

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Daniel Baer
2431 Stout Street
Denver, Colorado 80205

Complainant,

v.

Senator Cory Gardner
9227 E. Lincoln Ave. #200-234
Lone Tree, CO 80124

Cory Gardner for Senate and Lisa Lisker, Treasurer
9227 E. Lincoln Ave. #200-234
Lone Tree, CO 80124

Senate Leadership Fund and Caleb Crosby, Treasurer
45 North Hill Dr., Ste. 100
Warrenton, VA 20186

Respondents.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Senator Cory Gardner, Cory Gardner for Senate, Lisa Lisker in her official capacity as treasurer of Cory Gardner for Senate, Senate Leadership Fund, and Caleb Crosby in his official capacity as treasurer of Senate Leadership Fund (“SLF”) (collectively, “Respondents”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”), and Federal Election Commission (the “Commission”) regulations. The available evidence suggests that SLF, a federal super PAC, made and failed to report illegal in-kind contributions to Cory Gardner’s campaign for U.S. Senate and illegally facilitated the making of contributions to Cory Gardner’s campaign using corporate resources. Likewise, it appears that Cory Gardner and his campaign for U.S. Senate

accepted illegal in-kind contributions from SLF. The Commission should immediately investigate these violations and take appropriate remedial action against Respondents.

FACTS

Cory Gardner is a current U.S. Senator from the State of Colorado. Senator Gardner is a candidate for re-election in 2020.¹ Cory Gardner for Senate is Gardner’s principal campaign committee.² Senate Leadership Fund is an independent-expenditure-only committee, or “super PAC,” that accepts corporate contributions.³

On February 16, 2020, SLF sent a text message blast soliciting contributions for Cory Gardner for Senate. A screenshot of the text message is below:



¹ Cory Gardner, FEC Form 2, Statement of Candidacy (amended Jan. 27, 2015), <https://docquery.fec.gov/pdf/070/15020035070/15020035070.pdf>.

² Cory Gardner for Senate, FEC Form 1, Statement of Organization (amended Jan. 29, 2020), <https://docquery.fec.gov/pdf/520/202001299182371520/202001299182371520.pdf>.

³ Senate Leadership Fund, FEC Form 1, Statement of Organization (Jan. 20, 2015), <https://docquery.fec.gov/pdf/437/15031374437/15031374437.pdf> (“SLF FEC Form 1”) (SLF FEC Form 1); *see, e.g.*, Senate Leadership Fund, FEC Form 3X, 2019 Year-End Report (Jan. 31, 2020), <https://docquery.fec.gov/pdf/320/202001319185087320/202001319185087320.pdf> (“SLF Year-End Report”) (disclosing corporate contributions).

The hyperlink contained in the text takes the recipient directly to a WinRed fundraising page for Cory Gardner. The page is clearly labeled with a disclaimer that states, “Paid for by Senate Leadership Fund.”⁴ The page asks people to “[d]onate today to stand with Cory and protect the Republican Senate majority!”⁵ It states, “Your contribution will benefit Cory Gardner for Senate,” and it has a form to make contributions that would be routed to Cory Gardner for Senate.⁶

LEGAL DISCUSSION

The Act prohibits corporations from making contributions to federal candidates.⁷ Because super PACs may accept corporate funds and are not subject to any contribution limits, they are also prohibited from contributing to federal candidates.⁸ For purposes of the ban on contributions from super PACs, a “contribution” includes, in relevant part: (i) “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office;” and (ii) “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any [Federal] candidate . . . in connection with any election.”⁹

The Commission’s regulations also prohibit the use of corporate funds, including resources and facilities funded with corporate donations, to “facilitat[e] the making of

⁴ *Support Cory Gardner*, WINRED, https://secure.winred.com/Republican/support-cory-gardner/?recurring=true&amount=25&utm_medium=p2p&utm_source=SDL-B2&utm_campaign=20200216_SDL-B2_Gardner (last visited Feb. 24, 2020).

⁵ *Id.*

⁶ *Id.*

⁷ 52 U.S.C. § 30118(a).

⁸ *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 8, MUR 7124 (Katie McGinty for Senate) (stating that super PACs “are prohibited from making contributions to candidates and their authorized committees”). SLF’s Statement of Organization also represents that it will not make direct or in-kind contributions to federal candidates or committees. *See* SLF FEC Form 1, *supra* note 3.

