

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT**

MUR 7672

COMPLAINT DATE: December 16, 2019

NOTIFICATION DATES: December 18, 2019;
January 29, 2020

LAST RESPONSE RECEIVED: May 11, 2020

ACTIVATION DATE: May 29, 2020

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: June 17, 2024

Latest: Ongoing

ELECTION CYCLE: 2020

COMPLAINANT:Daniel Stevens, Executive Director
Campaign for Accountability

MUR 7674

COMPLAINT DATE: December 19, 2019

NOTIFICATION DATES: December 27, 2019;
January 29, 2020

LAST RESPONSE RECEIVED: May 15, 2020

ACTIVATION DATE: May 29, 2020

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: July 27, 2024

Latest: Ongoing

ELECTION CYCLE: 2020

COMPLAINANT:Margaret Christ and Brendan Fischer
Campaign Legal Center

MUR 7732

COMPLAINT DATES: April 30, 2019

NOTIFICATION DATE: May 4, 2020

LAST RESPONSE RECEIVED: May 26, 2020

ACTIVATION DATE: May 29, 2020

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: April 15, 2024

Latest: October 15, 2024

ELECTION CYCLE: 2020

COMPLAINANT:

Tiffany Muller, End Citizens United

RESPONDENTS:Senator Joni Ernst
Joni for Iowa and Cabell Hobbs, in his official capacity
as treasurer

1 Jobs Opportunity and New Ideas PAC and Cabell
 2 Hobbs, in his official capacity as treasurer
 3 Iowa Values
 4

5 **RELEVANT STATUTES**
 6 **AND REGULATIONS:**

7 52 U.S.C. § 30101(4)(A)
 8 52 U.S.C. § 30102
 9 52 U.S.C. § 30103
 10 52 U.S.C. § 30104 (a),(b), (c) and (g)
 11 52 U.S.C. § 30116
 12 52 U.S.C. § 30118(a)
 13 52 U.S.C. § 30125
 14 11 C.F.R. § 100.22(a)
 15 11 C.F.R. § 104.3(b)(4)(i), (vi)
 16 11 C.F.R. § 104.9
 17 11 C.F.R. § 109.20(a)
 18 11 C.F.R. § 109.21
 19 11 C.F.R. § 109.23(a)

20 **INTERNAL REPORTS CHECKED:** Disclosure Reports
 21

22 **AGENCIES CHECKED:** Internal Revenue Service Filings
 23

24 **I. INTRODUCTION**
 25

26 These matters stem from three separate complaints making various allegations regarding
 27 a 501(c)(4) organization named Iowa Values and its activities in support of Iowa U.S. Senator
 28 Joni Ernst's candidacy for reelection in 2020. One of the complaints alleges that Iowa Values'
 29 major purpose was the reelection of Ernst, and that after accepting contributions and making
 30 expenditures for the purpose of supporting Ernst, it should have registered as a political
 31 committee with the Commission. Some of the complaints also allege that Ernst, Ernst's principal
 32 campaign committee, Joni for Iowa, Ernst's Leadership PAC, Jobs Opportunity and New Ideas
 33 PAC ("New Ideas PAC"), and their agents solicited non-federal funds for Iowa Values, and that
 34 Iowa Values used such funds to pay for coordinated communications including the republication
 35 of Ernst campaign materials. Finally, one of the complaints alleges that Joni for Iowa allegedly
 36 failed to itemize payroll disbursements in order to hide funds paid to campaign employees who
 37 may have been working simultaneously for Iowa Values.

1 Respondents generally deny the allegations. Although Iowa Values does not deny that it
2 solicited funds to support Ernst and that it spent funds to support Ernst, it denies that it should
3 have registered as a political committee, asserting that its major purpose concerned issue
4 advocacy. Ernst, her campaign committee, and her leadership PAC deny that any of the named
5 individuals acted as agents of the campaign in soliciting nonfederal funds for Iowa Values, and
6 deny that Iowa Values coordinated its communications with Ernst or her committees. Joni for
7 Iowa similarly denies any attempt to hide the names of committee staff by failing to itemize
8 disbursements.

9 As discussed in further detail below, based in part on fundraising solicitations and public
10 communications that expressly advocate Ernst's reelection and a distinct change in the group's
11 focus away from broader issues to Ernst's reelection beginning in 2019, the available
12 information indicates that Iowa Values' major purpose was to support Ernst's candidacy, which
13 requires its registration as a political committee under the Federal Election Campaign Act of
14 1971, as amended (the "Act"). Therefore, we recommend that the Commission find reason to
15 believe that Iowa Values violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize,
16 register, and report as a political committee, and violated 52 U.S.C. § 30104(b), (c) or (g) by
17 failing to file reports of independent expenditures. While there appears to be insufficient
18 information to support the allegation that two of the named individuals acted as Ernst's agents
19 when they performed services for Iowa Values, there is information that Ernst may have played a
20 role with soliciting funds for Iowa Values by connecting a potential contributor to Iowa Values'
21 fundraising consultant. Thus, we recommend that the Commission find reason to believe that
22 Ernst and Joni for Iowa violated 52 U.S.C. § 30125 by soliciting non-federal funds through Iowa
23 Values, but that it take no action at this time as to New Ideas PAC. Because it appears that Iowa
24 Values republished Ernst campaign materials, we recommend that the Commission find reason

1 to believe that Iowa Values violated 52 U.S.C. § 30118(a) by making a prohibited in-kind
2 corporate contribution to Joni for Iowa. However, as explained further below, we recommend
3 that the Commission take no action at this time concerning the related coordination allegations.
4 Finally, in light of the amendments it filed with the Commission, we recommend that the
5 Commission dismiss the allegation that Joni for Iowa failed to itemize payroll disbursements in
6 violation of 52 U.S.C. § 30104(b)(5).

7 **II. FACTUAL BACKGROUND**

8 Joni Ernst is a candidate for reelection to the U.S. Senate for Iowa during the 2020
9 election cycle.¹ Joni for Iowa is her principal campaign committee.² New Ideas PAC has been
10 Ernst's Leadership PAC since 2014.³ Joni for Iowa is also a participant, along with New Ideas
11 PAC, in the joint fundraising committee, Joni's Roast and Ride.⁴

12 Iowa Values was established in 2017 and that same year registered as a 501(c)(4) tax-
13 exempt organization with the Internal Revenue Service ("IRS") stating that its mission is "[t]o
14 educate the public about common-sense solutions to various public policy issues of national
15 importance, including limited government, defending life, cutting wasteful spending, finding

¹ See *Meet Joni*, U.S. Senate, <https://www.ernst.senate.gov/public/index.cfm/meet-joni> (last accessed July 20, 2020); Amended Statement of Candidacy (Apr. 4, 2019).

² See Amended Statement of Organization (June 26, 2020). Ernst's campaign website can be found at <https://joniernst.com/>.

³ See Statement of Organization (Aug. 6, 2014) (initially registering as "JONI PAC") and Amended Statement of Organization (Sept. 16, 2014) (changing its name to "Jobs Opportunity and New Ideas PAC" after being advised by the Reports Analysis Division ("RAD") that it could not include the name of a candidate as part of the committee's name).

⁴ A nonfederal committee named Joni PAC Iowa, is the third participant for the joint fundraiser. See Statement of Organization (Apr. 7, 2016), Joni's Roast and Ride, <https://docquery.fec.gov/pdf/177/201604070300061177/201604070300061177.pdf>; Statements of Organization (Feb. 9, 2016, Oct. 17, 2016, and Apr. 29, 2020), Joni PAC Iowa, IECDDB Web Reporting System, available at https://webapp.iecdb.iowa.gov/PublicView/?d=organization%2fPACs%2fJONI+PAC+Iowa_9870. Other federal joint fundraising committees benefitting Ernst have included Ernst Victory Iowa, Ernst Victory, Great Iowa Fund, Tillis-Ernst Victory Fund, Scott Roberts Gardner Ernst Victory Fund (SRGE Victory Fund) (terminated), McFadden Ernst Cotton Sullivan Victory Fund (MECS Victory Fund) (terminated) and Ernst Victory Fund (terminated).

1 solutions for the challenges facing rural America, and building a strong national defense.”⁵ It
 2 appears, however, that the group did not become publicly active until 2018.⁶ Jon Kohan, a
 3 former Ernst campaign manager and Senate Deputy Chief of Staff, was the group's Executive
 4 Director in 2017 and 2018, and Derek Flowers, another former Ernst campaign manager,
 5 replaced him in 2019.⁷ The group's IRS filings reflect that it received \$390,000 in contributions
 6 in 2017 and \$187,000 in 2018, and reported \$268,014 in expenses in 2017 and \$295,680 in 2018.
 7 Iowa Values reported spending \$5,000 on political campaign activity in 2017 but reported no
 8 such spending in 2018.⁸ Information about its 2019 and 2020 activities is not yet available with
 9 the IRS.⁹ In its Response to the Complaint in MUR 7674, Iowa Values states that it expects its

⁵ See Form 990 Initial Return, Iowa Values (Nov. 13, 2018) (“2017 Form 990”), https://apps.irs.gov/pub/epostcard/cor/815224793_201712_990O_2019020816074301.pdf. The group is also registered as a nonprofit corporation in the District of Columbia and as a foreign nonprofit corporation in the state of Iowa. See Application for Certificate for Authority (Nonprofit) for Iowa Values (June 26, 2017) and 2019 Biennial Report for a Foreign Nonprofit Corporation (Feb. 26, 2019), available at *Business Entity Search*, IOWA SEC. OF STATE, <https://sos.iowa.gov/search/business/search.aspx> (last accessed July 20, 2020).

A similarly named group, Iowa Values (“Super PAC”), is registered with the Commission as an independent expenditure only committee, but it appears the Super PAC has had little activity since 2014. See <https://iowavalues.com/>; <https://www.fec.gov/data/committee/C00565846/>. The Iowa Values 501(c)(4) group subject of these matters has been confused with the Super PAC, however. See, e.g., Elizabeth Meyer, *Iowa Super PAC Launches Voter Outreach Efforts To Help Joni Ernst*, June 28, 2019, IOWA STARTING LINE, <https://iowastartingline.com/2019/06/28/iowa-super-pac-launches-voter-outreach-efforts-to-help-joni-ernst/> (discussing an Iowa Values June 2019 press release but citing to the Super Pac's FEC filings).

⁶ Erin Murphy, *Tom Tauke Co-founds Iowa Values Conservative Think Tank*, THE GAZETTE, May 23, 2018, <https://www.thegazette.com/subject/news/government/tom-tauke-co-founds-iowa-values-conservative-think-tank-20180523>.

⁷ See 2017 Form 990; 2018 Form 990, Iowa Values (Nov. 13, 2019), https://apps.irs.gov/pub/epostcard/cor/815224793_201812_990O_2020021017129842.pdf (Flowers signed the 2018 report in his capacity as Executive Director).

⁸ 2017 Form 990; 2018 Form 990. Kohan's compensation listed on the IRS filings was \$95,000 in 2017 and \$85,000 in 2018, which Iowa Values paid through Kohan's employer, Jamestown Associates, LLC. Holloway Consulting Inc., is listed as the group's fundraiser for both years.

⁹ The Form 990 for a previous tax year ending on December 31 has an initial return due date of May 15 and an extended due date of November 15 of the following year. See Return Due Dates for Exempt Organizations: Annual Return, IRS, <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>.

1 2019 Form 990 to reflect \$839,000 in total spending, but does not provide a detailed breakdown
2 of that spending.¹⁰

3 Iowa Values operates a website at www.ouriowavalues.com. The website's main page
4 includes a statement describing the group as "a nonprofit, nonpartisan forum" and features an ad
5 supporting Ernst.¹¹ The ad, entitled "Iowa Values - Values," states that "we deserve leaders who
6 have walked in our shoes and share these beliefs, like Joni Ernst."¹² The same ad is shown on
7 the "Our Videos" page of the website, along with four additional ads: three supporting Ernst and
8 one issue ad.¹³ One of the additional ads is entitled "Iowans Deserve Quality, Affordable
9 Choices" and states that "Joni Ernst is Fighting for Us," and "Quality Care, Iowa Values, Joni
10 Ernst."¹⁴ Another ad is entitled "Won't Stand for It" and states that "Joni Ernst is fighting for
11 our Iowa values in Washington" and "Joni Ernst, A Fighter for Iowa Families," while another
12 one is entitled "Right for Our Values."¹⁵ The issue ad, called "Lost," focuses on opposing
13 Medicare for all and does not mention Ernst.¹⁶ The Iowa Values website does not advocate on
14 behalf of, or even reference, any current federal candidate other than Ernst.

15 The group's Facebook and Twitter pages likewise mostly feature ads, videos, or articles
16 focusing on Ernst.¹⁷ Facebook's ad library shows that the group has spent \$60,909 on ads about

¹⁰ MUR 7674 Iowa Values Resp. at 12 (May 15, 2020).

¹¹ See <https://ouriowavalues.com/> (last accessed Sept. 24, 2020).

¹² *Id.*

¹³ See *Our Videos*, <https://ouriowavalues.com/our-videos> (last accessed Sept. 24, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ @ouriowavalues, FACEBOOK, <https://www.facebook.com/pg/ouriowavalues/posts/> (showing most recent post, dated Apr. 2, 2020) (last accessed Sept. 24, 2020); @OurIowaValues, TWITTER, <https://twitter.com/ouriowavalues> (showing most recent post, dated Apr. 2, 2020) (last accessed Sept. 24, 2020).

1 “social issues, elections or politics” from June 23, 2018 through September 22, 2020.¹⁸ Iowa
 2 Values spent \$46,500 on Google ads from June 27, 2019 through September 21, 2020.¹⁹

3 On June 27, 2019, Iowa Values posted a press release on its Facebook page announcing a
 4 six-month “Digital Advertising Blitz and Door to Door Canvassing,” that would kick off “the
 5 beginning of an election-long effort by Iowa Values to highlight the work of Sen. Joni Ernst.”²⁰
 6 The announcement stated that Iowa Values “invested six-figures in a digital advertising
 7 campaign that will touch swing voters in all 99 counties.”²¹ The release described the planned
 8 canvassing operation as a “large-scale effort” to knock on 150,000 doors across the state in 2019
 9 in order to make “high-quality, in person, face-to-face contacts with important segments of the
 10 electorate.”²² It also included a preview of the group’s “2020 Election Planning”; specifically, it
 11 stated that the group “plans to be a consistent and strong advocate for the conservative and free
 12 market principles it was founded to promote during the 2020 election” and that “in particular will
 13 highlight the work of Sen. Joni Ernst.”²³ One Iowa Values board member is quoted in the press

Iowa Value’s YouTube Channel contains the same videos as those that appear on the website. Our Iowa Values, YOUTUBE, <https://www.youtube.com/channel/UCwseruNKP4IgtkpCXWhzX6w/videos>.

¹⁸ See Iowa Values, @OurIowaValues, Facebook Ad Library (“Iowa Values Facebook Ad Library”), [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last accessed Sept. 24, 2020).

¹⁹ See Advertiser: Iowa Values, Google Transparency Report (“Iowa Values Google Ads Report”), <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960?hl=en> (last accessed Sept. 24, 2020). Although Iowa Values started running its ads in June 2019, it did not distribute any ads between September 2019 and June 2020.

²⁰ Iowa Values Announces Digital Advertising Blitz and Door to Door Canvassing (June 27, 2019), @OurIowaValues, FACEBOOK, https://www.facebook.com/ouriowavalues/posts/1130033023846492?__tn__=-R (including link to Iowa Values Press Release (June 27, 2019), <https://us3.campaign-archive.com/?e=&u=1e7cc07d8991b902eb884256d&id=f04d90419f>).

²¹ See Iowa Values Press Release (June 27, 2019), <https://us3.campaign-archive.com/?e=&u=1e7cc07d8991b902eb884256d&id=f04d90419f>.

²² *Id.*

²³ *Id.*

1 release reiterating the group's focus on Ernst's reelection, stating that "Iowa Values is going to
2 make sure everyone knows how [Ernst is] fighting for all Iowans in Washington."²⁴

3 The advertising campaign was followed by a fundraising solicitation sent by Iowa
4 Values' fundraising vendor, Claire Holloway Avella of Holloway Consulting, Inc.,²⁵ which
5 attached a strategy memo outlining the work that Iowa Values planned for the 2020 election
6 cycle.²⁶ The email appears to be directed to a specific individual and based on the language of
7 the email, it appears that the solicitation came about after Ernst introduced Holloway Avella to
8 this individual.²⁷ The July 2019 fundraising email contained the subject line "Funding Request
9 from Iowa Values 501(c)(4) – promoting issues Senator Joni Ernst advocates" and stated that the
10 group was formed to educate Iowans about "issues of national, state and local importance for
11 which Senator Ernst advocates."²⁸ As a basis for the funding request, the email described that
12 another group made "a six-figure ad buy in media markets across the state attacking Senator
13 Ernst."²⁹ It stated that the "purpose of our group, Iowa Values, is to push back against these type

²⁴ *Id.*

²⁵ According to the firm's website, Holloway Avella established Holloway Consulting in 2003, and "has successfully coordinated fundraising efforts for a roster of prominent members of the U.S. Senate, including the Honorable John McCain and Joni Ernst." *See Our Team*, <http://www.hollowayconsulting.net/ourteam.html> (last accessed Aug. 27, 2020). It appears that the consulting firm has been providing fundraising work for Ernst's various committees since 2013. *See Disbursements Search*, www.fec.gov (showing that Joni for Iowa first paid Holloway Consulting in 2013, New Ideas PAC, Ernst Victory and Ernst Victory Fund started paying the firm in 2015, Ernst Victory Iowa started paying in 2016, Joni's Roast and Ride began paying in 2017, and Great Iowa Fund began paying the firm in 2019).

²⁶ MUR 7674 Compl. at 3-4 (Dec. 19, 2019); MUR 7672 Compl. at Ex. B (Dec. 16, 2019).

²⁷ The email begins as follows: "As a follow up to our introduction by Senator Ernst." *See* MUR 7674 Compl. at note 13 (including link to a redacted copy of the email at <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html>); *see* July 2019 Email, Attach. 1.

²⁸ July 2019 Email, Attach. 1.

