

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FIRST GENERAL COUNSEL'S REPORT**  
4

5 **MUR: 7562**

6 DATE COMPLAINT FILED: Jan. 29, 2019

7 DATE OF NOTIFICATION: Feb. 1, 2019

8 DATE OF LAST RESPONSE: July 29, 2019

9 DATE RE-ACTIVATED: July 29, 2019

10  
11 EXPIRATION OF SOL: Oct. 1, 2022 (earliest)

12 ELECTION CYCLE: 2017

13  
14 **COMPLAINANT:**

U.S. Senator Doug Jones

15  
16 **RESPONDENTS:**

Popily, Inc. d/b/a Yonder f/k/a New Knowledge

Jonathon Morgan

Investing in US

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20 **P-MUR: 621**

21 DATE COMPLAINT FILED: Jan. 28, 2019

22 DATE OF NOTIFICATION: Feb. 1, 2019

23 DATE OF LAST RESPONSE: Apr. 29, 2019

24 DATE RE-ACTIVATED: July 29, 2019

25  
26 EXPIRATION OF SOL: Oct. 1, 2022 (earliest)

27 ELECTION CYCLE: 2017

28  
29 **SOURCE:**

30  
31 **RESPONDENTS:**

Popily, Inc. d/b/a Yonder f/k/a New Knowledge

Jonathan Morgan

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34 **RELEVANT STATUTES**  
35 **AND REGULATIONS:**

52 U.S.C. § 30116(a)(7)(B)(iii)

52 U.S.C. § 30118(a)

11 C.F.R. § 109.23(a)

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37  
38 **INTERNAL REPORTS CHECKED:**

FEC Disclosure Reports

39  
40 **FEDERAL AGENCIES CHECKED:**

None

41 **STATE AGENCIES CHECKED:**

Delaware Division of Corporations

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1     **I.     INTRODUCTION**

2             These matters involve allegations that New Knowledge, a cybersecurity and research  
3 firm, its founder Jonathon Morgan, and Investing in US, a progressive political investment fund  
4 (collectively, “Respondents”), conducted a social media campaign designed to mimic the tactics  
5 the Russian Federation apparently used to influence the 2016 elections during the 2017 special  
6 election for U.S. Senate in Alabama in violation of the Federal Election Campaign Act of 1971,  
7 as amended (the “Act”). Then-Senator Doug Jones, the ultimate victor in the 2017 special  
8 election, submitted the Complaint in MUR 7562 requesting that the Commission investigate the  
9 disinformation campaign detailed in three news articles: a December 18, 2018, *Washington Post*  
10 article, a December 19, 2018, *New York Times* article, and a January 7, 2019, *New York Times*  
11 Article.<sup>1</sup>

12  
13                             Neither submission alleges specific violations of the Act, but  
14 instead requests that the Commission open an investigation into the activities in question in order  
15 to determine whether they violate the Act.<sup>3</sup>

16             The *Washington Post* article provides a brief summary of New Knowledge and Morgan’s  
17 involvement in a disinformation campaign in Alabama.<sup>4</sup> The December 19, 2018, *New York*  
18 *Times* article chronicled the social media effort in more detail, identifying Investing in US’s  
19 involvement, described the social media tactics used, including creating Facebook pages and

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<sup>1</sup> Compl., MUR 7562 (Jan. 29, 2019) (“MUR 7562 Compl.”).

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<sup>3</sup> See MUR 7562 Compl.;

<sup>4</sup> Craig Timber, *et al.*, *Researcher Whose Firm Wrote Report on Russian Interference Used Questionable Online Tactics During Ala. Senate Race*, WASH. POST (Dec. 18, 2018) [hereinafter Wash. Post Article], [https://www.washingtonpost.com/technology/2018/12/19/researcher-affiliated-with-russian-interference-senate-report-used-questionable-online-tactics-during-alabama-senate-race/?utm\\_term=.7a54d0a2b5f4](https://www.washingtonpost.com/technology/2018/12/19/researcher-affiliated-with-russian-interference-senate-report-used-questionable-online-tactics-during-alabama-senate-race/?utm_term=.7a54d0a2b5f4).

1 appealing to conservative Alabamians, outlined contact with Mac Watson, a conservative write-  
 2 in candidate, and reported that the project had a \$100,000 budget.<sup>5</sup> The January 7, 2019, *New*  
 3 *York Times* article unveiled a related social media campaign linked to Investing in US that  
 4 similarly utilized disinformation tactics and focused on persuading “business-oriented  
 5 Republicans” to form a negative view of Republican candidate Roy Moore by linking him to  
 6 anti-alcohol campaigns.<sup>6</sup>

7 Respondents argue that the Complaint (collectively, the “Complaints”) are  
 8 procedurally deficient,<sup>7</sup> and New Knowledge disputes certain facts contained in the news  
 9 articles.<sup>8</sup> Respondents argue that write-in candidate Mac Watson never qualified as a  
 10 “candidate” under the Act and that, in any event, any putative violations related to him were *de*  
 11 *minimis*.<sup>9</sup> New Knowledge further contends that none of its social media communications  
 12 contained express advocacy and that much of its social media activity qualifies for the media

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<sup>5</sup> Scott Shane & Alan Blinder, *Secret Experiment in Alabama Senate Race Imitated Russian Tactics*, N.Y. TIMES (Dec. 19, 2018) [hereinafter Dec. 19, 2018 N.Y. Times Article], <https://www.nytimes.com/2018/12/19/us/alabama-senate-roy-jones-russia.html>.

