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May 8, 2020

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RMJacobs@Venable.com***Via Email to CELA@fec.gov***Office of Complaints Examination
and Legal Administration
Federal Election Commission
1050 First Street, NW
Washington, DC 20463

Attention: Christal Dennis, Paralegal

Re: MUR 7672—Response of Joni for Iowa; Jobs, Opportunity and New Ideas PAC; Cabell Hobbs as Treasurer; and Senator Joni K. Ernst

To Whom It May Concern:

This letter responds to the Complaint filed in MUR 7672 by the Campaign for Accountability (“Complainant” or “CFA”), a “left-wing advocacy organization”¹ masquerading as a nonpartisan watchdog, on behalf of Joni for Iowa; Jobs, Opportunity and New Ideas PAC; Cabell Hobbs as the treasurer of these two entities, and Senator Joni K. Ernst (collectively, the “Respondents”). The Complaint was clearly filed for publicity and political gain, and is based exclusively on flawed legal theories, speculation and innuendo. The asserted facts on their face do not support a reason to believe finding in this matter, and the Complaint should be dismissed.

The Federal Election Commission (the “Commission”) may find “reason to believe” only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the “Act”). *See* 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement

¹ <https://www.influencewatch.org/non-profit/campaign-for-accountability/>

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of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

In this case, CFA fails to provide any basis for the Commission to find reason to believe that Respondents violated the Federal Election Campaign Act (“the Act”) in any way. Neither Senator Ernst, her principal campaign committee or her leadership PAC, nor any agents acting on behalf of her or these entities, has established, maintained, financed, or controlled any entity that has raised or spent funds not subject to the limitations of the Act. Nor has Senator Ernst or her agents acting on her behalf raised or solicited any funds not subject to the limitations of the Act. Nothing in the Complaint suggests otherwise and the Commission should dismiss this matter promptly.

STANDARDS FOR A REASON TO BELIEVE FINDING

The Commission may only rely on two sources to determine whether it “has reason to believe that a person has committed ... a violation of [the Act].” 52 U.S.C. § 30109(a). First, the Commission may review the allegations in the complaint itself. *See id.* Second, the Commission may review “information ascertained in the normal course of its supervisory responsibilities.” *Id.* This second provision is narrow, as the Commission has no “roving statutory functions” to “gather and compile information and to conduct periodic investigations.” *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981) (“Machinists”). Instead, this statutory prong permits the Commission to review only information included in “other sworn complaints” or from evidence of actual “wrongdoing” learned in its routine review of reporting data. *In re Fed. Election Campaign Act Litig.*, 474 F. Supp. 1044, 1046 (D.D.C. 1979); *see also FEC v. Nat. Republican Senatorial Comm.*, 877 F. Supp. 15, 18 (D.D.C. 1995) (“NRSC”).

Accordingly, a “reason to believe” determination must be made “without any investigation” by the Commission, which precludes any type of independent inquiry into the substance of the allegations. *Stockman v. FEC*, 138 F.3d 144,147 n.2 (5th Cir. 1998).² The Supreme Court reaffirmed that adjudications involving political speech must not entail

² *See also NRSC*, 877 F. Supp. at 18 (“The FEC may not begin an enforcement investigation until after it finds reason to believe a violation has occurred.”).

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“burdensome” inquiries, *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (“WRTL II”), should “resolve disputes quickly without chilling speech,” *id.*, and “avoid threats of criminal liability and the heavy costs of defending against FEC enforcement” due to the uncertain application of federal law. *Citizens United v. FEC*, 558 U.S. 310, 335 (2010). This is particularly true even at the earliest stages of the Commission’s enforcement process, where a “reason to believe” finding can be treated as evidence of at least some guilt and stigmatizes a respondent in the public’s eye.