²⁹ *Id.*

1 of negative attacks.”³⁰ The email asked the recipient to “consider an investment of \$50,000” and
2 stated that contributions to 501(c)(4) groups are not publicly disclosed.³¹

3 The strategy memo attached to the email discusses an “Operation Firewall” aimed at
4 engaging voters who “represent the ‘firewall’ between winning and losing in 2020 for Senator
5 Ernst,” and that “there is critical work with segments of the electorate that must begin now in
6 2019 so that Senator Ernst has the best possible jumping off point in 2020.”³² It describes a
7 “ground game apparatus” as its approach to reach voters that would include a “paid door to door
8 effort” and a “complimentary long-term digital messaging plan.”³³

9 The Complaints discussed below pertain to various aspects of Iowa Values’ work in
10 connection with Ernst’s 2020 candidacy for reelection to the Senate. The Complaints make
11 allegations concerning the group’s political committee status and of possible violations of
12 provisions of the Act and the Commission’s regulations, including reporting violations, the
13 solicitation of nonfederal funds, coordination of communications, republication, and the failure
14 to itemize disbursements.

15 A. MUR 7674

16 The Complaint in MUR 7674 alleges that Iowa Values failed to organize or register as a
17 political committee, in violation of 52 U.S.C. §§ 30102 and 30103, and accordingly has failed to
18 file the disclosure reports required of political committees with the Commission, in violation of

³⁰ *Id.*

³¹ *Id.*

³² MUR 7674 Compl. at 4-5; *see also id.* at note 16 (including link to strategy memo at <https://assets.documentcloud.org/documents/6550822/Holloway-Email-Attachment-Iowa-Values-Strategy.pdf>); MUR 7672 Compl. at Ex. B (attaching copy of memo).

³³ *See* MUR 7672 Compl. at Ex. B.

1 52 U.S.C. § 30104(b).³⁴ It alleges that the group has been “working closely with Senator Joni
2 Ernst and has the major purpose of influencing Senator Ernst’s reelection.”³⁵ In support of the
3 allegations, the Complaint describes Iowa Values’ activities in support of Ernst, including its
4 June 27, 2019 Press Release, a series of Facebook and Google ads in which Iowa Values used a
5 photo or video of Ernst, or used her name, and the July 2019 fundraising email and attached
6 strategy memo.³⁶ The Complaint states that “[t]here is little evidence of Iowa Values engaging
7 in any activities in 2019 *other* than those aimed at influencing Ernst’s reelection.”³⁷

8 In response, Iowa Values denies that it was a political committee, stating instead that it is
9 an issue advocacy group and that its “primary purposes” include “educat[ing] the public about
10 common-sense solutions to various public policy issues of national importance including
11 limited government, defending life, cutting wasteful spending, finding solutions for the
12 challenges facing rural America, and building a strong national defense.”³⁸ It states that it spent
13 most of its funds in 2019 “in furtherance of policy priorities,” including “spending for public
14 opinion research, data development, message testing, grassroots targeting, policy white papers,
15 educational communications, fundraising, and compliance.”³⁹ The Response indicates that the
16 group’s 2019 Form 990 to be filed with the IRS in the fall of 2020 will show approximately
17 \$839,000 in total spending and that its political spending at both the federal and state levels was
18 no more than 41% of its overall activity.⁴⁰

³⁴ MUR 7674 Compl.

³⁵ *Id.* at 1.

³⁶ *Id.* at 2-5.

³⁷ *Id.* at 12.

³⁸ MUR 7674 Iowa Values Resp. at 3.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 2, 12.

1 The Response further discusses two pro-Joni Ernst ads cited in the Complaint but denies
2 that they were express advocacy or election related.⁴¹ The Response instead asserts that
3 “virtually all” of its ads discuss policy issues, even those that also reference Ernst’s work, and
4 “have never triggered a need to register or report with the Commission.”⁴² Finally, Iowa Values
5 acknowledges sending the fundraising email and strategy memo that focus on Ernst’s reelection
6 but asserts that it does not accept contributions earmarked for a specific purpose, noting that
7 engaging “in some political campaign spending” “does not automatically transform the
8 donations it receives into contributions.”⁴³ Rather, it adds that its Board of Directors ultimately
9 makes any decisions on how to spend such funds.⁴⁴

10 **B. MUR 7672**

11 The Complaint in MUR 7672 alleges that Iowa Values, Joni for Iowa, and New Ideas
12 PAC have been coordinating communications in support of Ernst’s reelection campaign.⁴⁵
13 Specifically, it alleges that Ernst and her agents established Iowa Values for the purpose of
14 supporting her campaign and that Iowa Values republished Joni for Iowa campaign materials.⁴⁶
15 The Complaint points to alleged ties between Iowa Values employees and consultants, and Ernst,
16 as well as the Ernst campaign, and questions why Washington, DC-based consultants who
17 previously or concurrently worked for Ernst would establish an Iowa-focused 501(c)(4)
18 organization for any reason other than to support Ernst’s reelection.⁴⁷

⁴¹ *Id.* at 10-13.

⁴² *Id.* at 12.

⁴³ *Id.* at 13-14.

⁴⁴ *Id.* at 14.

⁴⁵ MUR 7672 Compl.

⁴⁶ *Id.* at 1-2.

⁴⁷ *Id.* at 4-6, 10-11.

1 The Complaint focuses on three individuals in connection with its coordination
2 allegations. First, it alleges that coordination took place through Jon Kohan, who served as the
3 Executive Director of Iowa Values from its founding in 2017 through 2018, worked as Ernst's
4 campaign manager in 2014, as Ernst's Deputy Chief of Staff in the Senate until 2015, and in
5 2017, went to work with Jamestown Associates, a political consulting firm that has been
6 providing services to Joni for Iowa, New Ideas PAC, and Joni's Roast and Ride since 2017.⁴⁸
7 Next, the Complaint alleges that fundraising consultant Holloway Avella facilitated the
8 coordinated communications, basing that contention on her apparently simultaneous work for
9 Joni for Iowa and New Ideas PAC and her work on behalf of Iowa Values, including the July
10 2019 email, which references Senator Ernst providing the potential donor with an introduction to
11 the fundraiser, and seeking "an investment of \$50,000" in Iowa Values' efforts on behalf of
12 Ernst.⁴⁹ The Complaint notes that Iowa Values listed Holloway Consulting's address on its
13 corporate registration documents filed with the District of Columbia as a further basis for the
14 coordination allegation.⁵⁰ Finally, the Complaint alleges that Ernst's former campaign manager,
15 Derek Flowers, also acted as an agent for both Ernst and Iowa Values.⁵¹ Flowers' condominium
16 address was initially used as Iowa Values' "principal office" address in 2017, as well as by his
17 company Midland Strategies, LLC, a consultant used by Ernst's committees, before he was later
18 named Executive Director of Iowa Values in 2019.⁵²

⁴⁸ See *id.* at 4-5; see also *Disbursements Search*, www.fec.gov (showing that Joni's Roast and Ride and New Ideas PAC reportedly made their first disbursements to Jamestown Associates on Apr. 11, 2017, and Joni for Iowa first paid the firm on May 8, 2017).

⁴⁹ MUR 7672 Compl. at 5.

⁵⁰ *Id.* at Ex. A.

⁵¹ *Id.* at 6, 10.

⁵² *Id.* at 6.

1 The Complaint states that because of their close ties to the Ernst campaign, Kohan,
2 Holloway Avella, and Flowers acted as agents of Ernst and as such, “Sen. Ernst, through her
3 agents, established Iowa Values.”⁵³ The Complaint alleges that “supporting Sen. Ernst and
4 defending her record appears to be a key priority of Iowa Values,” based on the language of a
5 fundraising email and strategy memo that Holloway Avella sent out.⁵⁴ The Complaint concludes
6 that because Ernst’s agents were raising and spending funds outside the federal limits to support
7 Ernst’s reelection through Iowa Values, Ernst and her campaign were in violation of 52 U.S.C.
8 § 30125(e)(1).⁵⁵ The Complaint also states that Iowa Values has republished Ernst campaign
9 materials and that Joni for Iowa may have coordinated in the creation or dissemination of some
10 of the group’s communications.⁵⁶ It includes screenshots of two Iowa Values Facebook ads that
11 feature photographs allegedly taken from Ernst’s campaign website and Facebook page.⁵⁷ As a
12 result, the Complaint concludes that Iowa Values made, and Joni for Iowa accepted, illegal in-
13 kind contributions by coordinating communications and republishing Joni for Iowa campaign
14 materials.⁵⁸

15 A Response was submitted on behalf of Ernst, Joni for Iowa, and New Ideas PAC
16 denying that Ernst established or had any role with Iowa Values and that any of the named
17 individuals acted as her agents.⁵⁹ It also argues the Complaint does not present sufficient facts to

⁵³ *Id.* at 10-11.

⁵⁴ *Id.* at 7 and Ex. B.

⁵⁵ *Id.* at 11-12.

⁵⁶ *Id.* at 11-12.

⁵⁷ *Id.* at 8-9.

⁵⁸ *Id.* at 12.

⁵⁹ MUR 7672 Resp. (May 8, 2020). Iowa Values did not submit a response, but the joint response does include a brief paragraph arguing that there was no liability for Iowa Values. *Id.* at 13.

1 show that any of these individuals played a role in establishing the 501(c)(4) group, but rather
2 they just performed work as consultants for both the group and Ernst's campaign committee.⁶⁰
3 The Response notes that Holloway Avella was "perfectly free to solicit funds for Iowa Values as
4 long as she is not acting as Senator Ernst's agent when doing so."⁶¹ Additionally, the Response
5 describes the timing of Kohan and Flower's employment to support its contention that neither
6 individual was an agent of the Senator or her campaign at the time of their work for Iowa Values
7 and states that "[n]ot a single word in the Complaint suggests that any of the individuals
8 mentioned was acting at the direction of Senator Ernst."⁶² The Response does not address the
9 coordination or republication allegations and does not address the part of the email solicitation
10 indicating that Ernst introduced the potential donor to Holloway Avella for the purpose of being
11 solicited by the Iowa Values fundraiser.⁶³

12 C. MUR 7732

13 The Complaint in MUR 7732 sets forth distinct but related allegations that Joni for Iowa
14 failed to itemize salary payments on three of its disclosure reports (its 2019 October Quarterly,
15 2019 Year-End, and 2020 April Quarterly Reports) filed with the Commission in violation of the
16 Act's reporting provisions in an effort to hide its list of campaign staffers and "cover up"
17 possible coordination between Joni for Iowa and Iowa Values.⁶⁴ The Complaint asserts that the
18 Committee reported lump sum payments to its payroll vendor, Insperity, Inc., totaling over

⁶⁰ *Id.* at 5-7. The Response also notes that the Iowa Values 2017 Form 990 lists three board members, none of which are the individuals identified in the Complaint. *Id.* at 5.

⁶¹ *Id.* at note 10.

⁶² *Id.* at 6.

⁶³ *Id.* at 10-13.

⁶⁴ MUR 7732 Compl. at 1 (Apr. 30, 2020).

1 \$390,000 without itemizing the ultimate recipients of the payments.⁶⁵ According to the
2 Complaint, the disclosure reports should have included memo entries listing the individual
3 recipients of the salary payments.⁶⁶ The Complaint states that the “undeniable” “close
4 connection between Senator Ernst and a group with undisclosed donors only intensifies the
5 public need to identify the Committee’s salaried staff” and that the same staff could be working
6 for both organizations.⁶⁷

7 Joni for Iowa has reportedly paid over \$689,000 to Insuperity so far during the 2020
8 election cycle.⁶⁸ Joni for Iowa requests a dismissal, arguing that neither the Act nor the
9 Commission’s regulations requires committees to itemize salary payments, arguing that such
10 payroll payments are analogous to vendor payments made to subvendors, which the Commission
11 has not always required to be itemized.⁶⁹ Its Response asserts that the Commission’s 2013
12 interpretive rule regarding itemization did not address payroll payments and that the
13 Commission’s written guidance regarding the issue was “buried within the Commission’s
14 website” and “did not have the force of law.”⁷⁰

15 The Response additionally contends that even if itemization were required for payments
16 made to payroll vendors generally, itemization would still not be required in the Committee’s
17 particular circumstances because Insuperity served as a “co-employer” to Committee staff
18 pursuant to a “client service agreement.”⁷¹ However, the Committee did not provide a copy of

⁶⁵ *Id.* at 3.

⁶⁶ *Id.* at 4-5.

⁶⁷ *Id.* at 6.

⁶⁸ *See Disbursements Search*, www.fec.gov.

⁶⁹ MUR 7732 Resp. at 2 (May 26, 2020).

⁷⁰ *Id.* at 3; *infra* at 51-52 (discussing Commission’s guidance for reporting of salary payments).

⁷¹ *Id.* at 4. The Response does not elaborate but seems to suggest that Committee staff were being paid as Insuperity employees. However, this may be contrary to the Insuperity’s apparent terms of service. Insuperity’s

1 that agreement, identify any additional services that Insperity provided beyond payroll work, or
2 further elaborate why the affected employees would not be considered Committee staff.

3 Finally, the Response notes that although “not legally required to do so,” it filed amended
4 reports to itemize the disbursements at issue through the use of memo entries because staff “felt
5 it was easier to track cash flow and payments” that way.⁷²

6 The Committee submitted amended 2019 October Quarterly, 2019 Year-End, and
7 2020 April Quarterly Reports on April 30, 2020, itemizing the payments to individual salary
8 recipients made through Insperity as memo entries. Earlier reports from 2019 also reflect
9 disbursements made to Insperity (\$17,702.92), but in those earlier instances, salary payments had
10 been disclosed as separate disbursements to the individual campaign staff members.⁷⁴

11 **III. LEGAL ANALYSIS**

12 **A. Political Committee Status**

13 1. The Test for Political Committee Status

14 The Act and Commission regulations define a “political committee” as “any committee,
15 club, association, or other group of persons which receives contributions aggregating in excess of

website states that it provides “full-service HR solution[s]” and includes a description of its co-employment option that is referenced in Joni for Iowa’s Response. See <https://www.insperity.com/services/hr-outsourcing/?ref=footer> and <https://www.insperity.com/blog/what-is-co-employment/>. Under a co-employment agreement, Insperity “supplies services and benefits to a business and its existing workforce,” but it does not supply a workforce and the company “remains the primary employer.” <https://www.insperity.com/blog/what-is-co-employment/>.

⁷² *Id.* at 4-5.

⁷⁴ See, e.g., 2019 April Quarterly Rpt. and 2019 July Quarterly Rpt.

1 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
2 during a calendar year.”⁷⁵ In *Buckley v. Valeo*,⁷⁶ the Supreme Court held that defining political
3 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”
4 might be overbroad, reaching “groups engaged purely in issue discussion.”⁷⁷ To cure that
5 infirmity, the Court concluded that the term “political committee” “need only encompass
6 organizations that are under the control of a candidate or the *major purpose of which is the*
7 *nomination or election of a candidate.*”⁷⁸ Under the statute as thus construed, an organization
8 that is not controlled by a candidate must register as a political committee only if (1) it crosses
9 the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election of federal
10 candidates.

11 Although *Buckley* established the major purpose test, it provided no guidance as to the
12 proper approach to determine an organization’s major purpose.⁷⁹ After *Buckley*, the Commission
13 adopted a policy of determining on a case-by-case basis whether an organization is a political
14 committee, including whether its major purpose is the nomination or election of federal
15 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,
16 the Commission consistently has declined to do so.⁸⁰ Instead, the Commission decided that

⁷⁵ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁷⁶ 424 U.S. 1 (1976) (per curiam).

⁷⁷ *Id.* at 79.

⁷⁸ *Id.* (emphasis added).

⁷⁹ See, e.g., *Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (No. 12-311) (“RTAA”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”).

⁸⁰ See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,”

1 determining an organization's major purpose "requires the flexibility of a case-by-case analysis
2 of an organization's conduct that is incompatible with a one-size-fits-all rule," and that "any list
3 of factors developed by the Commission would not likely be exhaustive in any event, as
4 evidenced by the multitude of fact patterns at issue in the Commission's enforcement actions
5 considering the political committee status of various entities."⁸¹

6 To determine an entity's "major purpose," the Commission considers a group's "overall
7 conduct," including, among other factors, public statements about its mission, organizational
8 documents, and government filings (*e.g.*, IRS filings), and the proportion of spending related to
9 "Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."⁸² With
10 respect to such comparative spending, the Commission has stated that it compares how much of
11 an organization's spending is for "federal campaign activity" relative to "activities that [a]re not
12 campaign related."⁸³ Further, a district court has concluded that electioneering communications
13 presumptively have the purpose of influencing a federal election, and thus it would be contrary to
14 law for the Commission to categorically exclude non-express advocacy in a Commission
15 analysis of major purpose.⁸⁴

(Sept. 12, 2001), <https://sers.fec.gov/fosers/showpdf.htm?docid=5684> and Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance), <https://sers.fec.gov/fosers/showpdf.htm?docid=5669>.

⁸¹ Political Committee Status, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) (Supplemental Explanation and Justification) ("Supplemental E&J").

⁸² *Id.* at 5597, 5605.

⁸³ Supplemental E&J, at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission's case-by-case approach in the face of a constitutional challenge. *See* 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission's case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

⁸⁴ *See Citizens for Responsibility and Ethics in Washington v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. Mar. 20, 2018) ("CREW II") (determining that the Commission "must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate"); *see also id.* at 100 ("The Commission may in special circumstances conclude that an electioneering ad does not have [an election-related major] purpose. But given Congress's recognition that the 'vast majority' of electioneering ads have the purpose of electing a candidate, the Commission's exclusion of electioneering ads from its major-purpose analysis should be the rare exception, not the rule."). *Citizens for Responsibility and Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016)

1 Political committees must comply with certain organizational and reporting requirements
 2 set forth in the Act. They must register with the Commission, file periodic reports for disclosure
 3 to the public, appoint a treasurer who maintains its records, and identify themselves through
 4 “disclaimers” on all of their political advertising, on their websites, and in mass emails.⁸⁵

5 2. There is Reason to Believe That Iowa Values is a Political Committee

6 a. Statutory Threshold

7 Iowa Values appears to have exceeded the statutory threshold for political committee
 8 status in two separate ways.⁸⁶ First, Iowa Values received contributions exceeding \$1,000 in
 9 response to fundraising solicitations that indicated that funds would be used toward the
 10 reelection of Ernst. Under the Act, money received in response to fundraising solicitations
 11 clearly indicating that the funds being sought would be targeted to the election or defeat of
 12 clearly identified federal candidates constitute contributions.⁸⁷ Further, in a recent ruling the
 13 D.C. Circuit has reiterated that the term “contribution” applies to “funds intended to influence

(“CREW I”) (stating that it is improper to “exclude from . . . consideration all non-express advocacy in the context of disclosure”).