<sup>6</sup> Scott Shane & Alan Blinder, *Democrats Faked Online Push to Outlaw Alcohol in Alabama Race*, N.Y. Times (Jan. 7, 2019) [hereinafter Jan. 7, 2019 N.Y. Times Article], <https://www.nytimes.com/2019/01/07/us/politics/alabama-senate-facebook-roy-moore.html>.

<sup>7</sup> Respondents argue that they have been deprived of due process because the Complaints do not allege facts known to the complainants, and instead rely on unsworn newspaper articles. Popily, Inc. d/b/a Yonder f/k/a New Knowledge and Morgan Resp. at 5-8 (Apr. 30, 2019) (“New Knowledge Resp.”); Investing in Us Resp. at 1-3 (July 29, 2019). The Act requires that a complaint filed with the Commission be in writing, signed, and sworn. 52 U.S.C. § 30109(a)(1). There is no requirement that complaints be based only on personal knowledge. In fact, the Commission’s regulations expressly provide that allegations may be “based upon information and belief,” specifying only that statements not based on personal knowledge “should be accompanied by an identification of the source of information.” 11 C.F.R. § 111.4(c), (d); *see also* Mem. To the Comm’n from William C. Oldaker, General Counsel, FEC, Complaints Based on News Articles at 2 (Nov. 5, 1979) (Comm’n Mem. No. 663) (adopted Nov. 15, 1979) (“[T]he legislative concern that complaints not be frivolous or malicious would seem to not preclude those complaints based on news articles which were well-documented and substantial, if the other complaint filing criteria of signing and notarization were met.”). In this case, the Complaint comply with the requirements of the Act and Commission regulations.

<sup>8</sup> New Knowledge Resp. at 1, 3, 5-7.

<sup>9</sup> *Id.* at 12-13; Investing in US Resp. at 5 & n.21.

1 exemption.<sup>10</sup> Investing in US additionally contends that its activities are protected by the First  
2 Amendment and claims that it did not “create, place, or pay for any of the alleged  
3 advertisements.”<sup>11</sup>

4 The available information does not indicate that New Knowledge made prohibited  
5 corporate contributions when it provided assistance to Watson and published his campaign  
6 materials because Watson likely did not qualify as a candidate under the Act. Therefore, we  
7 recommend that the Commission dismiss the allegation that New Knowledge made prohibited  
8 in-kind contributions in violation of 52 U.S.C. § 30118(a). There is likewise insufficient  
9 information that Respondents violated the Act in connection with the activities associated with  
10 their broader social media campaign. The information before the Commission indicates that,  
11 although the Respondents engaged in an extensive social media campaign with the intent of  
12 influencing a federal election, it appears that the payments at issue were neither coordinated  
13 communications nor independent expenditures as defined by the Act. For that reason, we also  
14 recommend that the Commission dismiss the allegations that Respondents Investing in US and  
15 Jonathan Morgan violated the Act.

## 16 **II. FACTUAL BACKGROUND**

### 17 **A. Respondents**

18 Popily, Inc., which does business under the name Yonder and was formerly known as  
19 New Knowledge (“New Knowledge”)<sup>12</sup> is a Delaware corporation that provides cybersecurity

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<sup>10</sup> New Knowledge Resp. at 8-12.

<sup>11</sup> Investing in US Resp. at 4-6 & n.15.

<sup>12</sup> It appears that Popily, Inc., changed its trade name after submitting its April 2019 Response, which still refers to the company as “New Knowledge.” See Brent Wistrom, “Why New Knowledge Changed Its Name to Yonder,” *Austin Bus. J.* (Oct. 23, 2019), <https://www.bizjournals.com/austin/news/2019/10/23/why-new-knowledge-changed-its-name-to-yonder.html> . Because the events at issue in these matters occurred when the

1 and research services.<sup>13</sup> It states that it was founded to “study the ever-evolving online data  
 2 ecosystem and provide online reputation-management and data-security services.”<sup>14</sup> Jonathon  
 3 Morgan is New Knowledge’s founder and chief executive.<sup>15</sup> New Knowledge authored a  
 4 comprehensive report on the Russian Federation’s activities in the 2016 U.S. presidential  
 5 election provided to and released by the Senate Intelligence Committee in late 2018.<sup>16</sup>

6 Investing in US appears to be a for-profit investment management fund that finances  
 7 progressive political causes.<sup>17</sup> It was founded by Dmitri Mehlhorn with the support of LinkedIn  
 8 founder and billionaire Reid Hoffman.<sup>18</sup> Since its founding shortly after the 2016 election,  
 9 Investing in US has apparently raised and provided millions of dollars in funding to various  
 10 progressive groups including those focused on civic engagement, for-profit technology  
 11 companies, candidate recruiting and support groups, litigation efforts, organizations opposed to  
 12 Republican policies, and partisan political groups.<sup>19</sup>

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company was doing business as New Knowledge and the Complaints and the company’s Response refer to it as New Knowledge, this Report refers to Popily, Inc. by its former trade name, “New Knowledge,” for ease of reading.

