeth McCandless in her official capacity as treasurer violated 52 U.S.C. § 30104(i) and 11 C.F.R. § 104.22(b) by failing to file reports disclosing bundled contributions and send a letter of caution;
3. Approve the attached Factual and Legal Analysis;
4. Close the file; and

³² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

05.13.21

Date

Stephen Gura

Stephen Gura
Deputy Associate General Counsel
for Enforcement

Mark Allen

Mark Allen
Assistant General Counsel

Richard Weiss

Richard L. Weiss
Attorney

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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

I. INTRODUCTION

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

II. FACTUAL BACKGROUND

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

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

The Committee acknowledges that it originally reported all of the contributions on Schedule A, but failed to disclose that the contributions were earmarked through and bundled by NABPAC.¹⁰ After the Complaint was filed, the Committee filed amended Quarterly Reports disclosing the earmarked nature of the contributions.¹¹ The Committee also filed Form 3Ls disclosing the total contributions it received through NABPAC.¹² According to Respondents,

⁶ Compl. at 3-5.

⁷ *Id.* at 8.

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after taking these steps, “the public record is accurate and complete.”¹³ With regard to the alleged \$10,400 reporting discrepancy, the Committee responds that NABPAC forwarded \$10,400 comprised of contributions that were in excess of the respective contributors’ contribution limits; the Committee refunded those contributions and did not originally disclose them.¹⁴ After the Complaint was filed, the Committee disclosed the receipt of \$10,400 in excessive contributions and disclosed that it had refunded them.¹⁵ Respondents state that the violations have been cured and request dismissal of the allegations.¹⁶

III. LEGAL ANALYSIS

For purposes of the Act, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.¹⁷ Commission regulations define the term “earmarked” as “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.”¹⁸ The intermediary must report the original source and the intended recipient of an

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 3 each earmarked contribution in excess of \$200, the contributor's occupation and name of his or
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 7 contributions to the committee aggregate over \$200 per election cycle.²¹ This itemization must
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 11 forwarded by or received and credited to a person reasonably known by the reporting committee
 12 to be a lobbyist/registrant or lobbyist/registrant PAC aggregated in excess of that calendar year's
 13 bundling disclosure threshold during the covered period.²³ The lobbyist bundling disclosure
 14 threshold was \$18,700 in 2019 and \$19,000 in 2020.²⁴ Reporting committees must file Form 3L
 15 at the end of each "covered period" which is determined based on whether the reporting
 16 committee files campaign finance reports on a semi-annual, quarterly, or monthly basis.²⁵

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

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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

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 2 contributions it received through NABPAC were earmarked for the Committee and that the
 3 Committee failed to file the required Form 3L in 2019 indicating that NABPAC had bundled
 4 \$19,300 in contributions. In response to the Complaint dated September 29, 2020, the
 5 Committee amended its 2019 July Quarterly and 2020 April Quarterly Reports disclosing the
 6 earmarked nature of the contributions and filed the required 2019 3L report, all on November 5,
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 13 Congress), the Commission found reason to believe that the candidate committee violated

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2 amount in violation in both MUR 6134 and 6624 is far greater than, and thus distinguishable
3 from, the \$19,300 the Committee failed to earmark in 2019 and the \$8,800 it failed to earmark in
4 2020.

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

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

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 Rept. 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).

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