⁸⁵ See 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

⁸⁶ For the purpose of triggering political committee status, the Act defines the terms “contributions” and “expenditures” as including anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) and (9)(A)(i).

⁸⁷ See 52 U.S.C. § 30101(8)(A)(i); *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) (holding that proceeds from a solicitation are contributions where solicitation “makes plain that the contribution will be used to advocate the defeat or success of a clearly identified candidate at the polls”). See also Factual and Legal Analysis (“F&LA”) at 10 and Certification ¶ 1 (Mar. 9, 2005), MUR 5541 (November Fund) (finding reason to believe that the 527 group’s “public statements and press releases would very likely lead a potential contributor to believe his or her contribution would be used to oppose one specific federal candidate”); General Counsel’s Brief at 5-14, Certification ¶ 3 (July 16, 2007) and Conciliation Agreement ¶¶ IV.18 -24 (Nov. 15, 2007), MUR 5440 (Media Fund) (finding probable cause to believe that 527 group exceeded statutory threshold for contributions when its solicitations, including oral presentations and letters to individual donors, resulted in contributions targeting the election of John Kerry and defeat of George W. Bush).

1 elections.”⁸⁸ At least one fundraising solicitation consisted of an email that Holloway Avella
2 sent on behalf of Iowa Values seeking a “\$50,000” investment to “push back against . . . negative
3 attacks” against Ernst.⁸⁹ While that email appears to have been sent to a specific individual, it is
4 reasonably likely that similar emails were sent to other potential donors.

5 Iowa Values’ public statements would also lead potential contributions to believe that
6 their donations would be used toward Ernst’s reelection. The group’s June 2019 Press Release
7 discusses planned efforts to “highlight the work of Sen. Joni Ernst,” through a “Digital
8 Advertising Blitz and Door to Door Canvassing,” and announced that it had “invested six-
9 figures” into that effort.⁹⁰ The release plainly states that Iowa Values would “make sure
10 everyone knows how [Ernst is] fighting for all Iowans in Washington,” indicating that its efforts
11 were aimed at ensuring that Ernst is reelected.⁹¹ Likewise, the strategy memo attached to the
12 July 2019 fundraising email demonstrates the group’s intent to use funds to reelect Ernst. The
13 memo discusses its “intent to build a ground game apparatus” that would include “a paid door to
14 door effort” and a “long-term digital messaging plan” to engage voters who would be crucial
15 factors “between winning and losing in 2020 for Senator Ernst.”⁹² Iowa Values’ decision to
16 attach the memo to such emails underscores that the funds sent in response to those solicitations
17 would be targeted to the election of Ernst. In determining whether funds constituted
18 contributions under the Act, the Commission has in past matters “examined the entirety of the

⁸⁸ *Citizens for Responsibility and Ethics in Washington v. FEC*, No. 18-5261, 2020 WL 4914080 at 10 (D.C. Cir. Aug. 21, 2020), *aff’d* 316 F.Supp.3d 349 (D.D.C. Aug. 03, 2018) (citing *MCFL*, 479 U.S. at 262) (“CREW III”).

⁸⁹ *Supra* at 8-9.

⁹⁰ *Id.*

⁹¹ *Id.* at 7.

⁹² MUR 7672 Compl. at Ex. B.

1 solicitation and did not limit its analysis to the presence or absence of any particular words or
2 phrases.”⁹³ Consistent with the Commission’s past application of the \$1,000 threshold for
3 contributions, funds received in response to the Iowa Values July 2019 email solicitation would
4 have been given for the purpose of influencing a federal election and would therefore be
5 contributions under the Act.⁹⁴

6 Iowa Values’ IRS filings reflect that the group raised \$390,000 in contributions in 2017
7 and \$187,000 in 2018 using the same fundraising vendor who sent out the 2019 fundraising
8 email.⁹⁵ Although we do not have information regarding its total 2019 or its current 2020
9 fundraising, in light of its announced efforts to focus on Ernst’s 2020 reelection, it is possible
10 that the group’s advertising “blitz” that began in June 2019 yielded a larger amount of
11 contributions.

12 Second, Iowa Values made expenditures exceeding \$1,000 when it paid for advertising
13 expressly advocating the reelection of Ernst, and in the case of one ad, the defeat of her
14 opponent, Theresa Greenfield. To assess whether an organization has made an “expenditure,”
15 the Commission analyzes whether spending on any of an organization’s communications made
16 independently of a candidate constitutes express advocacy under 11 C.F.R. § 100.22.⁹⁶

⁹³ Supplemental E&J, at 5604.

⁹⁴ *See id.* at 5604-5605 (examining fundraising solicitations sent by 527 organizations and concluding that some received more than \$1,000 in response to emails and other types of fundraising appeals that clearly indicated the funds received would be used to the defeat of a Federal candidate and therefore, the funds received in response to those solicitations were contributions under the Act); *CREW III*, 2020 WL 4914080 at 10.

⁹⁵ *Supra* at 5.

⁹⁶ *See* Supplemental E&J, 72 Fed. Reg. at 5606. A communication contains express advocacy when, among other things, it uses campaign slogans or individual words that in context can have no other reasonable meaning than to urge the election or defeat of a clearly identified federal candidate. 11 C.F.R § 100.22(a). *See also*, F&LA at 5, 8-10, MUR 7465 (Freedom Vote, Inc.) (July 25, 2019) (finding reason to believe that Freedom Vote failed to register as a political committee where it reported spending \$174,607 in independent expenditures and also based on financial discrepancies in its IRS Form 990 where reported expenses for two distinct categories of spending, “program services” and “political campaign activities,” appeared to exceed its total reported expenses); F&LA at 10-11, MUR 6538R (Americans for Job Security) (finding that organization should have registered as a

1 According to its Press Release, by June 2019 it had already “invested six-figures” to run ads and
2 pay for door-to-door canvassing throughout Iowa advocating for Ernst.⁹⁷ As discussed in further
3 detail below, Iowa Values spent over \$107,000 on Facebook and Google ads, most of which
4 supported Ernst. The language of the 2019 strategy memo also indicates that Iowa Values was
5 “putting resources in front of the most critical voters” to advocate for Ernst, in the form of ads
6 and canvassing efforts.⁹⁸ Thus, because it received over \$1,000 in contributions in response to
7 fundraising solicitations and paid over \$1,000 to run ads and pay for in person canvassing that
8 expressly advocated Ernst’s reelection, Iowa Values exceeded the statutory threshold for political
9 committee status.⁹⁹

10 b. Major Purpose

11 Although it initially established itself as a tax-exempt organization focused on policy
12 issues in 2017,¹⁰⁰ since 2019, Iowa Values’ activities — including its public statements,
13 fundraising, and spending — appear to be focused primarily on the reelection of Ernst, thereby
14 indicating that its major purpose may have changed.¹⁰¹

political committee after spending well over \$4 million on independent expenditures containing express advocacy that indicated a purpose to elect or nominate federal candidates).

⁹⁷ *Supra* at 7. See F&LA at 13-16 (Aug. 9, 2006), MUR 5753 (League of Conservation Voters 527) (finding group met expenditure threshold when they spent more than \$1,000 on door-to-door canvassing and telephone banks where the scripts contained express advocacy).

⁹⁸ See MUR 7672 Compl. at Ex. B.

⁹⁹ See 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

¹⁰⁰ <https://ouriowavalues.com/issues>.

¹⁰¹ See, e.g., F&LA at 14-15, MUR 6538R (Americans for Job Security) (examining whether respondent’s major purpose may have changed over time); cf. *CREWI*, 209 F. Supp. 3d at 94 (noting “that an organization’s major purpose can *change*” (citing *MCFL*, 479 U.S. at 262) (emphasis in original)).

1 *i. Iowa Values' Statements of Purpose*

2 Iowa Values' new effort appears to have begun in June 2019, with the public
3 announcement of a six-month "Digital Advertising Blitz and Door to Door Voter Canvassing"
4 that would be "just the beginning of an election-long effort by Iowa Values to highlight the work
5 of Sen. Joni Ernst."¹⁰² The group's June 27, 2019, Press Release quotes Derek Flowers stating
6 that these efforts would "highlight the work Sen. Ernst has done to fight for Iowans" and
7 announces release of an ad entitled "We are Iowans" that also features Ernst.¹⁰³ According to the
8 Press Release, the ad would run on YouTube, Facebook and would be "accompanied by display
9 ads across the web."¹⁰⁴

10 Iowa Values' announcement was followed by a fundraising effort and release of a
11 strategy memo, which further support the conclusion that the group's primary purpose changed
12 starting in 2019. In July 2019, the group's fundraiser, Holloway Avella, sent an email seeking a
13 \$50,000 investment to support Ernst, citing negative attack ads that another group was running
14 against Ernst.¹⁰⁵ That email stated that "[t]he purpose of our group, Iowa Values, is to push back
15 against these type of negative attacks."¹⁰⁶ There is no available information that Iowa Values
16 solicited contributions by invoking the names of any other candidates or identified other
17 purposes than to support Ernst's reelection by pushing back on negative attacks against her.
18 Consistent with the Commission's statement that it "may need to examine the organization's

¹⁰² See Iowa Values Press Release, *supra* note 21. See also Supplemental E&J, 72 Fed. Reg. at 5597. The Commission has noted that in its consideration of an organization's "overall conduct," it will look at that organization's public statements, including its own materials, statements to donors, or statements made on its website, "giving due weight to the form and nature of the statements, as well as the speaker's position within the organization." *Id.* at 5601.

¹⁰³ See Iowa Values Press Release, *supra* note 21.

¹⁰⁴ *Id.*

¹⁰⁵ *Supra* at 8-9.

¹⁰⁶ *Id.*

1 fundraising appeals,”¹⁰⁷ it is significant that Holloway Avella described Iowa Values as having
2 “[t]he purpose” of furthering Ernst’s electoral prospects in this way when soliciting funds for the
3 accomplishment of that purpose.¹⁰⁸

4 The strategy memo attached to the July fundraising email also focused on supporting
5 Ernst.¹⁰⁹ It states that “[w]e believe that there is critical work with segments of the electorate
6 that must begin now in 2019 so that Ernst has the best possible jumping off point in 2020” and
7 discusses the need to engage voters who would be critical for “winning and losing in 2020 for
8 Senator Ernst.”¹¹⁰ The language used in this memo is similar to the language in the League of
9 Conservation Voters’ “National Electoral Strategic Plan 2004,” which the Commission
10 previously found to support finding that a group’s major purpose required it to register as a
11 political committee.¹¹¹

12 In its Response to the MUR 7674 Complaint, Iowa Values describes the email solicitation
13 as a “single fundraising appeal,” without elaborating whether its other fundraising appeals
14 differed from that message.¹¹² Given the circumstances, including Iowa Values’ receipt of other
15 significant funds during the relevant time period, it is reasonable to infer that its other
16 fundraising solicitations likely included similar language. Similarly, while Iowa Values

¹⁰⁷ Supplemental E&J at 5601.

¹⁰⁸ *See id.* at 5605 (the Commission determined MoveOn.Org Voter Fund’s major purpose by reviewing “statements regarding its objectives in e-mail solicitations” and SwiftBoat Vets’ major purpose was evidenced by statements to prospective donors and public statements). *See also, RTAA*, 681 F.3d at 556 (upholding the Commission’s case-by-case analysis approach because determining “the major purpose of an organization, and not simply a major purpose, is inherently a comparative task, and in most instances it will require weighing the importance of some a group’s activities against others”).

¹⁰⁹ MUR 7672 Compl. at Ex. B.

¹¹⁰ *Id.*

¹¹¹ Supplemental E&J at 5605.

¹¹² MUR 7674 Resp at 13.

1 questions the Complainant's reliance on language from its strategy memo to determine the
2 group's major purpose, it does not present additional documents from 2019 or later to aid in
3 clarifying its purpose.¹¹³ The documents presented on the group's website focus on policy
4 issues, but those appear to be original documents from 2017, when the group was established,
5 while more recent additions to the website show a change in focus for the group — that is,
6 supporting Ernst's reelection.¹¹⁴

7 Additionally, as discussed further below, the new focus of the group's spending and ads
8 indicate that Iowa Values' major purpose changed to the nomination or election of a federal
9 candidate in 2019.¹¹⁵ Therefore, it appears that the Iowa Values became a political committee in
10 2019 and was required to file a statement of organization and file reports of receipts and
11 disbursements.¹¹⁶

12 *ii. Iowa Values' Spending*

13 Iowa Values states that it expects its 2019 Form 990 filing to reflect \$839,000 in total
14 spending, and that at most, 41% of that was for political activity at the federal and state levels.¹¹⁷
15 On its own, such spending might be below the comparative spending the Commission has
16 previously found indicative of a major purpose to nominate or elect a candidate.¹¹⁸ The full
17 extent of the group's spending, however, is unclear. Iowa Values reported \$268,014 and
18 \$295,680 in overall spending in 2017 and 2018, respectively, on its IRS filings, and we do not

¹¹³ *Id.*

¹¹⁴ *See, e.g.,* <https://ouriowavalues.com/rightforourvalues/> (last accessed Sept. 18, 2020).

¹¹⁵ *See*, F&LA at 14-15, MUR 6538R (Americans for Job Security); *cf. CREW I*, 209 F. Supp. 3d at 94.

¹¹⁶ 52 U.S.C. §§ 30103(a), 30104(a)(1).

¹¹⁷ *See* MUR 7674 Resp. at 4, 12.

¹¹⁸ *See* Supplemental E&J, 72 Fed. Reg. at 5605 (providing three examples of organizations whose major purpose was federal campaign activity where the organizations respectively spent 91%, 50-75%, and 68% of their budgets on federal campaign activity).

1 know what kind of activity it determined to exclude from its political spending disclosure for
2 those years. For instance, the group's argument that not all of the ads featuring Ernst were the
3 functional equivalent of express advocacy may indicate that Iowa Values may not necessarily be
4 including in its political spending estimates many of the Ernst-related ads we have reviewed.¹¹⁹
5 Iowa Values publicly acknowledged through its June 2019 Press Release that it had already
6 "invested six-figures" on its efforts, including ads and door-to-door canvassing, supporting Ernst
7 by that point. Iowa Values' Response to the Complaint also does not identify the other activity
8 on which it spent money and does not identify other federal or state races in which it also
9 engaged in political spending. And we have seen no evidence that it paid for ads for any
10 candidates other than Ernst since 2019. Regardless, even just 41% of the \$839,000 in total
11 spending that it plans to disclose in its 2019 Form 990 IRS filing is a substantial portion
12 (\$343,990) of its overall spending, and considered together with the questions surrounding the
13 group's actual proportion of spending related to federal campaign activity compared to its total
14 spending, provides a sufficient basis to further investigate the matter.¹²⁰

15 Iowa Values' advertising since June 2019 also supports a conclusion that its mission had
16 shifted to an effort to reelect Ernst. As an initial matter, the timing of the ads appeared to be
17 geared toward influencing Ernst's reelection. Prior to 2019, Iowa Values' Facebook ads focused
18 on issues such as agriculture, education, and renewable energy.¹²¹ Its last issue ad ran in August

¹¹⁹ MUR 7674 Resp. at 12; *infra* at 29-35.

¹²⁰ *See, e.g.*, F&LA at 9, MUR 7465 (Freedom Vote, Inc.) (finding reason to believe and investigating matter where organization's actual spending, estimated to be approximately 47% from October 2015 through September 2017, was unclear but that its "proportion of spending related to Federal campaign activity compared to total spending in 2014 indicate[d] that its major purpose may be the nomination or election of federal candidates"). *See also* Supplemental E&J at 5605 (finding that the League of Conservation Voters' organization's budget, which included 50-75% directed to the Presidential election, was also evidence of the group's major purpose).

¹²¹ *See* Iowa Values Facebook Ad Library, *supra* note 18.

1 of 2018, and the group did not post anything to its Facebook page between July 2018 and June
2 2019, until it started running ads featuring Ernst.¹²² A similar gap exists between its Twitter
3 posts: the group did not post anything on its Twitter account between July 16, 2018 and June 26,
4 2019.¹²³ Iowa Values' activities appeared to ramp up after Ernst filed her Statement of
5 Candidacy in April 2019. Its first Facebook post in 2019 was the June 27, 2019, announcement
6 of its advertising blitz and voter canvassing effort and included a YouTube link to a video
7 supporting Ernst.¹²⁴ More recently, the group paid for a Facebook ad supporting Ernst that ran
8 just days before the June 2, 2020 primary election in Iowa,¹²⁵ and on July 27, 2020, it ran a
9 Google ad attacking her opponent in the general election.¹²⁶ In a recent ad that ran on Facebook
10 in September; it states that "Joni Ernst has consistently stood up for our Iowa Values during
11 these uncertain times" and asks the viewer to "click to thank Joni Ernst for defending Iowa
12 Values."¹²⁷ Clicking on the link below the video takes the viewer to the Iowa Values website
13 displaying the text, "JONI ERNST" "Stands up for us, protecting values that keep us strong"
14 above a large photo of Ernst.¹²⁸

¹²² <https://www.facebook.com/pg/ouriwavalues/posts/>.

¹²³ <https://twitter.com/ouriwavalues>.

¹²⁴ *Supra* note 17; *Iowa Values- Values* (June 25, 2019), Iowa Values You Tube, <https://www.youtube.com/watch?v=07ba3T737r0&feature=share>.

¹²⁵ *See* Iowa Values Facebook Ad Library, *supra* note 18. The ad stated "Senator Joni Ernst is working hard to provide relief for Iowa families and small businesses," and included a photo of Ernst with the text, "Joni Ernst, Strong Compassionate Leadership." Clicking on the link to "Thank Our Leaders," leads to a landing page displaying Ernst, Senator Chuck Grassley and Iowa Governor Kim Reynolds. *See* <https://landing.ouriwavalues.com/>. Although this ad was distributed within thirty days of a primary election, it would not be considered an electioneering communication because this ad was not a broadcast, cable or satellite communication. 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29.

¹²⁶ *See Theresa Greenfield's Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664>.

¹²⁷ *See* Iowa Values Facebook Ad Library, *supra* note 18 (showing that its latest ad started running on September 16, 2020 and was still active) (last accessed Sept. 17, 2020).