<sup>13</sup> Dec. 19, 2018 N.Y. Times Article; Wash. Post Article; Jan. 7, 2019 N.Y. Times Article.

<sup>14</sup> New Knowledge Resp. at 2.

<sup>15</sup> *Id.*; Wash. Post Article; Dec. 19, 2018 N.Y. Times Article.

<sup>16</sup> New Knowledge Resp. at 3; Wash. Post Article; Dec. 19, 2018 N.Y. Times Article. A copy of the report is available on New Knowledge’s website. *The Disinformation Report*, NEW KNOWLEDGE (Dec. 17, 2018), <https://www.newknowledge.com/articles/the-disinformation-report/>; see also Press Release, U.S. Senate Select Comm. on Intelligence, New Reports Shed Light on Interest Research Agency’s Social Media Tactics (Dec. 17, 2018) [hereinafter Senate Report], <https://www.intelligence.senate.gov/press/new-reports-shed-light-internet-research-agency%E2%80%99s-social-media-tactics>. This Office cited the aforementioned New Knowledge report in a separate report concerning allegations that the Russian Federation interfered with the 2016 presidential election. See First General Counsel’s Report at n.39 and passim, MURs 7207, 7268, 7274, and 7623 (Russian Federation, *et al.*)

<sup>17</sup> Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article (“Investing in Us . . . finances political operations in support of progressive causes.”); see also Dmitri Mehlhorn, *Investing in US: 2017-2018 in Review*, MEDIUM (Dec. 21, 2018) [hereinafter Mehlhorn Medium Post], <https://medium.com/@DmitriMehlhorn/investing-in-us-64afe222face> (“The idea behind Investing in US was to bring entrepreneurs and investors to join the resistance in fighting for the American dream.”).

<sup>18</sup> See, e.g., Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times.

<sup>19</sup> See Mehlhorn Medium Post.

1           **B.        Respondents' Social Media Campaigns During the 2017 Special Election in**  
 2           **Alabama**

3  
 4           1.       Alabama Conservative Politics

5           According to New Knowledge, a firm called American Engagement Technologies  
 6 ("AET") engaged it "to conduct a small research project on the ability of 'counter messaging' to  
 7 reduce political polarization."<sup>20</sup> New Knowledge decided to conduct this study in the context of  
 8 a real election and selected the 2017 special election in Alabama as one of the few federal  
 9 elections occurring in 2017.<sup>21</sup> According to the *New York Times* reporting, New Knowledge had  
 10 a budget of \$100,000 for the project.<sup>22</sup> Reid Hoffman provided the funding for the project.<sup>23</sup>  
 11 Hoffman, alongside Investing in US and Mehlhorn, provided funding to AET.<sup>24</sup> AET, in turn,  
 12 provided funding to New Knowledge to organize and operate the project.<sup>25</sup> New Knowledge  
 13 does not deny the \$100,000 figure or provide information with respect to its total budget, instead  
 14 only accounting for \$10,536 that it acknowledges it spent on Facebook advertising.<sup>26</sup>

15           New Knowledge created a Facebook page called Alabama Conservative Politics  
 16 ("ACP").<sup>27</sup> According to the news articles, which based their characterizations in part on an

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<sup>20</sup> New Knowledge Resp. at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *See, e.g.*, Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article.

<sup>23</sup> *See* Reid Hoffman, *Truth and Politics*, MEDIUM (Dec. 26, 2018) [hereinafter Hoffman Medium Post], <https://medium.com/@reidhoffman/truth-and-politics-1a532bc6c2b1>; Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article.

<sup>24</sup> *See* Hoffman Medium Post (describing his and Investing in US's financial support to AET); Jan. 7, 2019 N.Y. Times Article (describing the \$100,00 as "funneled" through Investing in US).

<sup>25</sup> *See* New Knowledge Resp. at 3; Hoffman Medium Post; *see also* Dec. 19, 2018 N.Y. Times Article ("The money passed through [AET].").

<sup>26</sup> New Knowledge Resp. at 2-4, 11, 14. Facebook allows users to advertise by turning an ordinary post into an ad that will appear on the Facebook pages of a targeted audience even though many in that audience do not currently follow the person posting. *See About Boosted Posts*, FACEBOOK, <https://www.facebook.com/business/help/240208966080581?id=352109282177656> (last visited Nov. 15, 2019).

<sup>27</sup> New Knowledge Resp. at 2-4; *see* Dec. 19, 2018 N.Y. Times Article; Wash. Post Article.