A “reason to believe” finding requires “a minimum evidentiary threshold [providing] at least ‘some legally significant facts’ to distinguish the circumstances from every other” situation where an entity engages in independent speech. *Democratic Senatorial Campaign Comm. v. FEC*, 745 F. Supp. 742, 745-46 (D.D.C. 1990). Complaints that state charges “only in the most conclusory fashion,” without supporting evidence, are dismissed by the Commission. *In re Fed. Election Campaign Act Litig.*, 474 F. Supp. at 1047. And where “the record did not suggest” a violation had occurred and “respondents’ answers to the complaint adequately refuted the complainant’s allegations as to any presumed,” dismissal is likewise warranted. *Democratic Senatorial Campaign Comm.*, 745 F. Supp. at 744.³

DISCUSSION

The Complaint alleges that “it appears likely” that Senator Ernst and her agents violated section 30125(e)(1) of the Act. That section of the Act says that candidates and those holding federal office—which clearly includes Senator Joni K. Ernst—may not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office...unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.” 52 U.S.C. § 30125(e)(1)(A). It also says that agents of a candidate may not undertake such activity. *Id.* Finally, the Act says that “an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office” may not engage in such activity. *Id.* The Commission’s regulations specify that these

³ The Commission’s Guidebook explains that “a no reason to believe finding would be appropriate when (1) a violation has been alleged, but the respondent’s response or other evidence demonstrates that no violation has occurred, (2) a complaint alleges a violation but is either not credible or is so vague that an investigation would be unwarranted, or (3) a complaint fails to describe a violation of the Act.”

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last prohibitions also apply to entities that are established, financed, maintained, or controlled by a candidate's agent. 11 C.F.R. § 300.2(c)(1). Thus, there are candidate prohibitions, agent prohibitions, and established-entity prohibitions on the delineated activities. Neither Senator Ernst, nor any of her political committees, nor any of her agents acting on her behalf engaged in any such activity. As such, there is no reason to believe any violation of the Act occurred and this Complaint should be dismissed.

I. Senator Ernst did not establish, finance, maintain, or control Iowa Values.

The Complaint makes absolutely no allegations that Senator Ernst took any action to establish, finance, maintain, or control any entity that has spent or raised funds outside of the federal limits. None. Nor does it make any allegation that Joni for Iowa, her official campaign committee, took any such actions. Nor does it make any allegations that her leadership PAC took any such actions.

The Complaint also makes no allegations that Senator Ernst directed her agents to take any such actions. The Commission's regulations define agent as "any person who has actual authority, either express or implied...to solicit, receive, direct, transfer, or spend funds in connection with any election." 11 C.F.R. § 300.2(b)(3). The Commission's Explanation and Justification of the agency rules say that "a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals." Federal Election Commission Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49083 (Jul. 29, 2002). Not a single word in the Complaint suggests that any of the individuals mentioned was acting at the direction of Senator Ernst.

Accordingly, the Commission should find that there is no reason to believe that Senator Ernst; Joni for Iowa, Jobs, Opportunity and New Ideas PAC; and Cabell Hobbs as treasurer violated the Act.

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II. Senator Ernst’s Agents did not establish, finance, maintain, or control Iowa Values.

The Complaint asks the Commission to make the leap of faith that “consultants with close ties to Sen. Ernst, who were all working for paid consultants of Sen. Ernst’s campaign, were acting as agents of Sen. Ernst when they started Iowa Values in order to support her campaign.” Compl. ¶ 21. The Complaint focuses on the work that Jon Kohan, Derek Flowers, and Claire Holloway Avella did for Iowa Values and the work they did for Senator Ernst, and then asks the Commission to draw the conclusion that they were acting as agents of Senator Ernst to establish, maintain, finance, or control Iowa Values. Compl. ¶ 19-20. The Complaint not only fails to show that these individuals established Iowa Values, but it also fails to prove that they were acting as Agents of Senator Ernst when they were performing services for Iowa Values (to the extent that is even relevant).