¹²⁸ *See* <https://ouriwavalues.com/rightforourvalues/>

1 Iowa Values contends that most of its ads, including many of those featuring Ernst, were
 2 issue ads, but most of the paid ads we have reviewed feature Ernst and advocate her support in
 3 some manner.¹²⁹ Under section 100.22(a) of the Commission's regulations, a communication
 4 expressly advocates the election or defeat of a clearly identified federal candidate if it uses
 5 certain phrases, such as "re-elect your Congressman," "'vote Pro-Life' or 'vote Pro-Choice'"
 6 accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice,"
 7 "or communications of campaign slogan(s) or individual word(s), which in context can have no
 8 other reasonable meaning than to urge the election or defeat of one or more clearly identified
 9 candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,'
 10 'Carter '76,' 'Reagan/Bush' or 'Mondale!'"¹³⁰

11 Section 100.22(b) sets forth whether a communication is also deemed to contain express
 12 advocacy. That regulation provides:

13 when taken as a whole with limited reference to external events, such as
 14 the proximity to the election, could only be interpreted by a reasonable
 15 person as containing advocacy of the election or defeat of one or more
 16 clearly identified candidate(s) because — (1) The electoral portion of the
 17 communication is unmistakable, unambiguous, and suggestive of only one
 18 meaning; and (2) Reasonable minds could not differ as to whether it
 19 encourages actions to elect or defeat one or more clearly identified
 20 candidate(s) or encourages some other action."¹³¹

21
 22 The Commission has found that a communication contains express advocacy where it uses a
 23 slogan referencing the candidate's character, qualifications or accomplishments.¹³²

¹²⁹ MUR 7674 Resp. at 12.

¹³⁰ 11 C.F.R. § 100.22(a).

¹³¹ 11 C.F.R. § 100.22(b).

¹³² See 11 C.F.R. § 100.22(a) and (b); Explanation and Justification, 60 Fed. Reg. 35,292, 35,295 (July 6, 1995) ("[C]ommunications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question."). See also F&LA at 8, MUR 5831 (Softer

1 Iowa Values has spent over \$107,000 on advertisements, most of which expressly
2 advocate support for Ernst, and it appears that the organization intends to continue with such
3 spending for the remainder of the election cycle. So far, since 2019 Iowa Values has spent
4 \$60,909 for a mixture of political and issue ads on Facebook; all but two of those ads since June
5 2019 expressed support for Ernst.¹³³ The Complaint in MUR 7674 cites to a Facebook ad that
6 ran in June and July 2019 and cost between \$1,000 and \$5,000, which featured footage of Ernst
7 with the following narration: “We deserve leaders who have walked in our shoes and share these
8 beliefs-like Joni Ernst. Standing up for Iowans all across our state.”¹³⁴ A review of Facebook’s
9 ad library reveals additional examples of such expenditures. Specifically, Iowa Values paid for
10 eleven different Facebook ads, which each ran multiple times, that all supported Ernst. For
11 example, one ad that ran between February 21 and March 21, 2020, at a cost between \$3,000 and
12 \$3,500, used the statement “Joni Ernst, A Fighter for Iowa Families.”¹³⁵ Other ads included
13 statements such as “Joni Ernst, Fighting for Our Iowa Values,” “Joni Ernst Knows: Iowans want
14 a healthcare system with choices for care,” and “Joni Ernst, Strong Leadership in Difficult
15 Times,” all alongside a photo of Ernst.¹³⁶ More recently, Iowa Values spent between \$2,000 and
16 \$2,500 on a Facebook ad that ran from June 1 through June 4, 2020, that displayed a photograph
17 of Ernst and the statement “Joni Ernst, Strong Compassionate Leadership.”¹³⁷ Screenshots of
18 some these Facebook ads are displayed below:

Voices) (Mar. 26, 2009) (identifying a slogan “centered on the candidate and referenc[ing] personal characteristics unrelated to any issue” as evidence of 100.22(a) express advocacy).

¹³³ *Supra* at 6-7.

¹³⁴ MUR 7674 Compl. at 4.

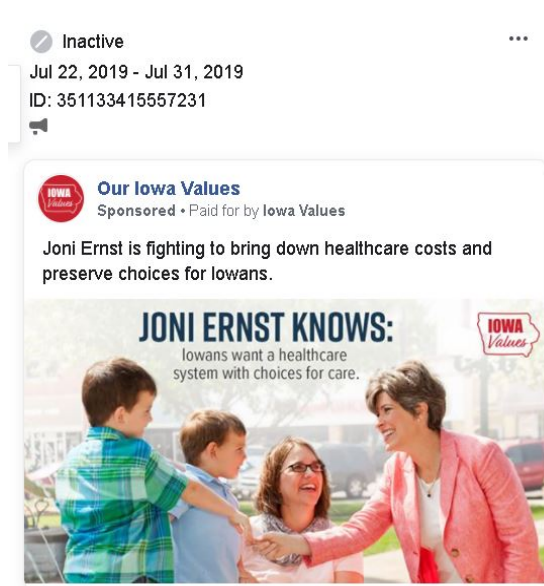
¹³⁵ *See* Iowa Values Facebook Ad Library, *supra* note 18.

¹³⁶ *Id.*

¹³⁷

https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impressi

1



2



3 Similarly, the group spent \$46,500 on Google ads, all of which advocate the election of
 4 Ernst or the defeat of her opponent.¹³⁸ One of its ads shows a text overlay on a photo of Ernst
 5 stating, “We Deserve Leaders Who Share Our Values Like Joni Ernst.” Another focuses on
 6 Ernst’s work on health care issues; it features various shots of Ernst with constituents and

[on search field=has impressions lifetime&view all page id=785144711668660&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped.](#)

¹³⁸ See Iowa Values Google Ads Report, *supra* note 19.

1 includes the statements “Joni Ernst is Fighting for Us, Quality Care, Iowa Values, Joni Ernst,” in
 2 both the audio and text.¹³⁹ Another video titled “Iowa Values – Values,” focuses on how Ernst’s
 3 congressional work represents “Iowa values.” It features news footage of Ernst along with
 4 reprinted news headlines, and audio narration stating that “We deserve leaders who have walked
 5 in our shoes and share these beliefs, like Joni Ernst. Standing up for Iowans all across our state
 6 and fighting for what we believe in. We are Iowans. These are our Iowa Values.”¹⁴⁰ A recent
 7 ad entitled “Theresa Greenfield’s Values,” which ran on July 27, 2020, does not mention Ernst,
 8 but states “we just can’t support Theresa Greenfield,” who is Ernst’s opponent for the November
 9 2020 general election.¹⁴¹ The ad further states, that Greenfield “does not share our values.”¹⁴²
 10 Iowa Values’ Google ads included the following:



11

¹³⁹ *Iowans Deserve Quality, Affordable Choices*, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR427988543244075008?hl=en>.

¹⁴⁰ *Iowa Values- Values*, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR59102392125227008?hl=en>.

¹⁴¹ *Theresa Greenfield's Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664?hl=en>

¹⁴² *Id.*

1 Here, it appears that Iowa Values sponsored ads that expressly advocated Ernst's election
2 under the definitions at 11 C.F.R. § 100.22(a) and (b). Commission precedent supports the
3 conclusion that the language used in the Iowa Values' ads constitutes express advocacy. For
4 instance, in MUR 5024R (Council for Responsible Government/Kean), the Commission
5 concluded that the phrase "Tell Tom Kean Jr . . . , New Jersey Needs New Jersey Leaders,"
6 constituted express advocacy under 11 C.F.R. § 100.22(a) because, after identifying Kean as
7 someone who had spent years living outside of New Jersey in another state, it was akin to
8 identifying the candidate as "pro-choice" or "pro-life" then telling the reader to "vote pro-
9 choice" or "vote pro-life" as illustrated in the regulation.¹⁴³ Similarly, in another matter, the
10 Commission found that language praising one candidate's qualifications and attacking another
11 candidate's lack of experience would also constitute express advocacy.¹⁴⁴ The Commission
12 further concluded that the statements at issue in these matters also constituted express advocacy
13 under section 100.22(b) because the electoral portions were "unmistakable, unambiguous and
14 suggestive of only one meaning" — to vote against the particular candidate, and that taken
15 outside the context of the upcoming election, the ads were virtually meaningless.¹⁴⁵

16 In the same way, Iowa Values' ads use language identifying Ernst's experience, personal
17 qualities, characteristics in a positive light, and repeated slogans, all of which appeared aimed at
18 directing viewers to vote for Ernst. For instance, the Google video ad displaying news footage

¹⁴³ F&LA at 13-14, MUR 5024R (Council for Responsible Government/Kean).

¹⁴⁴ *See, e.g.*, F&LA at 6-8, MUR 5831 (Softer Voices) (finding that ad that praised Rick Santorum and attacked the qualifications of his opponent by stating "Can we really risk Bob Casey learning on the job?" constituted express advocacy under 11 C.F.R. § 100.22(a) by effectively directing readers to vote against Casey); *see also*, F&LA at 6-7 and Conciliation Agreement ¶¶ IV.24-28, MUR 5511/5525 (Swift Boat Veterans) (finding that language stating that "Mr. Kerry is clearly unfit for command of the armed forces of the United States," was express advocacy by directing readers to contribute toward Kerry's defeat in the upcoming presidential election).

¹⁴⁵ *See* F&LA at 6-8, MUR 5831 (Softer Voices); F&LA at 6-7 and Conciliation Agreement ¶¶ IV.24-28, MUR 5511/5525 (Swift Boat Veterans); F&LA at 14-15, MUR 5024R (Council for Responsible Government/Kean).

1 and headlines describing Ernst's work, and the Facebook ad discussing "Joni's Record" on
2 health care issues, served to tout her accomplishments.¹⁴⁶ That ad also includes the statement,
3 "We deserve leaders who share our values like Joni Ernst" which, uses the term "Leaders" as a
4 reference to the upcoming election for Senator, and has no reasonable meaning other than to call
5 for the reelection of Joni Ernst.¹⁴⁷ Further, Iowa Values' repeated use of slogans in its ads
6 describing Ernst as a "fighter" and as someone exhibiting "strong compassionate leadership in
7 difficult times," essentially serve as commentary on her work in the Senate and her qualifications
8 for office. Indeed, Ernst's official campaign uses similar language pertaining to her "fighting"
9 for Iowa values; a quote from her featured on her campaign website states: "That's why I'm
10 fighting every day for our values. . . ." ¹⁴⁸ The Iowa Values ads also describe Ernst as someone
11 who has "walked in our shoes" and "shares our beliefs," tied to references to "Our Iowa Values."
12 Even a recent Google ad focused on her opponent, advocates defeat of Greenfield by stating that
13 Iowans cannot support her because "she does not share our values."¹⁴⁹ Utilizing the "values"
14 language is yet another reference to Ernst. Presenting Ernst's personal qualities in a favorable
15 light and indicating that she demonstrate "Iowa Values" suggests that Ernst would be a good
16 representative for Iowans and can have no other reasonable meaning than to urge Ernst's
17 reelection.

¹⁴⁶ *Iowa Values – Values*, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR59102392125227008?hl=en>.

¹⁴⁷ *Id.*

¹⁴⁸ Notably, many of the Iowa Values ads that state that Ernst will "fight back," she will "lead the fight," ask for people to "join the fight," appear to use similar language as Ernst's own campaign website and social media pages where she makes statements, such as she is "fighting every day for our values." <https://joniernst.com/>.

¹⁴⁹ *Theresa Greenfield's Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664>.

1 Iowa Values argues that its ads were issue or policy ads because none of its ads
2 “mentioned an election or referred to a ‘candidate’ for an election but instead discuss policy
3 issues.¹⁵⁰ However, this position ignores Commission precedent finding that communications
4 using slogans and describing a candidate’s qualities or qualifications constitute express
5 advocacy. The ads include statements such as “Joni Ernst, A Fighter for Iowa Families,” “We
6 deserve leaders who share our values like Joni Ernst,” “Joni Ernst is fighting for us,” “Joni Ernst,
7 Fighting for Iowa Values,” Joni Ernst, Strong Compassionate Leadership in Difficult Times,”
8 and other similar language. While some of these ads may discuss specific issues, such as health
9 care, the addition of such Ernst-focused statements makes it such that there is no reasonable
10 interpretation that they are advocating for Ernst and that the group’s major purpose was to reelect
11 Ernst to the Senate.¹⁵¹

12 Additionally, taking into context the timing of these statements also supports a
13 conclusion that these ads expressly advocated Ernst’s reelection. In particular, Iowa Values did
14 not begin paying for ads featuring Ernst until after she had already announced her reelection
15 campaign in April 2019. And the group ran three different ads touting Ernst’s “strong
16 compassionate leadership” in May and June 2020, shortly before the June 2, 2020 primary
17 election. Therefore, the electoral portions were “unmistakable, unambiguous and suggestive of
18 only one meaning” — that the viewer should vote for Joni Ernst. Taking away the context of the
19 upcoming 2020 election would render these ads meaningless.

¹⁵⁰ MUR 7674 Resp. at 12.

¹⁵¹ Even if the ads were not express advocacy, their focus on Ernst are still indicative of the major purpose to influence her reelection. *See, e.g.*, F&LA at 12-16, MUR 6535R (Americans for Job Security) (examining electioneering communications that did not contain express advocacy, in addition to its independent expenditures, to determine major purpose).

1 c. Conclusion

2 Iowa Values has exceeded the threshold for becoming a political committee by receiving
3 over \$1,000 in contributions and making well over \$1,000 in expenditures. Additionally, the
4 available information overall, including the focus of its ads and the language used in its
5 fundraising emails and the strategy memo, along with its overall spending indicate that the
6 organization's "major purpose" was nominating or electing a federal candidate. Therefore, we
7 recommend that the Commission find reason to believe that Iowa Values violated 52 U.S.C.
8 §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

9 **B. Reports of Independent Expenditures**

10 Under the Act, unauthorized political committees, as well as other persons, must disclose
11 independent expenditures. Non-connected political committees must itemize each independent
12 expenditure which exceeds \$200 or which, when added to previous independent expenditures
13 made on behalf of (or in opposition to) the same candidate, aggregates over \$200 during a
14 calendar year.¹⁵² Additionally, "every person (other than a political committee) who makes
15 independent expenditures in an aggregate amount or value in excess of \$250 during a calendar
16 year" must file a statement disclosing information about the expenditures.¹⁵³ An independent
17 expenditure is an expenditure that "expressly advocat[es] the election or defeat of a clearly

¹⁵² 52 U.S.C. § 30104(b)(6)(B)(iii). Independent expenditures of \$200 or less must be subtotaled and reported as unitemized expenditures. In addition to a political committee's regular reporting obligations, when a committee makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before, the date of an election, the Act requires the committee to file an additional report describing those expenditures within 24 hours. *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). Further, a political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day, must file a report describing those expenditures within 48 hours. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). *See, e.g.*, MUR 7286 (Indivisible Kentucky) (finding reason to believe that respondent failed to report independent expenditures and identify contributors of funds received for the purpose of funding billboards advocating the defeat of a federal candidate); MUR 6816 (Americans for Job Security) (finding reason to believe that respondent failed to disclose donor that made contributions for the purpose of furthering independent expenditures).

¹⁵³ 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(b), (e)(1)(i)-(v).

1 identified federal candidate,” and “is not made in concert or cooperation with or at the request or
2 suggestion of such candidate, the candidate’s authorized political committee, or their agents.”¹⁵⁴

3 As discussed above, Iowa Values paid for advertisements and door-to-door canvassing
4 that expressly advocated the election of Joni Ernst and thus required the filing of independent
5 expenditure reports with the Commission. Independent of the question about Iowa Values’
6 status as a political committee, it was required to file reports of independent expenditures for its
7 Facebook and Google ads supporting Joni Ernst. The group spent \$60,909 on Facebook ads
8 from 2018 through September 2020 and spent \$46,500 on Google ads from June through
9 September 2020.¹⁵⁵ All but one of the group’s Google ads advocated Ernst’s re-election, using
10 slogans such as “Joni Ernst is Fighting for Us,” “Quality Care, Iowa Values, Joni Ernst,” and
11 “We Deserve Leaders who have Walked in Our Shoes and Share these beliefs, like Joni Ernst;”
12 its most recent Google ad urges defeat of Ernst’s opponent, Theresa Greenfield.¹⁵⁶ In 2018, the
13 group’s Facebook ads focused primarily on issues such as agriculture, education and renewable
14 energy, but starting in June 2019, most of its ads featured Ernst.¹⁵⁷ It ran eleven different ads, on
15 multiple dates, with statements such as “Joni Ernst, Strong Compassionate Leadership in
16 Difficult Times” and “Joni Ernst, Fighting for Iowa Values.”¹⁵⁸ Only two ads focused on an
17 issue and did not mention a candidate.¹⁵⁹ A recent Facebook ad in support of Ernst launched on

¹⁵⁴ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of “expressly advocating”).

¹⁵⁵ *See* Iowa Values Facebook Ad Library, *supra* note 18; Iowa Values Google Ads Report, *supra* note 19.

¹⁵⁶ Iowa Values Google Ads Report; *Theresa Greenfield’s Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664?hl=e>.

¹⁵⁷ *See* Iowa Values Facebook Ad Library, *supra* note 18.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

1 June 1, 2020, the day before the Iowa primary election at a cost between \$2,000 and \$2,500, and
2 a different ad ran between May 14 and May 30, 2020, within 20 days of the primary at a cost
3 between \$5,000 and \$6,000.¹⁶⁰ Iowa Values should have filed 24-hour reports of independent
4 expenditures in connection with the May and June Facebook ads, and it was required to file
5 independent expenditure reports for the remainder of its ads advocating Ernst's reelection.
6 Additionally, it was required to file independent expenditure reports if it spent funds on a "paid
7 door to door effort" to garner support for Ernst, as explained in the strategy memo.¹⁶¹
8 Accordingly, we recommend that the Commission find reason to believe that Iowa Values
9 violated 52 U.S.C. § 30104(b)(6)(B)(iii), (c) or (g) by failing to file reports of independent
10 expenditures.

11 **C. Raising and Spending of Non-Federal Funds**

12 The Act prohibits federal candidates, their agents, and entities that are directly or
13 indirectly established, financed, maintained, or controlled ("EFMC'd") by or acting on behalf of
14 federal candidates and officeholders, from soliciting, receiving, directing, transferring, or
15 spending funds in connection with a federal election "unless the funds are subject to the
16 limitations, prohibitions, and reporting requirements of th[e] Act."¹⁶² The Act limits
17 contributions to non-authorized, non-party committees to \$5,000 in any calendar year.¹⁶³
18 Although an independent expenditure only committee ("IEOPC") may accept contributions from
19 corporations and individuals without regard to that \$5,000 limitation,¹⁶⁴ federal officeholders and

¹⁶⁰ *Id.*

¹⁶¹ MUR 7672 Compl. at Ex. B.