1 internal report of the social media effort, the project explicitly sought to experiment with the  
2 disinformation tactics reportedly used by the Russian Federation's social media operations in the  
3 2016 elections.<sup>28</sup> To that end, according to the articles, New Knowledge used ACP to pose as  
4 conservative Alabama residents in an attempt to appeal to other conservative voters, divide  
5 Republicans, support write-in candidates, undermine Republican candidate Roy Moore, and help  
6 Democratic candidate Doug Jones.<sup>29</sup> According to the *New York Times*, New Knowledge was  
7 behind a surge in Russian accounts following Moore on Twitter which drew media scrutiny  
8 negative to Moore's campaign.<sup>30</sup>

9 Also according to the *New York Times*, a write-in candidate, Mac Watson, initiated  
10 contact with ACP, which periodically engaged with him and ultimately offered Watson an  
11 endorsement and advice on appealing to "disenchanted Republican voters."<sup>31</sup> Likewise, the *New*  
12 *York Times* reports that ACP agreed to "boost" Watson's campaign and served as an advisor and  
13 "go-to media contact," arranging interviews for Watson with the *Montgomery Advertiser* and the  
14 *Washington Post*.<sup>32</sup> Watson reportedly said that, around the time ACP began assisting his write-

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<sup>28</sup> See Wash. Post Article; Dec. 19, 2018 N.Y. Times Article (citing internal report of effort self-describing it as an "experiment[]" with many of the tactics now understood to have influenced the 2016 elections"); *id.* (quoting Morgan that the project "was intended to help us understand how these kind of campaigns operated" and was designed to "work in the context of a real election"); Jan. 7, 2019 N.Y. Times Article (citing internal report of effort). New Knowledge claims that it has "never seen" the internal report discussed in the news articles. See New Knowledge Resp. at 6.

<sup>29</sup> See Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article.

<sup>30</sup> See Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article. In its Response, New Knowledge denies responsibility for the increase in Watson's Twitter followers and more broadly disputes that it used Twitter at all in its Alabama project. New Knowledge Resp. at 6-7.

<sup>31</sup> Dec. 19, 2018 N.Y. Times Article (reporting also that ACP declined Watson's request for a meeting).

<sup>32</sup> *Id.* New Knowledge disputes that it arranged media interviews for Watson. New Knowledge Resp. at 7.

1 in campaign, he noticed that his number of Twitter followers “suddenly ballooned” from  
2 approximately 100 to approximately 10,000.<sup>33</sup>

3 New Knowledge admits to spending \$10,536 on Facebook advertising, which it  
4 characterizes as promoting “re-posted” news articles, including \$1,078 to promote posts about  
5 Watson.<sup>34</sup> Of the \$1,078, New Knowledge specifies that it spent \$395 to promote a “post with a  
6 link to an interview with Mac Watson by the Alabama Political Reporter,”<sup>35</sup> \$11 to promote  
7 ACP’s Facebook post announcing its endorsement of Watson, and the remainder promoting  
8 Watson’s Facebook posts and events.<sup>36</sup> Morgan admitted in one news article to spending “less  
9 than \$10” to purchase a “small amount” of retweets to measure the effects of social media  
10 amplification; the article states that Morgan “did not recall the name of the Twitter account for  
11 which he bought the retweets but said it was not a campaign or other explicitly political  
12 account.”<sup>37</sup>

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<sup>33</sup> Dec. 19, 2018 N.Y. Times Article. New Knowledge denies that it was responsible for the increase in Watson’s Twitter followers. New Knowledge Resp. at 6-7.

<sup>34</sup> *Id.* at 2-4, 14. New Knowledge includes within the \$10,536 figure approximately \$370 it spent on Instagram advertisements because Facebook owns Instagram and uses the same advertising platform. *See id.* at 3 n.4.

<sup>35</sup> The Alabama Political Reporter posted two articles about Mac Watson in the run-up to the 2017 special election. *See* Brandon Moseley, *Mac Watson Announces Write-In Senate Campaign*, ALA. POLITICAL REPORTER (Nov. 10, 2017) [hereinafter APR Watson Announcement Article], <https://www.alreporter.com/2017/11/10/mac-watso-announces-write-senate-campaign/>; Mac Watson, *Write-In Candidate Mac Watson: Open Letter to the Voters of Alabama*, ALA. POLITICAL REPORTER (Nov. 22, 2017) [hereinafter APR Watson Open Letter], <https://www.alreporter.com/2017/11/22/write-candidate-mac-watson-open-letter-voters-alabama/>. The first article narratively describes Watson’s announcement and candidacy, including quotes from Watson. *See* APR Watson Announcement Article. The second article is styled as an “open letter” written by Watson making the case for his candidacy and appealing to the reader to write-in his name on Election Day. *See* APR Watson Open Letter. Neither appears to be styled as an “interview” with Watson and it is unclear which article New Knowledge is referencing.

<sup>36</sup> *See* New Knowledge Resp. at 4, 14.

<sup>37</sup> *See* Wash. Post Article; *cf.* New Knowledge Resp. at 6-7 (denying using Twitter in any way in connection with its work in Alabama).