A. Nothing in the Complaint suggests that these individuals established Iowa Values.

Iowa Values was created on February 1, 2017, as shown in Exhibit A to the Complaint. The 2017 IRS Form 990 says that its mission is “to educate the public about common-sense solutions to various public policy issues of national importance including limited government, defending life, cutting wasteful spending, finding solutions for the challenges facing rural America, and building a strong national defense.”⁴ The 2017 990 lists three board members, none of whom are mentioned in the Complaint, and none of whom is suggested to be an agent of Senator Ernst.⁵

District of Columbia corporate law makes clear that these three directors both control Iowa Values and established Iowa Values. The D.C. Nonprofit Corporations Act makes clear that “all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors.” D.C. Code § 29-406.01(b). A nonprofit corporation is formed in the District of Columbia by

⁴ <https://www.open990.org/org/815224793/iowa-values/>

⁵ <https://projects.propublica.org/nonprofits/organizations/815224793/201833189349304518/IRS990>

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one or more “incorporators,” who file the articles of incorporation and then appoint the board of directors (unless the directors are named in the articles of incorporation, in which case the board takes office immediately upon formation). D.C. Code § 29-402.01 and .05. Nothing in the complaint mentions the directors, or suggests that they were somehow not responsible for creating and establishing Iowa Values. As such, the Commission should find that there is no reason to believe that any of Senator Ernst’s agents established Iowa Values.

B. The facts do not suggest that these individuals established Iowa Values.

The FEC’s records of disbursements shows that the first disbursement paid to Mr. Kohan’s employer, Jamestown Associates, was made on April 11, 2017 from Jobs, Opportunities and New Ideas PAC and May 8, 2017, from Joni for Iowa.⁶ Iowa Values was incorporated on February 1, 2017, before his firm was employed by either Joni for Iowa or Jobs, Opportunities and New Ideas PAC. Accordingly, he could not have been an agent for Senator Ernst at the time, even if dual engagement by his company could somehow cause him to be an agent for Senator Ernst. Mr. Kohan does not currently work for Iowa Values.

Mr. Flowers’ company, Midland Strategies, was engaged by Senator Ernst’s leadership PAC at the time Iowa Values was formed, as shown by the FEC’s disbursement records. His company was not employed by Joni for Iowa. His company’s address in Iowa is listed with the Iowa Secretary of State’s office on the foreign corporation registration, as noted in the Complaint. Providing an address does not suggest he had any formal role with Iowa Values beyond allowing his address to be used for corporate records purposes. Nothing in the Complaint suggests he received compensation or performed other services for Iowa Values. This proves Mr. Flowers had no substantive role with Iowa Values at its inception, other than to allow the group to use his address.

The Complaint does specifically reference his becoming Executive Director in June 2019—fully a year after the FEC’s records show he received any compensation from the leadership

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https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00546788&committee_id=C00566851&recipient_name=jamestown&two_year_transaction_period=2018&two_year_transaction_period=2020&min_date=01%2F01%2F2015&max_date=12%2F31%2F2020.

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PAC or a joint fundraising committee.⁷ Thus, if anything, the Complaint suggests he could not have been acting as an agent of Senator Ernst at the time he became Executive Director of Iowa Values, negating CFA's speculative inferences to the contrary.

Claire Holloway Avella has been conducting fundraising services for Senator Ernst, her campaign, and her leadership PAC since 2014. Nothing in the Complaint says anything about her establishing Iowa Values, other than that her office address was listed on District of Columbia records.

In sum, it is clear that the information alleged in the Complaint does not suggest that they established Iowa Values. But, even if they did, there is nothing in the complaint that suggests they were acting as Senator Ernst's agents.

C. Even if the Commission considers these individuals to have “established” Iowa Values, there is nothing to suggest they were acting as Senator Ernst's agents.

As set forth above, the presence of a board of directors with control of the corporation is proof that the three individuals discussed in the Complaint did not form Iowa Values and should lead the Commission to dismiss this complaint. Moreover, the publicly available facts do not, in any way, suggest that they created Iowa Values, which should also lead the Commission to dismiss this matter. With that said, even assuming *arguendo* that these individuals established Iowa Values, which they did not, there is nothing in the Complaint—beyond wild speculation and innuendo—to suggest that they were acting as Senator Ernst's agents.