¹⁶² 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.60, 300.61; *see also* 52 U.S.C. §§ 30116(a), 30118(a) (setting out contribution limitation and corporate contribution prohibition, respectively).

¹⁶³ 52 U.S.C. § 30116(a)(1)(C).

¹⁶⁴ *See SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals' contributions to political committees that only make independent

1 candidates may only solicit up to \$5,000 from permissible sources on behalf of such a
 2 committee.¹⁶⁵

3 Commission regulations set out ten non-exclusive factors set out to determine whether a
 4 person or entity (“sponsor”) “directly or indirectly established, financed, maintained or
 5 controlled” another person or entity under 52 U.S.C. § 30125;¹⁶⁶ those factors include whether
 6 the “sponsor, directly or through its agent,” “had an active or significant role in the formation of
 7 the entity,” “owns controlling interest” in the entity, has “the authority or ability to hire appoint,
 8 demote, or otherwise controls the officers or other decision-making employees or members of
 9 the entity,” or “has common or overlapping officers or employees with the entity that indicates a
 10 formal or ongoing relationship.”¹⁶⁷ An agent “means any person who has actual authority, either
 11 express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any
 12 election” on behalf of a federal candidate.¹⁶⁸

13 Through regulation, the Commission has defined “to solicit” broadly to mean “to ask,
 14 request, or recommend, explicitly or implicitly, that another person make a contribution,

expenditures); Advisory Op. 2010-11 (Common Sense Ten) (“AO 2010-11”) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

¹⁶⁵ See Advisory Op. 2011-12 (Majority PAC) at 3 (“AO 2011-12) (determining that solicitation restrictions under 52 U.S.C. § 30125(e)(1)(A) remain applicable to contributions solicited by federal candidates, officeholders, and other covered persons); Conciliation Agreement ¶¶ 7, 8, MUR 7048 (Cruz for President) (same); F&LA at 11, MURs 6563 and 6733 (Rep. Aaron Schock).

¹⁶⁶ 11 C.F.R. § 300.2(c)(2).

¹⁶⁷ *Id.* § 300.2(c)(2)(i)-(x).

¹⁶⁸ 11 C.F.R. § 300.2(b)(3). In promulgating this regulation in 2002, the Commission explained that the definition of agent must cover “implied” authority because “[o]therwise, agents with actual authority would be able to engage in activities that would not be imputed to their principals so long as the principal was careful enough to confer authority through conduct or a mix of conduct and spoken words.” Explanation and Justification, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,082 (July 29, 2002) (“Non-Federal Funds E&J”). Thus, a principal may be held liable under an “implied actual authority theory” where “the principal’s own conduct reasonably causes the agent to believe that he or she had authority.” *Id.* at 49083.

1 donation, transfer of funds, or otherwise provide anything of value.”¹⁶⁹ The regulation further
2 provides that a “solicitation” is “an oral or written communication that, construed as reasonably
3 understood in the context in which it is made, contains a clear message asking, requesting, or
4 recommending that another person make a contribution” and “may be made directly or
5 indirectly” but “does not include mere statements of political support[.]”¹⁷⁰

6 In 2006, the Commission revised the definition of “to solicit” following a decision by the
7 United States Court of Appeals for the District of Columbia Circuit in *Shays v. FEC* holding that
8 the Commission’s former regulation, promulgated in 2002, was too narrow and failed to include
9 “implicit requests for money.”¹⁷¹ In promulgating the revised definition, the Commission
10 explained that the revision is broad in order to “ensure[] that candidates and parties may not,
11 implicitly and indirectly, raise unregulated funds for either themselves, or subject to statutory
12 exceptions, ‘friendly outsiders.’”¹⁷² The Commission further stated: “By covering implicit and
13 indirect requests and recommendations, the new definition forecloses parties and candidates from
14 using circumlocutions ‘that make their intentions clear without overtly “asking” for money’ and
15 “also squarely addresses the central concern of the Court of Appeals in *Shays* that ‘indirect’ as
16 well as ‘direct’ requests for funds or anything of value must be covered.”¹⁷³

¹⁶⁹ 11 C.F.R. § 300.2(m); *see also* Non-Federal Funds E&J, 67 Fed. Reg. at 49,086 (defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

¹⁷⁰ 11 C.F.R. § 300.2(m); *see also* Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13,926, 13,928 (Mar. 20, 2006) (“Solicit E&J”).

¹⁷¹ Solicit E&J, 71 Fed. Reg. at 13,927 (quoting *Shays v. FEC*, 414 F.3d 76, 104-06 (D.C. Cir. 2005)).

¹⁷² *Id.* at 13,928 (quoting *Shays*, 414 F.3d at 106).

¹⁷³ *Id.* The standard for determining whether a communication is a solicitation is objective and does not turn on the subjective interpretations of the person making the communication or its recipients. 11 C.F.R. § 300.2(m); *see also* Solicit E&J, 71 Fed. Reg. at 13,928. This objective standard “hinges on whether the recipient should have reasonably understood that a solicitation was made.” Solicit E&J, 71 Fed. Reg. at 13,929.

1 Here, Respondents argue that the Complaint presents no information indicating that
2 Ernst, or that any of the named individuals, participated in the formation of Iowa Values,
3 participated in the group's governance, or exercised any decision-making authority over the
4 entity.¹⁷⁴ The MUR 7672 Complaint identifies Kohan, Flowers, and Holloway Avella as alleged
5 agents for Ernst in support of its allegations that Ernst's campaign solicited non-federal funds
6 through Iowa Values in violation of section 30125. There is no information, however, that any
7 of these three individuals established Iowa Values, and indeed, they are not listed as board
8 members on the Iowa Values website or the group's IRS filings.¹⁷⁵

9 While these individuals appear to have provided services to Iowa Values in their
10 capacities as consultants, it is not clear whether Kohan or Flowers did so at the behest of Ernst or
11 her campaign. The available information indicates that Kohan and Flowers were no longer
12 working for Ernst, her campaign, or her Senate office at the time they provided services to Iowa
13 Values. Kohan left Ernst's Senate office staff in 2015 and Flowers worked for New Ideas PAC
14 until 2015.¹⁷⁶ Both initially went on to work for consultant companies but eventually began
15 providing services to Iowa Values years later: Kohan was Executive Director for Iowa Values
16 from 2017 through 2018, and Flowers replaced him in 2019.¹⁷⁷

17 On the other hand, Holloway Avella has been providing fundraising services to Ernst's
18 campaign, leadership PAC, and Iowa Values during the same time period, and when considered
19 along with the July 2019 fundraising email, these circumstances indicate that she solicited
20 nonfederal funds on behalf of Ernst and her campaign. First, Holloway Avella has been a

¹⁷⁴ MUR 7672 Resp. at 4-7.

¹⁷⁵ *Id.* at 4-5; <https://ouriowavalues.com/team>.

¹⁷⁶ *Supra* at 5, 12.

¹⁷⁷ *Id.* Although Flowers began a formal role with Iowa Values in 2019, it is unclear whether he performed any other services for the group prior to that date.

1 consultant for Joni for Iowa since 2013, for New Ideas PAC since 2015, and for Iowa Values
2 since 2017.¹⁷⁸ Second, the July 2019 fundraising email and attachments that Holloway Avella
3 personally sent support an inference that she was acting on behalf of Ernst. The email states that
4 Ernst personally introduced an individual to Holloway Avella, an introduction which appears to
5 have been for the purpose of making a financial contribution to Iowa Values.¹⁷⁹ The language in
6 the email is inconsistent with Ernst's Response to the MUR 7672 Complaint, which claims that
7 the Complaint contained no information to suggest "that any of the individuals mentioned was
8 acting at the direction of Senator Ernst."¹⁸⁰

9 The longstanding relationship between Ernst and Holloway Avella and the language of
10 the email also show that Ernst did in fact play a role in raising funds for Iowa Values. The
11 language indicates that, at some earlier point in time, Ernst connected the donor with Iowa
12 Values' fundraiser and did so in the context of, and for the purpose of, soliciting funds to Iowa
13 Values. Further, even without details of what previously transpired between Ernst and the
14 potential donor, the language of the email suggests that there was at least an "implicit and
15 indirect request[] and recommendation[]" that made Ernst's intention behind the introduction
16 clear.¹⁸¹ The purpose of the email, in particular that it was a fundraising solicitation, is
17 immediately clear from the subject line: "Funding Request from Iowa Values 501(c)(4) –
18 promoting issues Senator Ernst advocates."¹⁸² The email then references the personal
19 introduction, stating "[a]s a follow up to our introduction by Senator Ernst, I am reaching out to

¹⁷⁸ *Supra* note 25 (also noting that Holloway Consulting also provided fundraising services to a number of joint fundraising committees benefitting Ernst).

¹⁷⁹ *See* July 2019 Email, Attach. 1.

¹⁸⁰ MUR 7672 Resp. at 4.

¹⁸¹ Solicit E&J, at 13,928 (quoting *Shays*, 414 F.3d at 106).

¹⁸² July 2019 Email, Attach. 1.

1 you on behalf of Iowa Values,” explains that the purpose of Iowa Values “is to push back against
2 [] negative attacks” on Ernst, and proceeds to solicit a \$50,000 contribution to Iowa Values to
3 aid in those efforts.¹⁸³ The email also attaches “a contribution form with wiring instructions for
4 [the recipient’s] convenience” and attaches a memo outlining Iowa Values’ strategy in
5 connection with Ernst’s reelection.¹⁸⁴

6 As such, Ernst’s introduction of a potential donor to whom a five-figure contribution
7 could be requested to her longtime fundraising consultant appears to constitute a solicitation as
8 defined under the Commission’s regulations. The \$50,000 amount requested by Holloway
9 Avella is above the \$5,000 amount the Commission has advised a federal candidate may solicit,
10 and further indicates that Ernst made an improper soft money solicitation. Therefore, given these
11 circumstances, we recommend that the Commission find reason to believe that Ernst and Joni for
12 Iowa violated 52 U.S.C. § 30125(e)(1)(A) by soliciting nonfederal funds for Iowa Values, but
13 that it take no action at this time as to New Ideas PAC.¹⁸⁵

14 **D. Coordination and Republication**

15 Under the Act, “[c]oordinated means made in cooperation, consultation, or concert with,
16 or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political
17 party committee.”¹⁸⁶ The Commission’s regulations provide a three-part test for determining
18 when a communication is a coordinated expenditure, which is treated as an in-kind
19 contribution.¹⁸⁷ The communication must: (1) be paid for, in whole or in part, by a person other

¹⁸³ *Id.*

¹⁸⁴ *Id.*; MUR 7672 Compl. at Ex. B.

¹⁸⁵ Under the Act, a federal candidate acts as an agent of his or her authorized campaign committee with regard to contributions received and disbursements made. *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2(a).

¹⁸⁶ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

¹⁸⁷ 11 C.F.R. § 109.21(a)-(b).

1 than the candidate or committee (the “payment prong”); (2) satisfy one of five “content”
 2 standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of six “conduct” standards listed in
 3 11 C.F.R. § 109.21(d).¹⁸⁸ All three prongs must be satisfied for a communication to be
 4 considered coordinated.¹⁸⁹

5 Under the “former employee or independent contractor” standard,” the communication
 6 must be paid for by a person, or employer of a person, who was an employee or independent
 7 contractor of the candidate who is clearly identified in the communication, or the candidate’s
 8 opponent, during the previous 120 days.¹⁹⁰ Second, the former employee or independent
 9 contractor must convey to the person paying for the communication (A) information about the
 10 campaign’s plans, projects, activities, which was material to the creation, production or
 11 distribution of the communication, or (B) information used by the former employee or
 12 independent contractor in providing services to the candidate that was material to the creation,
 13 production or distribution of the communication.¹⁹¹

14 The “common vendor” standard requires that: (i) the person paying for the
 15 communication uses a “commercial vendor” to create, produce, or distribute the communication,
 16 (ii) the vendor, including any owner, officer, or employee, previously provided certain
 17 enumerated services — including, *inter alia*, “development of media strategy,” polling,
 18 fundraising, “developing the content of a public communication,” “identifying voters,” or

¹⁸⁸ *Id.* The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. *Id.* § 109.21(d)(1)-(6).

¹⁸⁹ 11 C.F.R. § 109.21(d)(4); *see also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

¹⁹⁰ 11 C.F.R. § 109.21(d)(5)(i).

¹⁹¹ 11 C.F.R. § 109.21(d)(5)(ii) (specifying that this aspect of the conduct standard is not satisfied if the information was obtained from a publicly available source).

1 “consulting or otherwise providing political or media advice”¹⁹² — to the candidate identified in
 2 the communication (or that candidate’s opponent) during the previous 120 days, and (iii) the
 3 commercial vendor uses or conveys to the person paying for the communication:

4 (A) Information about the campaign plans, projects, activities, or needs of
 5 the clearly identified candidate, the candidate’s opponent, or a political
 6 party committee, and that information is material to the creation,
 7 production, or distribution of the communication; or

8 (B) Information used previously by the commercial vendor in providing
 9 services to the candidate who is clearly identified in the communication,
 10 or the candidate’s authorized committee, the candidate’s opponent, the
 11 opponent’s authorized committee, or a political party committee, and that
 12 information is material to the creation, production, or distribution of the
 13 communication.¹⁹³

14
 15 The common vendor conduct standard is not satisfied if a commercial vendor has established and
 16 implemented a written firewall policy that meets certain requirements, so long as material
 17 information is not shared.¹⁹⁴

18 The payor of a communication that is coordinated through the use of a common vendor
 19 or a former employee makes a contribution to the candidate, but the candidate or authorized
 20 committee “does not receive or accept an in-kind contribution” resulting from coordination
 21 through a common vendor or former employee unless the communication was made at the
 22 request or suggestion of, with the material involvement of, or after substantial discussions with,
 23 the candidate or authorized committee.¹⁹⁵

¹⁹² 11 C.F.R. § 109.21(d)(4)(ii).

¹⁹³ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

¹⁹⁴ 11 C.F.R. § 109.21(h). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities, or needs was used or conveyed to the person paying for the communication. *Id.*

¹⁹⁵ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

1 Political committees are required to report all contributions made and received.¹⁹⁶
 2 Reports also must itemize contributions and expenditures aggregating more than \$200 during a
 3 calendar year.¹⁹⁷ Any person who is otherwise prohibited from making contributions or
 4 expenditures under any part of the Act or Commission regulations is prohibited from paying for
 5 a coordinated communication.¹⁹⁸

6 Additionally, Commission regulations treat as a “contribution” the “financing of the
 7 dissemination, distribution, or republication, in whole or in part, of any . . . campaign materials
 8 prepared by the candidate [or] the candidate’s authorized committee;” the regulations provide
 9 that payments for such communications “shall be considered a contribution for the purposes of
 10 contribution limitations and reporting responsibilities of the person making the expenditure.”¹⁹⁹
 11 The republication of campaign materials prepared by a candidate’s authorized committee is also
 12 “considered a[n in-kind] contribution for the purposes of contribution limitations and reporting
 13 responsibilities of the person making the expenditure”²⁰⁰ because the person financing the
 14 communication “has provided something of value to the candidate [or] authorized committee.”²⁰¹
 15 The candidate who prepared the original campaign material does not receive or accept an in-kind

¹⁹⁶ 52 U.S.C. § 30104(a), (b).

¹⁹⁷ *See* 52 U.S.C. § 30104(b)(3), (5).

¹⁹⁸ 11 C.F.R. § 109.22.

¹⁹⁹ 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii) (providing that “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or authorized agents shall be considered an expenditure.”).

²⁰⁰ 11 C.F.R. § 109.23(a).

²⁰¹ *See* Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (“Coordinated and Independent Expenditures E&J”). The purpose of the republication provision of the Commission’s regulations is to “distinguish between independent expressions of an individual’s views and the use of an individual’s resources to aid a candidate in a manner indistinguishable in substance for the direct payment of cash to a candidate.” H.R. Conf. Rep. 94-1057, 59, 1976 U.S.C.C.A.N. 946, 974 (1976).

1 contribution, and is not required to report an expenditure, unless the dissemination, distribution,
2 or republication of the campaign material is a coordinated communication under Commission
3 regulations.²⁰²

4 Here, although Iowa Values' communications appear to satisfy the payment and
5 content prongs of the coordination provisions, it is unclear whether the conduct prong is
6 satisfied. First, it does not appear that any of the three consultants named in the MUR 7672
7 Complaint were employees of Ernst's campaign or PAC during the previous 120 days before
8 moving on to work with Iowa Values in some capacity. Kohan ceased working for Ernst in
9 2015, Flowers received his last direct payment from New Ideas PAC in 2015, and it appears that
10 Holloway Avella was never an employee of the campaign.²⁰³ Because some time had passed
11 between the time that Kohan and Flowers left the Ernst committees and the time they started
12 providing services to Iowa Values, and there is no available information that Holloway Avella
13 ever personally worked directly for any of the Ernst Committees, it does not appear that the
14 former employee standard would be satisfied.

15 However, Holloway Avella, Kohan, and Flowers provided services to both Iowa Values
16 and the Ernst committees during the same time frame and that timing could satisfy the common
17 vendor conduct standard. Iowa Values' 2017 IRS filing shows that it paid \$42,609 to Holloway
18 Consulting, which raised \$390,000 in contributions for the group that year.²⁰⁴ During the same
19 year, Joni for Iowa and New Ideas PAC issued \$166,025 in disbursements to Holloway
20 Consulting.²⁰⁵ On its 2018 IRS filing, Iowa Values disclosed payments in the amount of \$16,200

²⁰² 11 C.F.R. § 109.23(a).

²⁰³ *Supra* at 5 and notes 8, 25.

²⁰⁴ *See* 2017 IRS Form 990.

²⁰⁵ Ernst Victory Iowa also paid Holloway Consulting \$1,084.18 in 2017.