1                   2.       Dry Alabama

2                   According to the *New York Times*, there were related Facebook and Twitter accounts  
3                   entitled “Dry Alabama” and “Southern Caller” that likewise sought to undermine Moore’s  
4                   campaign by tying him to a proposed statewide alcohol ban to divide Republican voters and  
5                   alienate moderate, business-oriented Republicans.<sup>38</sup> The article reports that this campaign had a  
6                   \$100,000 budget funneled through Investing in US as well.<sup>39</sup> This campaign received funding  
7                   only two weeks before the 2017 special election, so its organizers were able to devote about 80  
8                   percent of that budget — approximately \$80,000 — to Facebook advertisements.<sup>40</sup> According to  
9                   the article, the Dry Alabama project was an effort to “defeat Mr. Moore,” whose organizers  
10                  thought “associating Mr. Moore with calls for a statewide alcohol ban would hurt him with  
11                  moderate, business-oriented Republicans and assist the Democrat, Doug Jones.”<sup>41</sup> It quotes Matt  
12                  Osborne, a progressive activist who helped organize and manage the effort, as stating that the  
13                  tactics would “help Mr. Jones’s chances [by] zero[ing] in on tensions within the Republican  
14                  Party over whether drinking should be permitted in Alabama.”<sup>42</sup> The article cites several  
15                  examples of Dry Alabama’s promoted communications, which read “Pray for Roy Moore,” “Re-  
16                  enact Prohibition and make Alabama dry again!” and “Democrats continue to put party before

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<sup>38</sup>        See Jan. 7, 2019 N.Y. Times Article. The *New York Times* further reports there were two additional social media operations conducted by Tovo Labs and Dialectica. See *id.* Tovo Labs allegedly described its social media pages as containing “legitimate material,” while Dialectica pitched potential customers on its efforts to fight “fake news” with a “new generation of information weapons.” *Id.* The article provides and we have very little information on these efforts, and in particular the record lacks any information that links them to ACP, Dry Alabama, Southern Caller, New Knowledge, Morgan, or Investing in US.

<sup>39</sup>        *Id.* While the funding for ACP, Dry Alabama, and Southern Caller was all funneled through Investing in US, the article does not connect the latter two efforts to Hoffman as the ultimate funder or New Knowledge as the organizer. See *id.*; see also New Knowledge Resp. at 4, 7 (denying knowledge of or involvement with Dry Alabama and Southern Caller). Instead, it attributes funding for Dry Alabama and Southern Caller to “two Virginia donors . . . .” Jan. 7, 2017 N.Y. Times Article.

<sup>40</sup>        *Id.*

<sup>41</sup>        *Id.*

<sup>42</sup>        *Id.*

1 country.”<sup>43</sup> Osborne also told the *Times* that Dry Alabama and Southern Caller generated 4.6  
 2 million views of Facebook posts, 97,000 engagements, and 430,000 video views.<sup>44</sup>

### 3 **III. LEGAL ANALYSIS**

#### 4 **A. The Commission Should Exercise Its Prosecutorial Discretion to Dismiss the** 5 **Allegation That New Knowledge Made Prohibited In-Kind Corporate** 6 **Contributions to Mac Watson**

7  
 8 New Knowledge is a Delaware corporation.<sup>45</sup> The Act and Commission regulations  
 9 prohibit a corporation from making a contribution to a federal candidate.<sup>46</sup> Under the Act, “the  
 10 financing by any person of the dissemination, distribution, or republication, in whole or in part,  
 11 of any broadcast or any written, graphic, or other form of campaign materials prepared by the  
 12 candidate, his campaign committees, or their authorized agents shall be considered to be an  
 13 expenditure.”<sup>47</sup> The republication of campaign materials is also “considered a contribution for  
 14 the purposes of contribution limitations and reporting responsibilities of the person making the  
 15 expenditure,”<sup>48</sup> because the person financing the republication “has provided something of value  
 16 to the candidate [or] authorized committee.”<sup>49</sup> The candidate who prepared the campaign  
 17 material does not receive or accept an in-kind contribution, and is not required to report an

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<sup>43</sup> *See id.*

<sup>44</sup> *Id.*

<sup>45</sup> New Knowledge Resp. at 2. The Delaware Department of State Division of Corporations lists Popily, Inc. as a corporation registered with the state. *See Entity Search*, DEL. DIVISION OF CORPORATIONS, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last visited Nov. 15, 2019) (search for “Popily” under “Entity Search” or “5709906” under “File Number”).

<sup>46</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2.

<sup>47</sup> 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

<sup>48</sup> 11 C.F.R. § 109.23.

<sup>49</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003). The Commission has stated that “Congress has addressed republication of campaign materials through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views republication of his or her campaign material, even in part, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443.

1 expenditure, unless the dissemination, distribution, or republication of campaign materials is a  
2 coordinated communication.<sup>50</sup>

3 Here, New Knowledge financed the dissemination of materials produced by Watson's  
4 campaign when it paid to promote Facebook posts from Watson's campaign page. Specifically,  
5 New Knowledge admits that it spent \$672 on "ads shar[ing] Mr. Watson's Facebook posts and  
6 events."<sup>51</sup> For republication, the Commission has concluded that "campaign materials" include  
7 any material belonging to or emanating from a campaign.<sup>52</sup> Although New Knowledge  
8 characterizes those promoted posts as "updat[ing] ACP's readers of Mr. Watson's campaign  
9 event[s] and website,"<sup>53</sup> because New Knowledge paid to promote the Watson campaign's social  
10 media posts, New Knowledge appears to have financed the dissemination of Watson's campaign  
11 materials.

12 There is also information in the record suggesting that New Knowledge provided  
13 something of value to the Watson campaign when it served as an informal "advisor."<sup>54</sup> The Act  
14 defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything  
15 of value made by any person for the purpose of influencing any election for Federal office."<sup>55</sup>  
16 "[A]nything of value includes all in-kind contributions" such as "the provision of any goods or  
17 services without charge or at a charge that is less than the usual and normal charge."<sup>56</sup>  
18 "Examples of such goods or services include, but are not limited to: Securities, facilities,

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<sup>50</sup> 11 C.F.R. § 109.23(a).

