



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

September 13, 2018

Honorable Brian A. Benczkowski
Assistant Attorney General
Criminal Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Email: Criminal.Division@usdoj.gov

Re: Urgent Investigation of The Maine People's Alliance, Mainers for Accountable Leadership PAC, and Be a Hero Fund PAC for Bribery of a Public Official

Dear Assistant Attorney General Benczkowski:

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good.

We write today to request the Department of Justice immediately investigate The Maine People's Alliance, Mainers for Accountable Leadership PAC, and Be a Hero Fund PAC for bribery of a public official. These three groups have created a crowdfunding campaign and "raised money in the form of pledges that they said they would give to whoever decided to challenge Collins in 2020 if she voted for Kavanaugh's confirmation. If she votes no, the money will never be withdrawn from donors."¹

The groups' website specifically explains the bribery scheme to its donors, and the political contributions are entirely dependent of Senator Collins' vote:

There are two scenarios:

1. Senator Collins votes NO on Kavanaugh and you will not be charged, and no money will go to fund her future opponent.

¹ Eli Rosenberg, *Activists Raised \$1 Million to Defeat Susan Collins if She Votes for Kavanaugh. She Says It's Bribery.*, The Washington Post, Sept. 12, 2018 (available at: https://www.washingtonpost.com/politics/2018/09/12/activists-raised-million-defeat-susan-collins-if-she-votes-kavanaugh-she-says-its-bribery/?noredirect=on&utm_term=.02391f84c5b3).

2. Senator Collins votes YES on Kavanaugh and your pledge will go to her opponent's campaign, once that opponent has been identified.²

.....

*** We need Senator Collins to vote NO on the confirmation of Brett Kavanaugh to the Supreme Court. You can send a stronger message than a phone call or a tweet – pledge to help get Susan Collins out of office in 2020 if she doesn't stand with us.

Your card will only be charged if Collins votes for Kavanaugh's confirmation. ***

Be A Hero Team
Maine People's Alliance
Mainers for Accountable Leadership

As of today, the promised payment is over \$1 million, which is made only to influence and is dependent upon Senator Collins' official vote on one issue.

Bribery of a public official is illegal under 18 U.S.C. section 201(b)(1), which provides:

Whoever directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official³ or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent to influence any official act[.]⁴

18 U.S.C. § 201(b)(1). Specifically, “the payment may go to anyone or to anything and may include campaign contributions.”⁵

In the present case, the Maine People's Alliance, Mainers for Accountable Leadership, and Be a Hero Fund PAC have explicitly explained their promise to give over one million dollars is “with the intent to influence” a single vote taken by Senator Collins.⁶ They have directly tied a one-million-dollar payment to a specific vote. It does not matter that the payment is given to another or that it is in the form of political contributions.⁷ The law specifically includes payments to

² <https://www.crowdpac.com/campaigns/387413/either-sen-collins-votes-no-on-kavanaugh-or-we-fund-her-future-opponent>

³ “Public Official” is defined as a “Member of Congress.” 18 U.S.C. § 201(a)(3).

⁴ “Official Act” is defined as “any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.” 18 U.S.C. § 201(a)(3).

⁵ U.S. Attorneys' Manual, Criminal Resource Manual at 2041, available at: <https://www.justice.gov/usam/criminal-resource-manual-2041-bribery-public-officials>.

⁶ U.S. Attorneys' Manual, Criminal Resource Manual at 2041 (“[S]ection 201(b), prohibits the giving or accepting of anything of value to or by a public official, if the thing is given ‘with intent to influence’ an official act[.]”), available at: <https://www.justice.gov/usam/criminal-resource-manual-2041-bribery-public-officials>.

⁷ U.S. Attorneys' Manual, Criminal Resource Manual at 2041, available at: <https://www.justice.gov/usam/criminal-resource-manual-2041-bribery-public-officials>.

another as bribery, as well as political contributions, so long as the payment is an attempt to influence an official act.⁸ In fact, the groups acknowledge the power of their bribe to influence—it is “a stronger message than a phone call or tweet.” The elements of bribery have been met: it is illegal to offer or promise a public official (Senator) to give anything of value (over \$1 million) to another person (future opponent) with the intent to influence any official act (a Senator’s vote on a Supreme Court nominee).

Contrary to one organization’s statement that this does not rise to bribery ““because there’s no agreement” and “[i]t’s just the way money and politics tend to work these days””⁹, section 201(b)(1) does not require an “agreement” between the one offering the bribe and the public official.¹⁰ The illegal act is the “offer or promise,” and it does not matter whether the Senator acts in response to the offer in any particular way.¹¹ The three groups have made the illegal promise to give over one million dollars to another person with the stated intent and purpose to influence a Senator’s vote.

Furthermore, money and politics do not work this way—using political contributions to bribe public officials is illegal. As the U.S. Attorney’s office explains, a bribe may include campaign contributions.¹² In a case where a public official was accused of accepting a bribe, the Supreme Court explained “political contributions” are illegal if “the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act.”¹³ In this case, the quid pro quo¹⁴ could not be any clearer and more explicit: If Senator Collins votes the groups preferred way, they will do nothing. If Senator Collins does not vote their preferred way, they will give over one million dollars. The Maine People’s Alliance, Mainers for Accountable Leadership PAC, and Be a Hero Fund PAC are using promised political contributions as a bribe.

The Department of Justice must immediately act, investigate the groups for bribery and ensure the donation page soliciting funds for the bribery is removed. This type of corrupt and illegal behavior undermines our citizens’ trust in public officials and government, and it simply cannot be tolerated. The public expects our elected officials to act upon merit, and this type of public bribery introduces doubt and mistrust of our government. The fact the bribe was made publicly does not excuse a violation of the law—there is no requirement the commission of a crime be done in secret or covered up. We therefore request the Criminal Division of the Attorney General’s office immediately investigate and take appropriate action.

⁸ 18 U.S.C. § 201(b); U.S. Attorneys’ Manual, Criminal Resource Manual at 2041, available at: <https://www.justice.gov/usam/criminal-resource-manual-2041-bribery-public-officials>.

⁹ Foxnews.com, available at: <http://www.foxnews.com/politics/2018/09/12/activists-raise-1m-to-pressure-sen-collins-to-vote-against-kavanaugh-report-says.html>.

¹⁰ Compare 18 U.S.C. sec. 201(b)(2) (providing it is illegal for a “public official” to “directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value or for any other person or entity, in return for being influenced in the performance of any official act.”).

¹¹ Cf. *United States v. Brewster*, 480 U.S. 501, at 526 (1972) (explaining that unlike section 201(b)(1), section 201(b)(2) the illegal act is a “agreeing to take money for a promise to act in a certain way” and it is not necessary for “performance of the illegal promise”).

¹² U.S. Attorneys’ Manual, Criminal Resource Manual at 2041, available at: <https://www.justice.gov/usam/criminal-resource-manual-2041-bribery-public-officials>.

¹³ *McCormick v. United States*, 500 U.S. 257, 271 (1991).

¹⁴ U.S. Attorneys’ Manual, Criminal Resource Manual at 2044, available at: <https://www.justice.gov/usam/criminal-resource-manual-2044-particular-elements>.

Respectfully submitted,

A handwritten signature in blue ink that reads "Karnold". The letters are cursive and slightly slanted to the right.

Kendra Arnold
Executive Director, Foundation for Accountability & Civic Trust

Enclosure