1 to Holloway Consulting for fundraising solicitations, and the company raised \$187,000 for the
2 group.²⁰⁶ During the same time period, the Ernst committees paid Holloway Consulting a total
3 of \$194,132.97.²⁰⁷

4 Additionally, Kohan was paid for his role as Iowa Values' Executive Director through his
5 employer, Jamestown Associates.²⁰⁸ Jamestown Associates has received \$256,479.40 in
6 payments from Ernst's various committees since 2017. We do not know if Flowers is being paid
7 as the group's Executive Director through his consulting firm Midland Strategies.²⁰⁹ New Ideas
8 PAC and Joni's Roast and Ride have disclosed \$132,040 in payments to Midland Strategies and
9 \$15,802.64 to Flowers from 2015 through 2018.²¹⁰

10 At this stage, there is neither information that campaign plans may have been shared nor
11 that any vendors had firewalls in place as part of a consulting agreement to prevent any
12 coordination. While there is a possibility that coordination could have taken place between the
13 Iowa Values, Joni for Iowa and New Ideas PAC through the use of common vendors, there is no
14 available information at this stage that there was any sharing of information. Such information,
15 however, could be discovered in the course of investigating Iowa Values' political committee

²⁰⁶ See 2018 IRS Form 990.

²⁰⁷ Disclosure reports filed with the Commission show that five Ernst Committees (Joni for Iowa, Ernst Victory, Ernst Victory Iowa, Great Iowa Fund, and New Ideas PAC) paid Holloway Consulting a total of \$558,370.73 in 2019. It appears that Joni for Iowa has been paying Holloway Consulting for services since 2013.

²⁰⁸ *Supra* note 8.

²⁰⁹ The Ernst committees made disbursements to Midland Strategies totaling \$137,040 from December 2014 through July 2018.

²¹⁰ Joni for Iowa also disclosed payments to Midland Strategies in 2013.

1 status. Therefore, we recommend that the Commission take no action at this time in connection
2 with the coordination allegations.

3 On the other hand, it does appear that Iowa Values republished Ernst campaign materials.
4 At least three photos appearing in Iowa Values' Facebook and Google ads appear to have been
5 taken from the Joni for Iowa Facebook page.²¹¹ For each of those ads, the republished photos
6 are the only images used in the ad and are accompanied by a message: one ad included the
7 message "Iowa is waiting for a leader like you. Join the team and help canvas for Iowa Values"
8 above a photo of Ernst.²¹² Another ad consisted of a large photo of Ernst and with a text overlay
9 that stated "We Deserve Leaders Who Share Our Values Like JONI ERNST," and in a different
10 version using the same photo states "We are Iowans."²¹³ A more recent ad that ran in June 2020
11 features a photograph of Ernst and states "Joni Ernst, Strong Compassionate Leadership;" that
12 photograph also appears on the main page of Ernst's campaign website, <https://joniernst.com/>.²¹⁴
13 Below are some of the republished photos, alongside the originals that appeared on Ernst's
14 campaign website and Facebook page.

²¹¹ @joniforiowa, FACEBOOK, <https://www.facebook.com/joniforiowa/>. One of the campaign photos had also been used in Joni's Roast and Ride "campaign kickoff" materials. <https://www.eventbrite.com/e/joni-ernsts-campaign-kick-off-at-roast-and-ride-saturday-june-15th-2019-tickets-60526489359#>.

²¹² See Iowa Values Facebook Ad Library, *supra* note 18; Joni for Iowa, Facebook (June 16, 2019), https://www.facebook.com/joniforiowa/photos/a.600921606606422/2473410696024161/?type=3&_tn=-R.

²¹³ <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR507759692387188736?hl=en>; Joni for Iowa, Facebook Posts (June 3 and 5, 2019), https://www.facebook.com/joniforiowa/posts/2448093778555853?_tn=-R and https://www.facebook.com/joniforiowa/posts/2452102291488335?_tn=-R.

²¹⁴ See Iowa Values Facebook Ad Library, *supra* note 1818. The photograph was also posted on Joni for Iowa's Facebook and Flickr pages. See https://www.facebook.com/joniforiowa/posts/3470100479688506?_tn=-R and <https://www.flickr.com/photos/joniforiowa/>.

Inactive
Jul 20, 2019 - Jul 23, 2019
ID: 857407117976725

Our Iowa Values
Sponsored • Paid for by Iowa Values

Iowa is waiting for a leader like you. Join the team and help canvass for Iowa Values.



Joni Ernst
June 16, 2019

In order for our grassroots movement to be successful I am counting on the support of folks all across the Hawkeye State. Share this post today if you're on #TeamJoni.



1
2

Joni Ernst · 0:36 Thanks for tuning in! Join our team at <https://joniernst.com>



JONIERNST.COM
Home - Joni for Iowa

3
4

We Deserve Leaders Who Share Our Values Like
JONI ERNST.



Paid for by IOWA VALUES
6/28/19 - 7/27/19 (30 days)

WE ARE IOWANS.



Paid for by IOWA VALUES
6/28/19 - 7/27/19 (30 days)

Joni Ernst
June 3, 2019

There are less than two weeks until this year's Roast and Ride! Join me, Nikki Haley, Kim Reynolds, Chuck Grassley and more at this year's event! We hope to see you June 15th! Get your tickets here:



5
6



1
 2 Another photo appearing in the group's ads is Ernst's official Senate portrait, but we do
 3 not know the source of the remaining photos or the video footage the group used in its other
 4 communications. We thus recommend that the Commission find reason to believe that the Iowa
 5 Values made a prohibited in-kind contribution to Joni for Iowa in the form of republished
 6 campaign materials in violation of 52 U.S.C. § 30118(a).²¹⁵

7 **E. Itemization of Payroll Disbursements**

8 The Complaint in MUR 7732 alleges that Joni for Iowa violated the Act and Commission
 9 regulations by reporting only the lump sum payments made to its payroll vendor and not itemizing
 10 salary payments to campaign staff.²¹⁶ The Complaint alleges that by disclosing only the payments to
 11 its payroll vendor, Joni for Iowa sought to hide the names of employees who may have also been
 12 working simultaneously with Iowa Values.²¹⁷

²¹⁵ In the past, the Commission has dismissed matters where the use of a republished photo was incidental or *de minimis* and typically where the republication involved only one advertisement, but here Iowa Values used photos and videos of Ernst as the central part of multiple ads. *See, e.g.*, MUR 5743 (Betty Sutton) (Commission admonished a committee after determining that a republished candidate photo was incidental and likely had a *de minimis* value); MUR 5996 (Tim Bee) (Commission exercised prosecutorial discretion to dismiss the allegation that a group republished photo of a candidate that comprised two seconds of a 30-second ad, and was downloaded at no charge from candidate's publicly available website). *C.f.* MUR 6783 (Indian Americans for Freedom) (entering into a conciliation agreement with group that made excessive or prohibited contributions by republishing a candidate's campaign materials in one mailing).

²¹⁶ *Supra* at 14-15.

²¹⁷ *Id.*

1 A candidate's authorized committee must itemize all disbursements, including operating
2 expenditures that exceed \$200 or aggregate to over \$200 when added to other disbursements in
3 the same category made to the same payee during the election cycle.²¹⁸ Although neither the Act
4 nor Commission regulations expressly address reporting of ultimate payees such as subvendors,
5 subcontractors, or vendor employees, in a 2013 interpretive rule, the Commission clarified the
6 itemization requirement and specifically addressed the proper disclosure of ultimate payees
7 where a committee pays a credit card bill that includes charges exceeding \$200 from a single
8 vendor.²¹⁹ It explained that a committee itemizing a disbursement to a credit card company
9 "must itemize as a memo entry any transaction with a single vendor charged on the credit card
10 that exceeds the \$200 itemization threshold" in order to itemize the "ultimate payee, as the
11 provider of the goods or services to the political committee" and to reflect that the credit card
12 company was not the provider of those goods and services.²²⁰ In explaining the rule, "the
13 Commission makes clear that this interpretation is based on long-standing Commission practice
14 and is not making any fundamental changes to its rules or processes."²²¹

15 The Commission's guide for candidates also includes instructions for interpreting the
16 regulatory requirement for itemizing operating expenditures under 11 C.F.R. § 104.3(b)(4)(i),
17 and provides specific guidance for properly itemizing operating expenditures charged on a credit

²¹⁸ 52 U.S.C. § 30104(b)(5); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9.

²¹⁹ In the rule, the Commission describes a committee's obligation to report "ultimate payees" in three specific circumstances: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) payments by candidates who use personal funds to pay committee expenses without reimbursement. *See* Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (Jul. 8, 2013) ("Ultimate Payee Interpretive Rule"); *see also* MUR 7732 Resp. at 2-3 (discussing Commission precedent applying the Ultimate Payee Interpretive Rule).

²²⁰ Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626

²²¹ *Id.*

1 card using memo entries that disclose the ultimate recipient of the payment.²²² Specific guidance
2 concerning the proper reporting of disbursements to payroll companies likewise appears on the
3 Commission's website, which explains that "[t]he lump sum paid to the payroll company must
4 be followed by MEMO entries that include the individuals that were the ultimate recipients of
5 the salary payments," and that such payments "are disclosed in the same manner as credit card
6 payments and ultimate recipients."²²³

7 In its 2020 April Quarterly, 2019 Year-End, and 2019 October Quarterly Reports filed
8 with the Commission, Joni for Iowa initially disclosed only lump sum payments to Insuperity,
9 Inc., totaling \$581,996 during the 2020 election cycle, but on April 30, 2020, the Committee
10 filed amendments to those reports to add memo entries and disclose the names of twelve
11 individual recipients for a total of \$269,452 in payments.²²⁴ These amendments were not made
12 in response to RFAIs, but it is possible that the forthcoming complaint in MUR 7732, which the
13 Complainant had publicized, may have been what prompted the amendments.²²⁵

14 In its Response, Joni for Iowa argues that neither the Act nor Commission regulations
15 require itemization of payroll payments in this matter and that the Commission's guidance on the
16 issue was difficult to find.²²⁶ However, the Commission has interpreted the itemization
17 requirement to apply to the disclosure of payroll disbursements in the context of enforcement

²²² Federal Election Commission Campaign Guide for Congressional Candidates and Committees at 104-105 (June 2014) ("Candidate Guide"), <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

²²³ See *RAD FAQs for Political Action Committees*, FEC WEBSITE, https://www.fec.gov/resources/cms-content/documents/RAD_FAQs-PACs_last_visited_september_21_2020.pdf.

²²⁴ *Supra* at 16 and note 73.

²²⁵ The Complaint was dated April 30, 2020, was received by the Commission on the same date, and the Complainant issued a press release about the Complaint on May 1. See <https://endcitizensunited.org/latest-news/press-releases/end-citizens-united-files-fec-complaint-against-senator-joni-ernst/> (last accessed July 27, 2020).

²²⁶ *Supra* at 15-16.

1 matters as far back as 1999.²²⁷ And the Commission's guidance for applying the itemization
2 requirements in the regulation to the analogous credit card payment scenario has been available
3 to the public since 2013. Nevertheless, Joni for Iowa chose to amend its reports to itemize the
4 payments at issue in the Complaint. It is unclear why the Committee had itemized payroll
5 disbursements in earlier reports from the 2020 election cycle, but did not do so for the three
6 reports at issue here.²²⁸ Regardless, Joni for Iowa filed amendments to itemize the payments on
7 its own accord and well before the date of the primary election. The Commission has dismissed
8 matters involving similar circumstances and has pursued other matters where the requisite
9 amendments were not done promptly or were completed too close to the election.²²⁹ Consistent
10 with those matters, and in view of the fact the Committee filed its amendments before the
11 primary election and well before the general election, we recommend that the Commission
12 exercise its prosecutorial discretion and dismiss the allegations that Joni for Iowa failed to report
13 payroll disbursements properly.²³⁰

²²⁷ See MUR 6818 (Allen Weh for Senate) (2017); MUR 6576 (McLeod for Congress) (2013); MUR 4822 (Friends for Harry Reid) (1999).

²²⁸ See, e.g., 2019 April Quarterly Rpt. (disclosing salary payments to two individuals as well as separate payments to Insuperity); 2019 July Quarterly Rpt. (disclosing salary payments to three individuals and separate disbursements to Insuperity). The amended reports at issue here added memo entries to reflect the salary payments.

²²⁹ See, e.g., F&LA at 8, MUR 6818 (Commission dismissed allegation that committee disclosed lump sum payments totaling \$285,953 made to a payroll company but failed to itemize the disbursement for the individual salary payments where committee filed corrective amendments in response to RFAIs); F&LA at 12-13, MUR 6576 (McLeod for Congress) (dismissing committee's failure to itemize payroll expenditures, among other violations, where committee corrected reports itemizing \$8,727 in payroll disbursements shortly after receiving RFAIs and before the election). See also MUR 6897 (Allen Weh for Senate) (EPS dismissal concerning 80 unitemized reimbursements made to the candidate totaling over \$70,000 that accrued over two filing quarters where committee amended its disclosure reports to include most previously excluded payee information). *But see* First Gen. Counsel's Rpt. at 13-15, MUR 7534 (recommending dismissal where amount of unitemized reimbursements was relatively modest \$14,768.93 but Commission was equally divided over recommendations); Conciliation Agreement ¶¶ IV.11-15, V, VI MUR 4822 (Friends for Harry Reid) (entering into conciliation agreement concerning \$316,737.86 in improperly itemized payroll payments across five disclosure reports that were not amended until election day).

²³⁰ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

1 **IV. INVESTIGATION**

2 We propose to investigate the nature, extent, and cost of Iowa Values' federal campaign
3 activity during the 2018 and 2020 election cycles in order to determine whether it should have
4 registered and reported as a political committee. We will also obtain information regarding the
5 scope of the group's republication of Ernst campaign materials. The investigation will also seek
6 to determine the role that Ernst may have played with raising funds for the group. We intend to
7 conduct our investigation through voluntary means but recommend that the Commission
8 authorize the use of compulsory process, including the issuance of appropriate interrogatories,
9 document subpoenas, and deposition subpoenas, as necessary.

1 **V. RECOMMENDATIONS**

- 2 1. Find reason to believe that Iowa Values violated 52 U.S.C. §§ 30102, 30103, and
3 30104, by failing to organize, register, and report as a political committee;
4
5 2. Find reason to believe that Iowa Values violated 52 U.S.C. § 30104(b), (c) or (g) by
6 failing to file independent expenditure reports;
7
8 3. Find reason to believe that Iowa Values violated 52 U.S.C. § 30118(a) by making a
9 prohibited in-kind corporate contribution to Joni for Iowa through the
10 publication of campaign materials;
11
12 4. Find reason to believe that Senator Joni Ernst and Joni for Iowa and Cabell Hobbs
13 in his official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) by
14 soliciting nonfederal funds;
15
16 5. Take no action at this time that Jobs Opportunity and New Ideas PAC and Cabell
17 Hobbs as treasurer violated 52 U.S.C. § 30125 by soliciting nonfederal funds;
18
19 6. Dismiss as a matter of prosecutorial discretion the allegation that Joni for Iowa and
20 Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)
21 by failing to itemize disbursements;
22
23 7. Take no action at this time that Iowa Values made prohibited contributions in
24 violation of 52 U.S.C. § 30118 through coordinated communications;
25
26 8. Take no action at this time that Senator Joni Ernst and Joni for Iowa and Cabell
27 Hobbs in his official capacity as treasurer accepted prohibited contributions in
28 violation of 52 U.S.C. § 30118 through republished and coordinated
29 communications;
30
31 9. Approve the Factual and Legal Analyses;
32
33 10. Authorize compulsory process; and

1 11. Approve the appropriate letters.
2
3

4 Lisa J. Stevenson
5 Acting General Counsel
6

7
8
9 September 25, 2020

Charles Kitcher

10 Date

11 Charles Kitcher
12 Acting Associate General Counsel for Enforcement
13

14 *Mark Shonkwiler*

15 _____
16 Mark Shonkwiler
17 Assistant General Counsel
18

19 *Ana J. Peña-Wallace*

20 _____
21 Ana J. Peña-Wallace
22 Attorney
23
24
25

26 Attachments:

- 27 1. Iowa Values July 2019 Email
28 2. Factual and Legal Analysis for Iowa Values
29 3. Factual and Legal Analysis for Senator Ernst and Joni for Iowa

MUR767200105

From: Claire Holloway Avella <claire@hollowayconsulting.net>

Date: July [REDACTED] 2019 at [REDACTED]

To: "[REDACTED]" <[REDACTED]>

Subject: Funding Request from Iowa Values 501(c)(4) - promoting issues Senator Joni Ernst advocates

[REDACTED]

As a follow up to our introduction by Senator Ernst, I am reaching out to you on behalf of Iowa Values. By way of background, Iowa Values is 501(c)(4) formed to educate Iowans about common-sense solutions to various public policy issues of national, state, and local importance for which Senator Ernst advocates. Thank you for agreeing to learn more about this effort and/or schedule a visit by phone. Let me know if there is a date/time that works best for your schedule. In the meantime, I know your time is limited so I am passing along some initial information for your review and consideration.

As you may have seen, an outside group on the left, Iowa Voices (not to be confused with our group, Iowa Values) recently launch a six-figure ad buy in media markets across the state attacking Senator Ernst on her vote to repeal Obamacare, which they turn into a vote to discriminate against people with pre-existing conditions. They also try to take some shine off her military service by having a fellow service member deliver the attack. The purpose of our group, Iowa Values, is to push back against these type of negative attacks.

Attached please find a memo outlining our 2019 strategy. It is our hope that [REDACTED] will consider an investment of \$50,000 to help continue our efforts over the summer months. I have attached a contribution form with wiring instructions for your convenience. As a reminder, contributions to 501(c)(4) entities are not publically disclosed. I have attached an assurance letter for your compliance needs. I am also happy to connect you and/or your team with the Iowa Values legal counsel should you have additional questions.

Thank you in advance for your consideration. Please let me know if you would like to schedule a call to discuss further.

Claire

Claire (Holloway) Avella

Holloway | Consulting | Inc.

Direct: 202.558.6677 [REDACTED]

Mobile: [REDACTED]

Email: claire@hollowayconsulting.net

ATTACHMENT 1

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4

5 **RESPONDENT:** Iowa Values **MURs 7672 and 7674**

6 **I. INTRODUCTION**
7

8 These matters were generated by complaints filed with the Federal Election Commission
9 (the “Commission”) by the Campaign for Accountability and the Campaign Legal Center, making
10 various allegations regarding a 501(c)(4) organization named Iowa Values and its activities in
11 support of Iowa U.S. Senator Joni Ernst’s candidacy for reelection in 2020.¹ One of the
12 complaints alleges that Iowa Values’ major purpose was the reelection of Ernst, and that after
13 accepting contributions and making expenditures for the purpose of supporting Ernst, it should
14 have registered as a political committee with the Commission. The complaints also allege that
15 Ernst, Ernst’s principal campaign committee, Joni for Iowa, Ernst’s Leadership PAC, Jobs
16 Opportunity and New Ideas PAC (“New Ideas PAC”), and their agents solicited non-federal
17 funds for Iowa Values, and that Iowa Values used such funds to pay for coordinated
18 communications including the republication of Ernst campaign materials.