<sup>51</sup> *See* New Knowledge Resp. at 2-4, 14.

<sup>52</sup> *See, e.g.*, First Gen. Counsel's Rpt. at 7-8, MUR 5743 (Betty Sutton) (candidate photo obtained from campaign website), recommendation adopted by Commission, Cert., MUR 5743 (Dec. 5, 2006).

<sup>53</sup> New Knowledge Resp. at 14.

<sup>54</sup> Dec. 19, 2018 N.Y. Times Article.

<sup>55</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>56</sup> 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8).

1 equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”<sup>57</sup> A  
2 news article cited by the MUR 7562 Complaint alleges that New Knowledge served as a “go-to  
3 media contact” who “got [Watson] interviews with *The Montgomery Advertiser* and the  
4 *Washington Post*,” and “offered advice on how to sharpen his appeal to disenfranchised Republican  
5 voters.”<sup>58</sup> These appear to be the kinds of media consulting services that, when provided at less  
6 than the usual cost to a candidate by a corporation, could qualify as an additional prohibited  
7 contribution.<sup>59</sup>

8 Respondents, however, contend that Watson did not qualify as a “candidate” under the  
9 Act and therefore that any activity related to him would not be regulated under the Act.<sup>60</sup> The  
10 Act defines a “candidate” as an individual seeking election to federal office who has received  
11 contributions or made expenditures in excess of \$5,000 or authorized another person to receive  
12 contributions or make expenditures who has received contributions or made expenditures in  
13 excess of \$5,000.<sup>61</sup> There is not enough information in the record to conclude that Watson  
14 crossed this \$5,000 threshold to become a candidate. Watson never filed a Statement of  
15 Candidacy or any disclosure reports with the Commission, and it does not appear that he ran a  
16 particularly large campaign since he garnered only “a few hundred votes.”<sup>62</sup> Moreover, New  
17 Knowledge disputes at least some of the news article’s claims about its services to Watson’s  
18 campaign.<sup>63</sup> Considering all of this information, there is considerable doubt that Watson became

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<sup>57</sup> *Id.* § 100.52(d).

<sup>58</sup> Dec. 19, 2018 N.Y. Times Article.

<sup>59</sup> *See* 52 U.S.C. §§ 30101(8), 30118(a); 11 C.F.R. § 100.52(d)(1).

<sup>60</sup> New Knowledge Resp. at 12-13; Investing in US Resp. at 5 & n.21.

<sup>61</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>62</sup> Dec. 19, 2018 N.Y. Times Article.

<sup>63</sup> Resp. at 7 (asserting that neither ACP nor New Knowledge aided Watson in getting media interviews or caused his Twitter followers to increase).

1 a candidate under the Act, and we do not recommend that the Commission expend further  
2 resources to investigate this question.<sup>64</sup>

3 Accordingly, we recommend that the Commission dismiss the allegation that New  
4 Knowledge made prohibited in-kind contributions to Watson's campaign in violation of 52  
5 U.S.C. § 30118(a).

6 **B. The Commission Should Dismiss the Allegations Regarding New**  
7 **Knowledge's Other Spending**

8 The broader allegations against New Knowledge appear to be that it spent \$100,000  
9 "experiment[ing] with many of the tactics now understood to have influenced the 2016 election"  
10 and "orchestrated an elaborate 'false flag' operation" against Moore.<sup>65</sup> New Knowledge largely  
11 denies these allegations.<sup>66</sup> Even if true, however, the information in the record does not appear  
12 to indicate that these actions, when considered in their contexts, constitute violations of the Act.

13 Other than the allegations concerning Mac Watson above, it appears that New  
14 Knowledge could have been liable for violating the Act in one of three ways. First, given its  
15 alleged intent to influence a federal election, New Knowledge could have been liable for failing  
16 to register and report as a political committee.<sup>67</sup> The Act and Commission regulations define a  
17 "political committee" as "any committee, club, association, or other group of persons which  
18 receives contributions aggregating in excess of \$1,000 during a calendar year or which makes  
19 expenditures aggregating in excess of \$1,000 during a calendar year."<sup>68</sup> In *Buckley v. Valeo*,<sup>69</sup>

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<sup>64</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>65</sup> Dec. 19, 2018 N.Y. Times Article.

<sup>66</sup> New Knowledge Resp. Morgan told the New York Times that others had worked on the effort and written the internal report on which the story was based. Dec. 19, 2018 N.Y. Times Article.

<sup>67</sup> 52 U.S.C. §§ 30102, 30103, and 30104(a)

<sup>68</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>69</sup> 424 U.S. 1 (1976) (*per curiam*).

1 the Supreme Court held that defining political committee status “only in terms of [the] amount of  
2 annual ‘contributions’ and ‘expenditures’” might be overbroad, reaching “groups engaged purely  
3 in issue discussion.”<sup>70</sup> To cure that infirmity, the Court concluded that the term “political  
4 committee” “need only encompass organizations that are under the control of a candidate or the  
5 *major purpose of which is the nomination or election of a candidate.*”<sup>71</sup> Accordingly, under the  
6 statute as thus construed, an organization that is not controlled by a candidate must register as a  
7 political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major  
8 purpose” the nomination or election of federal candidates.