⁹ 52 U.S.C. § 30118(b)(2), *cross-referencing id.* § 30101(8)(A).

contributions” to federal candidates.¹⁰ Prohibited corporate facilitation broadly means using corporate “resources or facilities to engage in fundraising activities in connection with any federal election.”¹¹ Corporate facilitation can take the form of officials or employees directing subordinates to plan, organize or carry out fundraising projects; using a corporation’s list of customers, clients, or vendors to solicit contributions; or any other use of corporate resources or facilities in connection with fundraising activities that is not paid for or reimbursed by the candidate.¹²

Under the Commission’s regulations, a fundraising “solicitation” includes, in addition to direct requests for contributions, a “communication that identifies a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page.”¹³ The Commission has made clear, in an advisory opinion, that providing a link to a contribution page for a candidate implicates the ban on corporate facilitation.¹⁴

As a super PAC, SLF may accept unlimited corporate contributions, but it is legally prohibited from using such funds to make contributions to federal candidates or to facilitate contributions to federal candidates.¹⁵ The available facts suggest that SLF illegally facilitated contributions to Cory Gardner for Senate using corporate resources. SLF used its funds, which include substantial corporate donations,¹⁶ to pay for text messages soliciting contributions for Cory Gardner for Senate. The text messages had SLF’s name on them and the WinRed landing

¹⁰ 11 C.F.R. § 114.2(f)(1).

¹¹ *Id.*

¹² *See id.* § 114.2(f)(2)(i).

¹³ *Id.* § 300.2(m)(1)(iii).

¹⁴ *See* Advisory Op. 2008-14 (Melothe, Inc.) at 7 (stating that the “provision of a hyperlink directing a media Web site’s visitors to a campaign’s contribution page” would be corporate facilitation if an exemption does not apply).

¹⁵ *See* F&LA at 8, MUR 7124 (Katie McGinty for Senate); *see also* 11 C.F.R. § 114.2(f)(1).

¹⁶ *See* SLF Year-End Report, *supra* note 3.

page clearly states that it was “Paid for by Senate Leadership Fund.” It is without question that SLF was the sponsor of these communications and paid the costs for their distribution. Further, the text message clearly constitutes a “solicitation” under the Act. The text message asks the recipient to “support” Gardner and links to a website fully dedicated to raising contributions for Cory Gardner for Senate.¹⁷ The use of corporate funds to solicit contributions via a link to a candidate contribution platform is corporate facilitation under Commission precedent.¹⁸ Accordingly, the Commission should immediately investigate this matter to determine if SLF in fact illegally facilitated the making of contributions to Cory Gardner for Senate.

The available facts further suggest that SLF made, and Cory Gardner for Senate accepted, illegal in-kind contributions in the form of the cost of the text messages and WinRed website. Any expenses incurred by SLF in sending text messages and setting up/administering the WinRed landing page that raises funds for Cory Gardner for Senate constitute illegal in-kind contributions to Cory Gardner’s campaign. By sending the text messages and setting up the WinRed page, SLF was raising funds directly for Cory Gardner for Senate and was thereby providing a service to a candidate in connection with a federal election. The Act is clear that the provision of services or anything of value to a federal candidate in connection with a federal election results in a contribution.¹⁹ Assuming that even a single person donated in response to SLF’s solicitation, Cory Gardner for Senate received funds through a WinRed page that reads, “Paid for by Senate Leadership Fund.” Any continued acceptance of such funds by Cory Gardner for Senate raises serious questions about whether Cory Gardner for Senate is knowingly accepting illegal in-kind contributions from SLF.

¹⁷ See 11 C.F.R. § 300.2(m)(1)(iii).

¹⁸ See Advisory Op. 2008-14 (Melothe, Inc.) at 7.

¹⁹ 52 U.S.C. § 30118(b)(2).

Finally, neither SLF nor Cory Gardner for Senate have reported the contributions, which also violates the Act.²⁰

REQUESTED ACTION

As we have shown, Respondents appear to have violated the Act and Commission regulations by making or accepting, and failing to report, illegal in-kind contributions. SLF further appears to have additionally violated the Act and Commission regulations by using corporate resources to facilitate contributions to Cory Gardner for Senate. As such, we respectfully request that the Commission immediately investigate these violations, require Cory Gardner for Senate to immediately refund the contributions received from the WinRed landing page at issue, enjoin Respondents from further violations, and fine Respondents the maximum amount permitted by law.

Sincerely,

Daniel Baer
2431 Stout Street
Denver, Colorado 80205

SUBSCRIBED AND SWORN to before me this 12th day of March 2020.

Notary Public

My Commission Expires:

²⁰ See *id.* § 30104(b) (requiring committees to report making and receiving contributions).