19 Respondents generally deny the allegations. Although Iowa Values does not deny that it
20 solicited funds to support Ernst and that it spent funds to support Ernst, it denies that it should
21 have registered as a political committee, asserting that its major purpose concerned issue
22 advocacy.

23 As discussed in further detail below, based in part on fundraising solicitations and public
24 communications that expressly advocate Ernst’s reelection and a distinct change in the group’s
25 focus away from broader issues to Ernst’s reelection beginning in 2019, the available

¹ See 52 U.S.C. § 30109(a)(1).

1 information indicates that Iowa Values’ major purpose was to support Ernst’s candidacy, which
2 requires its registration as a political committee under the Federal Election Campaign Act of
3 1971, as amended (the “Act”). Therefore, the Commission finds reason to believe that Iowa
4 Values violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and
5 report as a political committee, and violated 52 U.S.C. § 30104(b), (c) or (g) by failing to file
6 reports of independent expenditures. Because it appears that Iowa Values republished Ernst
7 campaign materials, the Commissions also finds reason to believe that Iowa Values violated
8 52 U.S.C. § 30118(a) by making a prohibited in-kind corporate contribution to Joni for Iowa.

9 **II. FACTUAL BACKGROUND**

10 Joni Ernst is a candidate for reelection to the U.S. Senate for Iowa during the 2020
11 election cycle.² Joni for Iowa is her principal campaign committee.³ New Ideas PAC has been
12 Ernst’s Leadership PAC since 2014.⁴ Joni for Iowa is also a participant, along with New Ideas
13 PAC, in the joint fundraising committee, Joni’s Roast and Ride.⁵

² See *Meet Joni*, U.S. Senate, <https://www.ernst.senate.gov/public/index.cfm/meet-joni> (last accessed July 20, 2020); Amended Statement of Candidacy (Apr. 4, 2019).

³ See Amended Statement of Organization (June 26, 2020). Ernst’s campaign website can be found at <https://joniernst.com/>.

⁴ See Statement of Organization (Aug. 6, 2014) (initially registering as “JONI PAC”) and Amended Statement of Organization (Sept. 16, 2014) (changing its name to “Jobs Opportunity and New Ideas PAC” after being advised by the Reports Analysis Division (“RAD”) that it could not include the name of a candidate as part of the committee’s name).

⁵ A nonfederal committee named Joni PAC Iowa, is the third participant for the joint fundraiser. See Statement of Organization (Apr. 7, 2016), Joni’s Roast and Ride, <https://docquery.fec.gov/pdf/177/201604070300061177/201604070300061177.pdf>; Statements of Organization (Feb. 9, 2016, Oct. 17, 2016, and Apr. 29, 2020), Joni PAC Iowa, IECDB Web Reporting System, available at https://webapp.iecdb.iowa.gov/PublicView/?d=organization%2fPACs%2fJONI+PAC+Iowa_9870. Other federal joint fundraising committees benefitting Ernst have included Ernst Victory Iowa, Ernst Victory, Great Iowa Fund, Tillis-Ernst Victory Fund, Scott Roberts Gardner Ernst Victory Fund (SRGE Victory Fund) (terminated), McFadden Ernst Cotton Sullivan Victory Fund (MECS Victory Fund) (terminated) and Ernst Victory Fund (terminated).

1 Iowa Values was established in 2017 and that same year registered as a 501(c)(4) tax-
2 exempt organization with the Internal Revenue Service (“IRS”) stating that its mission is “[t]o
3 educate the public about common-sense solutions to various public policy issues of national
4 importance, including limited government, defending life, cutting wasteful spending, finding
5 solutions for the challenges facing rural America, and building a strong national defense.”⁶ It
6 appears, however, that the group did not become publicly active until 2018.⁷ Jon Kohan, a
7 former Ernst campaign manager and Senate Deputy Chief of Staff, was the group’s Executive
8 Director in 2017 and 2018, and Derek Flowers, another former Ernst campaign manager,
9 replaced him in 2019.⁸ The group’s IRS filings reflect that it received \$390,000 in contributions
10 in 2017 and \$187,000 in 2018, and reported \$268,014 in expenses in 2017 and \$295,680 in 2018.
11 Iowa Values reported spending \$5,000 on political campaign activity in 2017 but reported no

⁶ See Form 990 Initial Return, Iowa Values (Nov. 13, 2018) (“2017 Form 990”), https://apps.irs.gov/pub/epostcard/cor/815224793_201712_990O_2019020816074301.pdf. The group is also registered as a nonprofit corporation in the District of Columbia and as a foreign nonprofit corporation in the state of Iowa. See Application for Certificate for Authority (Nonprofit) for Iowa Values (June 26, 2017) and 2019 Biennial Report for a Foreign Nonprofit Corporation (Feb. 26, 2019), available at *Business Entity Search*, IOWA SEC. OF STATE, <https://sos.iowa.gov/search/business/search.aspx> (last accessed July 20, 2020).

A similarly named group, Iowa Values (“Super PAC”), is registered with the Commission as an independent expenditure only committee, but it appears the Super PAC has had little activity since 2014. See <https://iowavalues.com/>; <https://www.fec.gov/data/committee/C00565846/>. The Iowa Values 501(c)(4) group subject of these matters has been confused with the Super PAC, however. See, e.g., Elizabeth Meyer, *Iowa Super PAC Launches Voter Outreach Efforts To Help Joni Ernst*, June 28, 2019, IOWA STARTING LINE, <https://iowastartingline.com/2019/06/28/iowa-super-pac-launches-voter-outreach-efforts-to-help-joni-ernst/> (discussing an Iowa Values June 2019 press release but citing to the Super Pac’s FEC filings).

⁷ Erin Murphy, *Tom Tauke Co-founds Iowa Values Conservative Think Tank*, THE GAZETTE, May 23, 2018, <https://www.thegazette.com/subject/news/government/tom-tauke-co-founds-iowa-values-conservative-think-tank-20180523>.

⁸ See 2017 Form 990; 2018 Form 990, Iowa Values (Nov. 13, 2019), https://apps.irs.gov/pub/epostcard/cor/815224793_201812_990O_2020021017129842.pdf (Flowers signed the 2018 report in his capacity as Executive Director).

1 such spending in 2018.⁹ Information about its 2019 and 2020 activities is not yet available with
2 the IRS.¹⁰ In its Response to the Complaint in MUR 7674, Iowa Values states that it expects its
3 2019 Form 990 to reflect \$839,000 in total spending, but does not provide a detailed breakdown
4 of that spending.¹¹

5 Iowa Values operates a website at www.ouriowavalues.com. The website's main page
6 includes a statement describing the group as "a nonprofit, nonpartisan forum" and features an ad
7 supporting Ernst.¹² The ad, entitled "Iowa Values - Values," states that "we deserve leaders who
8 have walked in our shoes and share these beliefs, like Joni Ernst."¹³ The same ad is shown on
9 the "Our Videos" page of the website, along with four additional ads: three supporting Ernst and
10 one issue ad.¹⁴ One of the additional ads is entitled "Iowans Deserve Quality, Affordable
11 Choices" and states that "Joni Ernst is Fighting for Us," and "Quality Care, Iowa Values, Joni
12 Ernst."¹⁵ Another ad is entitled "Won't Stand for It" and states that "Joni Ernst is fighting for
13 our Iowa values in Washington" and "Joni Ernst, A Fighter for Iowa Families," while another
14 one is entitled "Right for Our Values."¹⁶ The issue ad, called "Lost," focuses on opposing

⁹ 2017 Form 990; 2018 Form 990. Kohan's compensation listed on the IRS filings was \$95,000 in 2017 and \$85,000 in 2018, which Iowa Values paid through Kohan's employer, Jamestown Associates, LLC. Holloway Consulting Inc., is listed as the group's fundraiser for both years.

¹⁰ The Form 990 for a previous tax year ending on December 31 has an initial return due date of May 15 and an extended due date of November 15 of the following year. *See* Return Due Dates for Exempt Organizations: Annual Return, IRS, <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>.

¹¹ MUR 7674 Iowa Values Resp. at 12 (May 15, 2020).

¹² *See* <https://ouriowavalues.com/> (last accessed Sept. 24, 2020).

¹³ *Id.*

¹⁴ *See Our Videos*, <https://ouriowavalues.com/our-videos> (last accessed Sept. 24, 2020).

¹⁵ *Id.*

¹⁶ *Id.*

1 Medicare for all and does not mention Ernst.¹⁷ The Iowa Values website does not advocate on
2 behalf of, or even reference, any current federal candidate other than Ernst.

3 The group's Facebook and Twitter pages likewise mostly feature ads, videos, or articles
4 focusing on Ernst.¹⁸ Facebook's ad library shows that the group has spent \$60,909 on ads about
5 "social issues, elections or politics" from June 23, 2018 through September 22, 2020.¹⁹ Iowa
6 Values spent \$46,500 on Google ads from June 27, 2019 through September 17, 2020.²⁰

7 On June 27, 2019, Iowa Values posted a press release on its Facebook page announcing a
8 six-month "Digital Advertising Blitz and Door to Door Canvassing," that would kick off "the
9 beginning of an election-long effort by Iowa Values to highlight the work of Sen. Joni Ernst."²¹
10 The announcement stated that Iowa Values "invested six-figures in a digital advertising
11 campaign that will touch swing voters in all 99 counties."²² The release described the planned
12 canvassing operation as a "large-scale effort" to knock on 150,000 doors across the state in 2019

¹⁷ *Id.*

¹⁸ @ouriowavalues, FACEBOOK, <https://www.facebook.com/pg/ouriowavalues/posts/> (showing most recent post, dated Apr. 2, 2020) (last accessed Sept. 24, 2020); @OurIowaValues, TWITTER, <https://twitter.com/ouriowavalues> (showing most recent post, dated Apr. 2, 2020) (last accessed Sept. 24, 2020). Iowa Value's YouTube Channel contains the same videos as those that appear on the website. Our Iowa Values, YOUTUBE, <https://www.youtube.com/channel/UCwseruNKP4IgtkpCXWhzX6w/videos>.

¹⁹ See Iowa Values, @OurIowaValues, Facebook Ad Library ("Iowa Values Facebook Ad Library"), [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last accessed Sept. 24, 2020).

²⁰ See Advertiser: Iowa Values, Google Transparency Report ("Iowa Values Google Ads Report"), <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960?hl=en> (last accessed Sept. 24, 2020). Although Iowa Values started running its ads in June 2019, it did not distribute any ads between September 2019 and June 2020.

²¹ Iowa Values Announces Digital Advertising Blitz and Door to Door Canvassing (June 27, 2019), @OurIowaValues, FACEBOOK, https://www.facebook.com/ouriowavalues/posts/1130033023846492?__tn__=-R (including link to Iowa Values Press Release (June 27, 2019), <https://us3.campaign-archive.com/?e=&u=1e7cc07d8991b902eb884256d&id=f04d90419f>).

²² See Iowa Values Press Release (June 27, 2019), <https://us3.campaign-archive.com/?e=&u=1e7cc07d8991b902eb884256d&id=f04d90419f>.

1 in order to make “high-quality, in person, face-to-face contacts with important segments of the
2 electorate.”²³ It also included a preview of the group’s “2020 Election Planning”; specifically, it
3 stated that the group “plans to be a consistent and strong advocate for the conservative and free
4 market principles it was founded to promote during the 2020 election” and that “in particular will
5 highlight the work of Sen. Joni Ernst.”²⁴ One Iowa Values board member is quoted in the press
6 release reiterating the group’s focus on Ernst’s reelection, stating that “Iowa Values is going to
7 make sure everyone knows how [Ernst is] fighting for all Iowans in Washington.”²⁵

8 The advertising campaign was followed by a fundraising solicitation sent by Iowa
9 Values’ fundraising vendor, Claire Holloway Avella of Holloway Consulting, Inc.,²⁶ which
10 attached a strategy memo outlining the work that Iowa Values planned for the 2020 election
11 cycle.²⁷ The email appears to be directed to a specific individual and based on the language of
12 the email, it appears that the solicitation came about after Ernst introduced Holloway Avella to
13 this individual.²⁸ The July 2019 fundraising email contained the subject line “Funding Request
14 from Iowa Values 501(c)(4) – promoting issues Senator Joni Ernst advocates” and stated that the

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ According to the firm’s website, Holloway Avella established Holloway Consulting in 2003, and “has successfully coordinated fundraising efforts for a roster of prominent members of the U.S. Senate, including the Honorable John McCain and Joni Ernst.” *See Our Team*, <http://www.hollowayconsulting.net/ourteam.html> (last accessed Aug. 27, 2020). It appears that that the consulting firm has been providing fundraising work for Ernst’s various committees since 2013. *See Disbursements Search*, www.fec.gov (showing that Joni for Iowa first paid Holloway Consulting in 2013, New Ideas PAC, Ernst Victory and Ernst Victory Fund started paying the firm in 2015, Ernst Victory Iowa started paying in 2016, Joni’s Roast and Ride began paying in 2017, and Great Iowa Fund began paying the firm in 2019).

²⁷ MUR 7674 Compl. at 3-4 (Dec. 19, 2019); MUR 7672 Compl. at Ex. B (Dec. 16, 2019).

²⁸ The email begins as follows: “As a follow up to our introduction by Senator Ernst.” MUR 7674 Compl. at note 13 (including link to a redacted copy of the email at <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html>).

1 group was formed to educate Iowans about “issues of national, state and local importance for
2 which Senator Ernst advocates.”²⁹ As a basis for the funding request, the email described that
3 another group made “a six-figure ad buy in media markets across the state attacking Senator
4 Ernst.”³⁰ It stated that the “purpose of our group, Iowa Values, is to push back against these type
5 of negative attacks.”³¹ The email asked the recipient to “consider an investment of \$50,000” and
6 stated that contributions to 501(c)(4) groups are not publicly disclosed.³²

7 The strategy memo attached to the email discusses an “Operation Firewall” aimed at
8 engaging voters who “represent the ‘firewall’ between winning and losing in 2020 for Senator
9 Ernst,” and that “there is critical work with segments of the electorate that must begin now in
10 2019 so that Senator Ernst has the best possible jumping off point in 2020.”³³ It describes a
11 “ground game apparatus” as its approach to reach voters that would include a “paid door to door
12 effort” and a “complimentary long-term digital messaging plan.”³⁴

13 The Complaints discussed below pertain to various aspects of Iowa Values’ work in
14 connection with Ernst’s 2020 candidacy for reelection to the Senate. The Complaints make
15 allegations concerning the group’s political committee status and of possible violations of
16 provisions of the Act and the Commission’s regulations, including reporting violations, the
17 solicitation of nonfederal funds, and republication.

²⁹ See <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ MUR 7674 Compl. at 4-5; *see also id.* at note 16 (including link to strategy memo at <https://assets.documentcloud.org/documents/6550822/Holloway-Email-Attachment-Iowa-Values-Strategy.pdf>); MUR 7672 Compl. at Ex. B (attaching copy of memo).

³⁴ *See* MUR 7672 Compl. at Ex. B.

1 **A. MUR 7674**

2 The Complaint in MUR 7674 alleges that Iowa Values failed to organize or register as a
3 political committee, in violation of 52 U.S.C. §§ 30102 and 30103, and accordingly has failed to
4 file the disclosure reports required of political committees with the Commission, in violation of
5 52 U.S.C. § 30104(b).³⁵ It alleges that the group has been “working closely with Senator Joni
6 Ernst and has the major purpose of influencing Senator Ernst’s reelection.”³⁶ In support of the
7 allegations, the Complaint describes Iowa Values’ activities in support of Ernst, including its
8 June 27, 2019 Press Release, a series of Facebook and Google ads in which Iowa Values used a
9 photo or video of Ernst, or used her name, and the July 2019 fundraising email and attached
10 strategy memo.³⁷ The Complaint states that “[t]here is little evidence of Iowa Values engaging
11 in any activities in 2019 *other* than those aimed at influencing Ernst’s reelection.”³⁸

12 In response, Iowa Values denies that it was a political committee, stating instead that it is
13 an issue advocacy group and that its “primary purposes” include “educat[ing] the public about
14 common-sense solutions to various public policy issues of national importance including
15 limited government, defending life, cutting wasteful spending, finding solutions for the
16 challenges facing rural America, and building a strong national defense.”³⁹ It states that it spent
17 most of its funds in 2019 “in furtherance of policy priorities,” including “spending for public
18 opinion research, data development, message testing, grassroots targeting, policy white papers,

³⁵ MUR 7674 Compl.

³⁶ *Id.* at 1.

³⁷ *Id.* at 2-5.

³⁸ *Id.* at 12.

³⁹ MUR 7674 Iowa Values Resp. at 3.

1 educational communications, fundraising, and compliance.”⁴⁰ The Response indicates that the
2 group’s 2019 Form 990 to be filed with the IRS in the fall of 2020 will show approximately
3 \$839,000 in total spending and that its political spending at both the federal and state levels was
4 no more than 41% of its overall activity.⁴¹

5 The Response further discusses two pro-Joni Ernst ads cited in the Complaint but denies
6 that they were express advocacy or election related.⁴² The Response instead asserts that
7 “virtually all” of its ads discuss policy issues, even those that also reference Ernst’s work, and
8 “have never triggered a need to register or report with the Commission.”⁴³ Finally, Iowa Values
9 acknowledges sending the fundraising email and strategy memo that focus on Ernst’s reelection
10 but asserts that it does not accept contributions earmarked for a specific purpose, noting that
11 engaging “in some political campaign spending” “does not automatically transform the
12 donations it receives into contributions.”⁴⁴ Rather, it adds that its Board of Directors ultimately
13 makes any decisions on how to spend such funds.⁴⁵

14 **B. MUR 7672**

15 The Complaint in MUR 7672 alleges that Iowa Values, Joni for Iowa, and New Ideas
16 PAC have been coordinating communications in support of Ernst’s reelection campaign.⁴⁶
17 Specifically, it alleges that Ernst and her agents established Iowa Values for the purpose of

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 2, 12.

⁴² *Id.* at 10-13.

⁴³ *Id.* at 12.

⁴⁴ *Id.* at 13-14.

⁴⁵ *Id.* at 14.

⁴⁶ MUR 7672 Compl.