The Complaint says that “consultants with close ties to Sen. Ernst, who were all working for paid consultants of Sen. Ernst's campaign, were acting as agents of Sen. Ernst when they started Iowa Values in order to support her campaign.” Compl. ¶ 21. The Complaint makes the bald assertion that “[t]here is no plausible reason why two D.C. based consultants would

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https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00566851&committee_id=C00614198&recipient_name=midland+strategies&min_date=01%2F01%2F2015&max_date=12%2F31%2F2020

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decide on their own accord to help establish a 501(c)(4) organization focused on the values of the State of Iowa other than to support the re-election of Sen: Ernst.” Complaint ¶ 19.

Notwithstanding the fact that CFA’s geography-based argument has no grounding in actual law, there are numerous reasons why these individuals would be involved in such an effort, including:

- A policy-centered organization focused on conservative causes could be beneficial to public officials in Des Moines and in Washington by helping to educate the public about these issues and to build support for such policies.
- Having worked in Iowa and solicited Iowa donors, they know the state and its people well, and, working with Iowans such as the three board members, they could create an organization that would promote conservative values and policies.
- While Ms. Avella is based in the general vicinity of Washington, D.C., she represents clients from all over the country. Nothing in the complaint suggests that Mr. Kohan works in Washington,⁸ and he travels all over the country working for candidates and causes. There is really no reason to think they would not be interested in working with a conservative social welfare organization in a state that they know well.

Perhaps the better thing to say is that there are many reasons why two consultants who know Iowa well would want to establish a conservative social welfare organization there. None of them relate to the separate and distinct rolls they play, or previously played, for Senator Ernst.

Moreover, there is no reason why these individuals cannot work for and with multiple clients. To suggest that their work for Senator Ernst precludes them from doing other work in Iowa is absurd and would deprive them of a right to make a living and a right to exercise

⁸ His biography suggests otherwise: <https://www.jamestownassociates.com/jon-kohan> (he “currently resides in North Carolina with his wife Brittany”).

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their freedom of speech. The Commission's Explanation and Justification is clear that individuals can wear multiple hats and serve different principals:

In light of the foregoing, it is clear that individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties.⁹

The Supreme Court has also made clear that even “party officials may solicit soft money in their unofficial capacities.” *McConnell v. FEC*, 540 U.S. 93, 159-61 (2003).¹⁰

While the example focuses on fundraising, there is nothing in the Explanation and Justification or the Commission's regulations that suggest it does not apply generally to the discussion of agents. The example follows the Commission's explanation that “the agent must be acting on behalf of the principal,” to cause a violation. *Id.* The Commission explains that “[t]his additional requirement ensures that liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts *for the principal.*” *Id.* (emphasis added).

There are no facts, just illogical leaps, in the Complaint that suggest any of these individuals were working as agents for Senator Ernst or her committees when they undertook their efforts. To be clear, there is nothing in the Complaint on which the Commission could find reason to believe these individuals created Iowa Values, but even assuming they did, there are no actual facts presented in the Complaint that substantiate CFA's claim that they were acting as agents of Senator Ernst. As such, the Commission should dismiss this Complaint.

⁹ Final Rules and Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064, 49083 (July 29, 2002).

¹⁰ Although it does not appear to be an element of the Complaint, it is also worth noting that under the Commission's rules, it is clear that Ms. Avella is perfectly free to solicit funds for Iowa Values as long as she is not acting as Senator Ernst's agent when doing so. Nothing in the Complaint suggests was acting as her agent when making the one solicitation that formed the basis of the entire Complaint.

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D. The Commission’s factors to determine whether an entity was established, financed, maintained, or controlled by Senator Ernst or her agents suggest Iowa Values was not.

Finally, in light of the prior discussion, it is worth noting that the Commission’s indicia of whether an entity is established, financed, maintained, or controlled by a federal official all tilt against such a finding with respect to Iowa Values. Many are completely irrelevant. Those that superficially involve similar facts still are not true because those facts do not “indicate[] a formal or ongoing relationship between” Senator Ernst and Iowa Values.

Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity.

As a tax-exempt nonprofit organization, Iowa Values has no stock or securities.

Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures.