9         The current record does not support an inference that New Knowledge was a political  
10 committee because, even if the statutory threshold is met, its major purpose appears to be  
11 cybersecurity research rather than influencing federal elections. Although the use of  
12 disinformation tactics could itself be indicative of a purpose to nominate or elect a candidate,  
13 the available information indicates that even if New Knowledge acted with such a purpose, that  
14 purpose was not its major purpose. The Commission has explained that, in order to determine an  
15 entity’s “major purpose,” it undertakes a fact-intensive case-by-case analysis looking at a  
16 group’s “overall conduct,” including public statements about its mission, organization  
17 documents, the proportion of spending related to “federal campaign activity,” and whether it  
18 engaged in any activities that were not campaign related.<sup>73</sup>

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<sup>70</sup> *Id.* at 79.

<sup>71</sup> *Id.* (emphasis added).

<sup>73</sup> Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5605 (Feb. 7, 2007).

1           The Response from New Knowledge describes its founding purpose “to study the ever-  
2 evolving online data ecosystem and provide online reputation-management and data-security  
3 services.”<sup>74</sup> Significantly, the United States Senate contracted with New Knowledge to study  
4 and prepare a white paper on Russian interference in the 2016 election,<sup>75</sup> and the company’s  
5 current website highlights a similar type of work.<sup>76</sup> Even the articles cited by the Complaints  
6 characterize New Knowledge as “a small cyber security firm”<sup>77</sup> and “research firm.”<sup>78</sup> Although  
7 there is no information in the record about what proportion of New Knowledge’s spending was  
8 related to the Alabama project, New Knowledge’s characterization of it as a “small research  
9 project”<sup>79</sup> appears to be accurate, and there is no basis to assume that the project accounted for a  
10 particularly large share of New Knowledge’s activity — the reported budget was \$100,000 and  
11 New Knowledge’s successor company appears to have no less than five executive officers.<sup>80</sup>  
12 Thus, there is no indication in the Complaints or the Responses, or in the information otherwise  
13 available to us, that New Knowledge’s major purpose at this or any other time was to nominate  
14 or elect federal candidates.

15           Second, even if New Knowledge were not a political committee, it still could be liable for  
16 failing to report independent expenditures. An organization that is not a political committee and  
17 makes independent expenditures in an aggregate amount or value in excess of \$250 during a

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<sup>74</sup> New Knowledge Resp. at 2.

<sup>75</sup> See Press Release of Intelligence Committee, “New Reports Shed Light on Internet Research Agency’s Social Media Tactics,” Dec. 17, 2018, <https://www.intelligence.senate.gov/press/new-reports-shed-light-internet-research-agency%E2%80%99s-social-media-tactics>.

<sup>76</sup> Yonder (formerly New Knowledge), About Us, <https://www.yonder-ai.com/about-us> (last visited November 16, 2021) (“Yonder is an A.I. software company that discovers the hidden groups who control and amplify online narratives, so companies can navigate an unpredictable, ever-evolving internet with confidence”).

<sup>77</sup> Dec. 19, 2018 N.Y. Times Article.

<sup>78</sup> Wash. Post Article.

<sup>79</sup> New Knowledge Resp. at 3.

1 calendar year must file a statement with the Commission.<sup>81</sup> An “independent expenditure” is an  
2 expenditure “for a communication expressly advocating the election or defeat of a clearly  
3 identified candidate” that is not coordinated with the candidate or the candidate’s committee.<sup>82</sup>  
4 The term “expressly advocating” means any communication that: (1) uses phrases or words such  
5 as “vote for,” “elect,” “defeat,” etc., “which in context can have no other reasonable meaning  
6 than to urge the election or defeat of one or more clearly identified candidate(s)”; or (2) “[w]hen  
7 taken as a whole and with limited reference to external events, such as the proximity to the  
8 election, could only be interpreted by a reasonable person as containing advocacy of the election  
9 or defeat of one or more clearly identified candidate(s).”<sup>83</sup>

10 The information before the Commission does not indicate that New Knowledge engaged  
11 in any express advocacy or its functional equivalent beyond its endorsement of Watson, who as  
12 noted above, does not appear to have met the Act’s definition of a “candidate.” The *New York*  
13 *Times* article concerning New Knowledge does not contain any examples of language that ACP  
14 posted. In addition, the ACP Facebook Page no longer appears to exist, and we were unable to  
15 find any archived versions of it. As for the allegation that New Knowledge made it appear that  
16 numerous Russian Twitter accounts supported Moore,<sup>84</sup> that action would not necessarily contain  
17 express advocacy as defined in the Act, and the available record does not reflect that it did. For  
18 these reasons, there does not appear to be a basis upon which the Commission could find reason  
19 to believe that New Knowledge made unreported independent expenditures.

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<sup>80</sup> Yonder (formerly New Knowledge), About Us, <https://www.yonder-ai.com/about-us>.

<sup>81</sup> 52 U.S.C. § 30104(c)(1); *see also* 11 C.F.R. §§ 109.10, 114.10(b) (independent expenditure reporting requirements for corporations and labor organizations).

