

May 26, 2020

Chairman James Lankford
Senate Select Committee on Ethics
220 Hart Senate Office Building
Washington, DC 20510

Re: Request for Ethics Committee Investigation

Dear Chairman:

This letter constitutes a complaint against Senator Cory Gardner pursuant to Rule 2 of the Rules of Procedure of the Senate Select Committee on Ethics (the “Committee”), which authorizes any person to file a sworn complaint with the Committee “alleging that any Senator . . . has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate . . . in the performance of his or her duty as a Member . . . or has engaged in improper conduct which may reflect upon the Senate.”¹ On May 15, 2020, Senator Gardner began airing a television advertisement in connection with his election campaign. The advertisement included footage from a hearing of the Senate Foreign Relations Committee, in clear violation the Senate’s Standing Order on Television and Radio Broadcast of Senate Chamber Proceedings (Senate Manual, Section 69). Senator Gardner also may have used his official Twitter account to tease the title of the ad before its release, thereby potentially using official resources for campaign purposes. Accordingly, I respectfully request that the Committee investigate whether Senator Gardner has violated the Standing Order, federal law, and the Senate’s ethics rules and take appropriate remedial action against the Senator.

Factual Background

On May 15, 2020, Senator Gardner, through his campaign committee, Cory Gardner for Senate, released a television advertisement entitled “We’ll Get Through this Together.”² The advertisement features footage of Senator Gardner from a 2015 hearing of the Senate Foreign Relations Committee’s Subcommittee on East Asia, the Pacific, and International Cybersecurity Policy.³ The image appears at timestamp 0:06 of the campaign advertisement and is identical to an image of Senator Gardner from timestamp 24:31 of the CSPAN footage of the committee hearing.⁴ The campaign appears to have zoomed in on Senator Gardner so as to remove his

¹ U.S. Senate, Senate Select Comm. on Ethics, Rules of Procedure, R. 2(a) (2015), https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=551b39fc-30ed-4b14-b0d3-1706608a6fcb (“Ethics Committee Rules”).

² Jesse Paul, *Cory Gardner Works to Improve his Image with First TV Ad as Democratic Rivals Draw Sharp Differences in Forum*, THE COLO. SUN (May 15, 2020), <https://coloradosun.com/2020/05/15/cory-gardner-tv-ad-democratic-forum-senate-race-colorado/>.

³ *See id.* (showing the television advertisement embedded within the article); *Subcommittee Hearing: The Changing Landscape of U.S.-China Relations: What’s Next?*, U.S. SENATE COMM. ON FOREIGN RELATIONS (Sept. 29, 2015), <https://www.foreign.senate.gov/hearings/the-changing-landscape-of-us-china-relations-whats-next> (“Committee Footage”).

⁴ Compare Paul, *with* Committee Footage.

placard and the the words “Foreign Relations Committee” from the shot.⁵ A side-by-side comparison of the images appears below, with the committee footage on the left and the image from the campaign advertisement on the right.



The night before the advertisement went on the air, Senator Gardner also tweeted, from his official Senate Twitter account, “We will get through this. Together.”⁶

Legal Analysis

The Senate has a Standing Order governing Television and Radio Broadcast of Senate Chamber Proceedings.⁷ Section 6 of the Standing Order states, “The use of any tape duplication of radio or television coverage of the proceedings of the Senate for political campaign purposes is strictly prohibited.”⁸ Senator Gardner, by including footage that originated from CSPAN’s television coverage of a Senate committee proceeding in a political campaign advertisement, committed a clear-cut violation of the Standing Order. Whether Senator Gardner obtained the footage directly from CSPAN or from another media outlet’s re-airing or reporting on the CSPAN coverage is irrelevant. The clip is a “duplication of . . . television coverage of the proceedings of a Senate” and its use for political purposes is prohibited.

In addition to violating the Standing Order, Senator Gardner’s behavior shows a general disregard for a key ethical principle embedded in the Senate’s rules and federal law—that “[o]fficial resources may only be used for official purposes.”⁹ Under 31 U.S.C. § 1301(a), federally appropriated funds “shall be applied only to the objects for which the appropriations

⁵ Compare Paul, with Committee Footage.

⁶ @SenatorCoryGardner, TWITTER, <https://twitter.com/SenCoryGardner/status/1261112458745466880> (posted May 14, 2020, 9:53 p.m.).

⁷ See U.S. Senate, Standing Rules, Orders, Laws and Resolutions Affecting the Business of the United States Senate at 129 (2014), <https://www.govinfo.gov/content/pkg/SMAN-113/pdf/SMAN-113.pdf>. The Standing Order is also referred to as Senate Manual Section 69. See *id.*

⁸ *Id.* at 131.

⁹ U.S. SENATE, SENATE SELECT COMM. ON ETHICS, SENATE ETHICS MANUAL at 153 (2003), <https://www.ethics.senate.gov/downloads/pdf/manual.pdf> (“Senate Ethics Manual”).

were made.”¹⁰ The Senate Ethics Manual makes clear that Senate appropriations are intended for “official representational and legislative duties,” not political campaign activity.¹¹

The Senate Committee on Rules and Administration’s Internet Services and Technology Resources Usage Rules adhere to this guiding principle and prohibit the “[u]se of Senate Internet Services and Senate technology resources for campaign, fundraising, commercial, or promotional purposes.”¹² The Rules state that all information posted to an official website, including an “official third-party website” like a Member’s Twitter, must relate to activities and duties directly connected with the official office.¹³

On the eve of releasing a campaign advertisement already making use of official Senate footage, Senator Gardner appeared to use his official Twitter account to tease the advertisement’s release, tweeting the ad’s title. The Senator’s tweet does not appear to be connected to his official representational duties, which is the only permissible use of the account. Rather, the purpose of the tweet seems to be to reinforce Senator Gardner’s campaign messaging and bolster the soon-to-be-released ad. Senator Gardner’s blurring of his official and campaign resources violates federal law and Senate rules and further suggests that he prioritizes his personal political goals over the ethical obligations he owes to his constituents, negatively “reflect[ing] upon the Senate”¹⁴

As it appears that Senator Gardner has violated a law and a Standing Order and rule of the Senate, and engaged in improper conduct that is “contrary to accepted morals [and] derogates from the public trust expected of a Senator,”¹⁵ I respectfully request that the Committee investigate Senator Gardner’s activities and take appropriate remedial action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 26, 2020.



¹⁰ 31 U.S.C. § 1301(a).

¹¹ Senate Ethics Manual at 140.

¹² U.S. Senate, Comm. on Rules and Administration, Internet Services and Technology Usage Rules, R. 2.2 (Nov. 9, 2015), <https://www.senate.gov/usage/internetpolicy.htm>.

¹³ *Id.*, R. 1.6, 2.3.

¹⁴ See Ethics Committee Rules, R. 2(a).

¹⁵ See Senate Ethics Manual, Improper Conduct Reflecting Upon the Senate, Appendix E, at 434.