There are no allegations in the Complaint about the formal documents. The publicly-available information about Iowa Values discloses the names of the directors, who are not agents of Senator Ernst. As the Commission’s Explanation and Justification make clear, “actions taken by a sponsor’s agents *on behalf of the sponsor*”¹¹ are the key to determining indirect creation. As such, there is nothing to show formal or informal control.

Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity.

The publicly available Form 990 for Iowa Values shows that it has no employees. The Chairman is one of the Directors, the Secretary/Treasurer is

¹¹ *Id.*

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one of the Directors. In 2017, the Executive Director was Jon Kohan, and, as noted above, he was not acting as an agent of Senator Ernst when retained by Iowa Values. As such, this is inapplicable to Iowa Values.

Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity.

Senator Ernst's entities have no members.

Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity.

This factor has been discussed extensively. Iowa Values has no employees. As shown on its Form 990, the Executive Director was compensated as an independent contractor. Based on the FEC filings for Joni for Iowa, any role that Mr. Kohan has with Joni for Iowa is also on an independent contractor basis—he is not the campaign manager, for example. As such, there are no overlapping officers. Even if he were to be considered such, as explained above, this does not indicate a formal or ongoing relationship, and the mere fact that he is involved with both organizations cannot satisfy this criterion alone.

Whether a sponsor has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity.

Joni for Iowa and Jobs, Opportunities and New Ideas PAC are ongoing entities, so Iowa Values cannot be a successor entity. As discussed above, there are no members, there are no common employees, and any officer overlap does not suggest common control.

Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct

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or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully.

There are no allegations made, and the FEC reports for Joni for Iowa and Jobs, Opportunity and New Ideas PAC show that they have not provided any funds or goods to Iowa Values.

Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully [sic].

As explained above, Ms. Avella conducts fundraising for Senator Ernst and for Iowa Values. When raising funds for Iowa Values she is not acting as an agent of Senator Ernst. Therefore, this factor is not satisfied.

Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity.

The spartan allegations in the Complaint have been refuted above, demonstrating that this factor is not satisfied.

Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity.

As a nonprofit corporation exempt under Section 501(c)(4) of the Internal Revenue Code as a social welfare organization, Iowa Values is not required to publicly disclose its donors. Even assuming every Iowa Values supporter also gave to Senator Ernst, there is nothing to suggest a formal or ongoing relationship—only that the donors would be supportive of an organization that is supportive of Senator Ernst and her policy positions. As the Commission has found, “one would expect some degree of overlap between the contributor base

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of ideologically compatible organizations without their necessarily being a 'formal or ongoing relationship' between the two organizations."¹²

In short, none of the factors suggests that Senator Ernst or her agents established, financed, maintained, or controlled Iowa Values, and the Complaint should be dismissed accordingly.

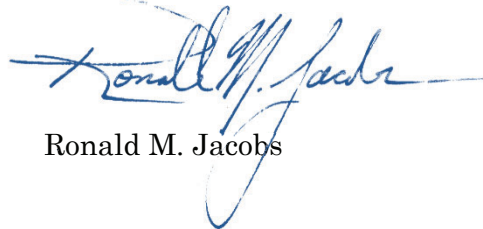
III. Because Senator Ernst and her agents did not violate the Act, there can be no liability for Iowa Values.

Finally, there can be no reason to believe that Iowa Values violated the Act if Senator Ernst and her agents did nothing wrong. As set forth above, Iowa Values is a nonprofit social welfare organization that operates in Iowa. It may support Senator Ernst and others who share its political positions, but that does not in any way suggest that it has violated the Federal Election Campaign Act.

CONCLUSION

For all of these reasons, we respectfully request the Commission act swiftly to determine that the Complaint provides no facts on which the Commission could possibly find that there is a reason to believe Senator Ernst; Joni for Iowa; Jobs, Opportunity and New Ideas PAC; or Cabell Hobbs as treasurer engaged in any impermissible activity and dismiss this Complaint.s

Respectfully submitted,



Ronald M. Jacobs

¹² MUR 5343 (Democratic Senate Majority PAC - Non Federal Account), First General Counsel's Report, at 11.