<sup>82</sup> 11 C.F.R. § 100.16(a) (definition of independent expenditure); *see also* 52 U.S.C. § 30101(17) (same).

<sup>83</sup> 11 C.F.R. § 100.22(a)-(b).

<sup>84</sup> *See supra* note 30 and accompanying text.



1 Third, even if New Knowledge were not a political committee and did not make any  
2 independent expenditures, it could be liable for any coordinated communications or  
3 expenditures. Prohibited in-kind corporate contributions include, *inter alia*, coordinated  
4 communications, subject to a three-part test codified at 11 C.F.R. § 109.21, and coordinated  
5 expenditures, defined at 11 C.F.R. § 109.20(a). Under the Commission's coordinated  
6 communications regulation, the communication at issue must: (1) be paid for by a third party;  
7 (2) satisfy a "content" standard; and (3) satisfy a "conduct" standard.<sup>85</sup> All three prongs are  
8 required in order for the communication to be considered a coordinated communication and  
9 treated as an in-kind contribution.<sup>86</sup>

10 Setting aside the activity pertaining to Watson, however, there is no information before  
11 the Commission indicating that the conduct standard was met. There is no information  
12 suggesting that the effort was coordinated with Moore's Democratic opponent, Doug Jones.  
13 Jones filed the instant Complaint against New Knowledge, and the *New York Times* article in the  
14 Complaint notes that "[t]here is no evidence that Mr. Jones sanctioned or was even aware of the  
15 social media project."<sup>87</sup>

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<sup>85</sup> 11 C.F.R. § 109.21. The content standards include: (1) a communication that is an electioneering communication; (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; (4) a public communication that, in relevant part, refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated 90 days or fewer before a primary, general, or special election, and is directed to voters in the jurisdiction of the clearly identified candidate; and (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c).

The conduct standards include: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; and (5) former employee or independent contractor. *Id.* § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See id.* § 109.21(d)(6).

<sup>86</sup> *Id.* § 109.21(a).

<sup>87</sup> Dec. 19, 2018 N.Y. Times Article.

1           Accordingly, we recommend that the Commission dismiss the allegation that New  
2 Knowledge violated the Act by making disbursements for the broader social media campaign  
3 concerning the 2017 special election for U.S. Senate in Alabama.

4           **C.     The Commission Should Dismiss the Allegations Regarding Jonathon**  
5           **Morgan and Investing in US**

6           Despite the serious allegations that Investing in US may have spent \$200,000 for projects  
7 intended to influence a federal election, there is not enough information in the record to indicate  
8 that Investing in US violated the Act. The news articles provide little explanation about  
9 Investing in US or its relationship with the projects it allegedly funded. Moreover, even if the  
10 MUR 7562 Complaint's news article about the "Dry Alabama" initiative could be read to  
11 implicate Investing in US, there is no information suggesting it violated the Act.<sup>88</sup> Likewise, the  
12 allegation regarding Jonathan Morgan — that he spent "less than \$10" on unspecified retweets<sup>89</sup>  
13 — does not appear on its face to suggest that Morgan violated the Act.<sup>90</sup> For these reasons, we  
14 recommend that the Commission dismiss the allegations that Jonathan Morgan and Investing in  
15 Us violated the Act.

16           **IV.    RECOMMENDATIONS**

17           1. Decline to open a Matter Under Review with respect to Pre-MUR 621;  
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<sup>88</sup>       Much like the allegations against New Knowledge, the information before the Commission does not make a prima facie case for any violation of the Act. The news article does not, on its own, appear to raise a reasonable inference that Investing in US was a political committee. The examples of posts from the group do not contain express advocacy that would implicate the Act's reporting requirements for independent expenditures. *See* Jan. 7, 2019 N.Y. Times Article (citing examples of messages: "Pray for Roy Moore," "Re-enact Prohibition and make Alabama dry again!," and "Democrats continue to put party before country"). Finally, it does not appear that the effort was coordinated with a candidate.

<sup>89</sup>       Wash. Post Article.

<sup>90</sup>       Morgan, as an individual, is subject only to contribution limits rather than an outright prohibition. 52 U.S.C. § 30116(a). Thus, even if his tweets were in-kind contributions — although there is no reason to think that they were — they might still be permissible. Moreover, the reported \$10 figure is below the Commission's threshold to report independent expenditures, 52 U.S.C. § 30104(c)(1), although again, there is no information suggesting that these tweets contained express advocacy.

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- 2. Dismiss the allegation that Popily, Inc. d/b/a Yonder f/k/a New Knowledge violated 52 U.S.C. § 30118(a) by making corporate in-kind contributions to Mac Watson;
- 3. Dismiss the allegation that Popily, Inc. d/b/a Yonder f/k/a New Knowledge violated the Act by making disbursements for its broader social media campaign;
- 4. Dismiss the allegations that Investing in US and Jonathon Morgan violated the Act;
- 5. Approve the attached Factual and Legal Analysis;
- 6. Approve the appropriate letters; and
- 7. Close the file.

Lisa J. Stevenson  
Acting General Counsel

December 9, 2021  
Date

Charles Kitcher  
Charles Kitcher  
Associate General Counsel for Enforcement

Jin Lee  
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