1 supporting her campaign and that Iowa Values republished Joni for Iowa campaign materials.⁴⁷
2 The Complaint points to alleged ties between Iowa Values employees and consultants, and Ernst,
3 as well as the Ernst campaign, and questions why Washington, DC-based consultants who
4 previously or concurrently worked for Ernst would establish an Iowa-focused 501(c)(4)
5 organization for any reason other than to support Ernst's reelection.⁴⁸

6 The Complaint focuses on three individuals in connection with its allegations as to agents
7 of Ernst soliciting nonfederal funds for Iowa Values. First, it identifies Jon Kohan, who served
8 as the Executive Director of Iowa Values from its founding in 2017 through 2018, worked as
9 Ernst's campaign manager in 2014, as Ernst's Deputy Chief of Staff in the Senate until 2015, and
10 in 2017, went to work with Jamestown Associates, a political consulting firm that has been
11 providing services to Joni for Iowa, New Ideas PAC, and Joni's Roast and Ride since 2017.⁴⁹
12 Next, the Complaint identifies fundraising consultant Holloway Avella basing that contention on
13 her apparently simultaneous work for Joni for Iowa and New Ideas PAC and her work on behalf
14 of Iowa Values, including the July 2019 email, which references Senator Ernst providing the
15 potential donor with an introduction to the fundraiser, and seeking "an investment of \$50,000" in
16 Iowa Values' efforts on behalf of Ernst.⁵⁰ The Complaint notes that Iowa Values listed
17 Holloway Consulting's address on its corporate registration documents filed with the District of
18 Columbia.⁵¹ Finally, the Complaint identifies Ernst's former campaign manager, Derek Flowers,

⁴⁷ *Id.* at 1.

⁴⁸ *Id.* at 4-6, 10-11.

⁴⁹ *See id.* at 4-5; *see also Disbursements Search*, www.fec.gov (showing that Joni's Roast and Ride and New Ideas PAC reportedly made their first disbursements to Jamestown Associates on Apr. 11, 2017, and Joni for Iowa first paid the firm on May 8, 2017).

⁵⁰ MUR 7672 Compl. at 5.

⁵¹ *Id.* at Ex. A.

1 who also allegedly acted as an agent for both Ernst and Iowa Values.⁵² Flowers' condominium
2 address was initially used as Iowa Values' "principal office" address in 2017, as well as by his
3 company Midland Strategies, LLC, a consultant used by Ernst's committees, before he was later
4 named Executive Director of Iowa Values in 2019.⁵³

5 The Complaint states that because of their close ties to the Ernst campaign, Kohan,
6 Holloway Avella, and Flowers acted as agents of Ernst and as such, "Sen. Ernst, through her
7 agents, established Iowa Values."⁵⁴ The Complaint alleges that "supporting Sen. Ernst and
8 defending her record appears to be a key priority of Iowa Values," based on the language of a
9 fundraising email and strategy memo that Holloway Avella sent out.⁵⁵ The Complaint also
10 alleges that Iowa Values has republished Ernst campaign materials.⁵⁶ It includes screenshots of
11 two Iowa Values Facebook ads that feature photographs allegedly taken from Ernst's campaign
12 website and Facebook page.⁵⁷ As a result, the Complaint concludes that Iowa Values made, and
13 Joni for Iowa accepted, illegal in-kind contributions by republishing Joni for Iowa campaign
14 materials.⁵⁸ Iowa Values did not submit a response to the MUR 7672 Complaint.

15 Available information indicates that Ernst denies establishing or having any role with
16 Iowa Values and that any of the named individuals acted as her agents. Notably, according to
17 the available information, Ernst indicates that the three individuals identified in the Complaint

⁵² *Id.* at 6, 10.

⁵³ *Id.* at 6.

⁵⁴ *Id.* at 10-11.

⁵⁵ *Id.* at 7 and Ex. B.

⁵⁶ *Id.* at 11-12.

⁵⁷ *Id.* at 8-9.

⁵⁸ *Id.* at 12.

1 just performed work as consultants for both the group and Ernst’s campaign committee and that
2 Holloway Avella was free to solicit funds for Iowa Values as long as she was not acting as
3 Senator Ernst’s agent when doing so.⁵⁹

4 **III. LEGAL ANALYSIS**

5 **A. Political Committee Status**

6 1. The Test for Political Committee Status

7 The Act and Commission regulations define a “political committee” as “any committee,
8 club, association, or other group of persons which receives contributions aggregating in excess of
9 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
10 during a calendar year.”⁶⁰ In *Buckley v. Valeo*,⁶¹ the Supreme Court held that defining political
11 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”
12 might be overbroad, reaching “groups engaged purely in issue discussion.”⁶² To cure that
13 infirmity, the Court concluded that the term “political committee” “need only encompass
14 organizations that are under the control of a candidate or the *major purpose of which is the*
15 *nomination or election of a candidate.*”⁶³ Under the statute as thus construed, an organization
16 that is not controlled by a candidate must register as a political committee only if (1) it crosses
17 the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election of federal
18 candidates.

⁵⁹ The Iowa Values 2017 Form 990 lists three board members, none of which are the individuals identified in the Complaint.

⁶⁰ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁶¹ 424 U.S. 1 (1976) (per curiam).

⁶² *Id.* at 79.

⁶³ *Id.* (emphasis added).

1 Although *Buckley* established the major purpose test, it provided no guidance as to the
2 proper approach to determine an organization’s major purpose.⁶⁴ After *Buckley*, the Commission
3 adopted a policy of determining on a case-by-case basis whether an organization is a political
4 committee, including whether its major purpose is the nomination or election of federal
5 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,
6 the Commission consistently has declined to do so.⁶⁵ Instead, the Commission decided that
7 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis
8 of an organization’s conduct that is incompatible with a one-size-fits-all rule,” and that “any list
9 of factors developed by the Commission would not likely be exhaustive in any event, as
10 evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions
11 considering the political committee status of various entities.”⁶⁶

12 To determine an entity’s “major purpose,” the Commission considers a group’s “overall
13 conduct,” including, among other factors, public statements about its mission, organizational
14 documents, and government filings (*e.g.*, IRS filings), and the proportion of spending related to
15 “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁶⁷ With

⁶⁴ See, *e.g.*, *Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (No. 12-311) (“RTAA”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”).

⁶⁵ See, *e.g.*, Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” (Sept. 12, 2001), <https://sers.fec.gov/fosers/showpdf.htm?docid=5684> and Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance), <https://sers.fec.gov/fosers/showpdf.htm?docid=5669>.

⁶⁶ Political Committee Status, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

⁶⁷ *Id.* at 5597, 5605.

1 respect to such comparative spending, the Commission has stated that it compares how much of
2 an organization’s spending is for “federal campaign activity” relative to “activities that [a]re not
3 campaign related.”⁶⁸ Further, a district court has concluded that electioneering communications
4 presumptively have the purpose of influencing a federal election, and thus it would be contrary to
5 law for the Commission to categorically exclude non-express advocacy in a Commission
6 analysis of major purpose.⁶⁹

7 Political committees must comply with certain organizational and reporting requirements
8 set forth in the Act. They must register with the Commission, file periodic reports for disclosure
9 to the public, appoint a treasurer who maintains its records, and identify themselves through
10 “disclaimers” on all of their political advertising, on their websites, and in mass emails.⁷⁰

⁶⁸ Supplemental E&J, at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. *See* 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

⁶⁹ *See Citizens for Responsibility and Ethics in Washington v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. Mar. 20, 2018) (“CREW II”) (determining that the Commission “must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate”); *see also id.* at 100 (“The Commission may in special circumstances conclude that an electioneering ad does not have [an election-related major] purpose. But given Congress’s recognition that the ‘vast majority’ of electioneering ads have the purpose of electing a candidate, the Commission’s exclusion of electioneering ads from its major-purpose analysis should be the rare exception, not the rule.”). *Citizens for Responsibility and Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016) (“CREW I”) (stating that it is improper to “exclude from . . . consideration all non-express advocacy in the context of disclosure”).

⁷⁰ *See* 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

1 2. There is Reason to Believe That Iowa Values is a Political Committee

2 a. Statutory Threshold

3 Iowa Values appears to have exceeded the statutory threshold for political committee
4 status in two separate ways.⁷¹ First, Iowa Values received contributions exceeding \$1,000 in
5 response to fundraising solicitations that indicated that funds would be used toward the
6 reelection of Ernst. Under the Act, money received in response to fundraising solicitations
7 clearly indicating that the funds being sought would be targeted to the election or defeat of
8 clearly identified federal candidates constitute contributions.⁷² Further, in a recent ruling the
9 D.C. Circuit has reiterated that the term “contribution” applies to “funds intended to influence
10 elections.”⁷³ At least one fundraising solicitation consisted of an email that Holloway Avella
11 sent on behalf of Iowa Values seeking a “\$50,000” investment to “push back against . . . negative
12 attacks” against Ernst.⁷⁴ While that email appears to have been sent to a specific individual, it is
13 reasonably likely that similar emails were sent to other potential donors.

⁷¹ For the purpose of triggering political committee status, the Act defines the terms “contributions” and “expenditures” as including anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) and (9)(A)(i).

⁷² See 52 U.S.C. § 30101(8)(A)(i); *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) (holding that proceeds from a solicitation are contributions where solicitation “makes plain that the contribution will be used to advocate the defeat or success of a clearly identified candidate at the polls”). See also Factual and Legal Analysis (“F&LA”) at 10 and Certification ¶ 1 (Mar. 9, 2005), MUR 5541 (November Fund) (finding reason to believe that the 527 group’s “public statements and press releases would very likely lead a potential contributor to believe his or her contribution would be used to oppose one specific federal candidate”); General Counsel’s Brief at 5-14, Certification ¶ 3 (July 16, 2007) and Conciliation Agreement ¶¶ IV.18 -24 (Nov. 15, 2007), MUR 5440 (Media Fund) (finding probable cause to believe that 527 group exceeded statutory threshold for contributions when its solicitations, including oral presentations and letters to individual donors, resulted in contributions targeting the election of John Kerry and defeat of George W. Bush).

⁷³ *Citizens for Responsibility and Ethics in Washington v. FEC*, No. 18-5261, 2020 WL 4914080 at 10 (D.C. Cir. Aug. 21, 2020), *aff’d* 316 F.Supp.3d 349 (D.D.C. Aug. 03, 2018) (citing *MCFL*, 479 U.S. at 262) (“CREW III”).

⁷⁴ *Supra* at 6-7.

1 Iowa Values’ public statements would also lead potential contributions to believe that
2 their donations would be used toward Ernst’s reelection. The group’s June 2019 Press Release
3 discusses planned efforts to “highlight the work of Sen. Joni Ernst,” through a “Digital
4 Advertising Blitz and Door to Door Canvassing,” and announced that it had “invested six-
5 figures” into that effort.⁷⁵ The release plainly states that Iowa Values would “make sure
6 everyone knows how [Ernst is] fighting for all Iowans in Washington,” indicating that its efforts
7 were aimed at ensuring that Ernst is reelected.⁷⁶ Likewise, the strategy memo attached to the
8 July 2019 fundraising email demonstrates the group’s intent to use funds to reelect Ernst. The
9 memo discusses its “intent to build a ground game apparatus” that would include “a paid door to
10 door effort” and a “long-term digital messaging plan” to engage voters who would be crucial
11 factors “between winning and losing in 2020 for Senator Ernst.”⁷⁷ Iowa Values’ decision to
12 attach the memo to such emails underscores that the funds sent in response to those solicitations
13 would be targeted to the election of Ernst. In determining whether funds constituted
14 contributions under the Act, the Commission has in past matters “examined the entirety of the
15 solicitation and did not limit its analysis to the presence or absence of any particular words or
16 phrases.”⁷⁸ Consistent with the Commission’s past application of the \$1,000 threshold for
17 contributions, funds received in response to the Iowa Values July 2019 email solicitation would

⁷⁵ *Id.*

⁷⁶ *Id.* at 5.

⁷⁷ MUR 7672 Compl. at Ex. B.

⁷⁸ Supplemental E&J, at 5604.

1 have been given for the purpose of influencing a federal election and would therefore be
2 contributions under the Act.⁷⁹

3 Iowa Values' IRS filings reflect that the group raised \$390,000 in contributions in 2017
4 and \$187,000 in 2018 using the same fundraising vendor who sent out the 2019 fundraising
5 email.⁸⁰ Although we do not have information regarding its total 2019 or its current 2020
6 fundraising, in light of its announced efforts to focus on Ernst's 2020 reelection, it is possible
7 that the group's advertising "blitz" that began in June 2019 yielded a larger amount of
8 contributions.

9 Second, Iowa Values made expenditures exceeding \$1,000 when it paid for advertising
10 expressly advocating the reelection of Ernst, and in the case of one ad, the defeat of her
11 opponent, Theresa Greenfield. To assess whether an organization has made an "expenditure,"
12 the Commission analyzes whether spending on any of an organization's communications made
13 independently of a candidate constitutes express advocacy under 11 C.F.R. § 100.22.⁸¹
14 According to its Press Release, by June 2019 it had already "invested six-figures" to run ads and
15 pay for door-to-door canvassing throughout Iowa advocating for Ernst.⁸² As discussed in further

⁷⁹ See *id.* at 5604-5605 (examining fundraising solicitations sent by 527 organizations and concluding that some received more than \$1,000 in response to emails and other types of fundraising appeals that clearly indicated the funds received would be used to the defeat of a Federal candidate and therefore, the funds received in response to those solicitations were contributions under the Act); *CREW III*, 2020 WL 4914080 at 10.

⁸⁰ *Supra* at 5.

⁸¹ See Supplemental E&J, 72 Fed. Reg. at 5606. A communication contains express advocacy when, among other things, it uses campaign slogans or individual words that in context can have no other reasonable meaning than to urge the election or defeat of a clearly identified federal candidate. 11 C.F.R § 100.22(a). See also, F&LA at 10-11, MUR 6538R (Americans for Job Security) (finding that organization should have registered as a political committee after spending well over \$4 million on independent expenditures containing express advocacy that indicated a purpose to elect or nominate federal candidates).

⁸² *Supra* at 5. See F&LA at 13-16 (Aug. 9, 2006), MUR 5753 (League of Conservation Voters 527) (finding group met expenditure threshold when they spent more than \$1,000 on door-to-door canvassing and telephone banks where the scripts contained express advocacy).

1 detail below, Iowa Values spent over \$107,000 on Facebook and Google ads, most of which
2 supported Ernst. The language of the 2019 strategy memo also indicates that Iowa Values was
3 “putting resources in front of the most critical voters” to advocate for Ernst, in the form of ads
4 and canvassing efforts.⁸³ Thus, because it received over \$1,000 in contributions in response to
5 fundraising solicitations and paid over \$1,000 to run ads and pay for in person canvassing that
6 expressly advocated Ernst’s reelection, Iowa Values exceeded the statutory threshold for political
7 committee status.⁸⁴

8 b. Major Purpose

9 Although it initially established itself as a tax-exempt organization focused on policy
10 issues in 2017,⁸⁵ since 2019, Iowa Values’ activities — including its public statements,
11 fundraising, and spending — appear to be focused primarily on the reelection of Ernst, thereby
12 indicating that its major purpose may have changed.⁸⁶

13 i. Iowa Values’ Statements of Purpose

14 Iowa Values’ new effort appears to have begun in June 2019, with the public
15 announcement of a six-month “Digital Advertising Blitz and Door to Door Voter Canvassing”
16 that would be “just the beginning of an election-long effort by Iowa Values to highlight the work

⁸³ See MUR 7672 Compl. at Ex. B.

⁸⁴ See 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁸⁵ <https://ouriowavalues.com/issues>.

⁸⁶ See, e.g., F&LA at 14-15, MUR 6538R (Americans for Job Security) (examining whether respondent’s major purpose may have changed over time); cf. *CREW I*, 209 F. Supp. 3d at 94 (noting “that an organization’s major purpose can *change*” (citing *MCFL*, 479 U.S. at 262) (emphasis in original)).

1 of Sen. Joni Ernst.”⁸⁷ The group’s June 27, 2019, Press Release quotes Derek Flowers stating
2 that these efforts would “highlight the work Sen. Ernst has done to fight for Iowans” and
3 announces release of an ad entitled “We are Iowans” that also features Ernst.⁸⁸ According to the
4 Press Release, the ad would run on YouTube, Facebook and would be “accompanied by display
5 ads across the web.”⁸⁹

6 Iowa Values’ announcement was followed by a fundraising effort and release of a
7 strategy memo, which further support the conclusion that the group’s primary purpose changed
8 starting in 2019. In July 2019, the group’s fundraiser, Holloway Avella, sent an email seeking a
9 \$50,000 investment to support Ernst, citing negative attack ads that another group was running
10 against Ernst.⁹⁰ That email stated that “[t]he purpose of our group, Iowa Values, is to push back
11 against these type of negative attacks.”⁹¹ There is no available information that Iowa Values
12 solicited contributions by invoking the names of any other candidates or identified other
13 purposes than to support Ernst’s reelection by pushing back on negative attacks against her.
14 Consistent with the Commission’s statement that it “may need to examine the organization’s
15 fundraising appeals,”⁹² it is significant that Holloway Avella described Iowa Values as having

⁸⁷ See Iowa Values Press Release, *supra* note 22. See also Supplemental E&J, 72 Fed. Reg. at 5597. The Commission has noted that in its consideration of an organization’s “overall conduct,” it will look at that organization’s public statements, including its own materials, statements to donors, or statements made on its website, “giving due weight to the form and nature of the statements, as well as the speaker’s position within the organization.” *Id.* at 5601.

⁸⁸ See Iowa Values Press Release, *supra* note 22.

⁸⁹ *Id.*

⁹⁰ *Supra* at 6-7.

⁹¹ *Id.*

⁹² Supplemental E&J at 5601.

1 “[t]he purpose” of furthering Ernst’s electoral prospects in this way when soliciting funds for the
2 accomplishment of that purpose.⁹³

3 The strategy memo attached to the July fundraising email also focused on supporting
4 Ernst.⁹⁴ It states that “[w]e believe that there is critical work with segments of the electorate that
5 must begin now in 2019 so that Ernst has the best possible jumping off point in 2020” and
6 discusses the need to engage voters who would be critical for “winning and losing in 2020 for
7 Senator Ernst.”⁹⁵ The language used in this memo is similar to the language in the League of
8 Conservation Voters’ “National Electoral Strategic Plan 2004,” which the Commission
9 previously found to support finding that a group’s major purpose required it to register as a
10 political committee.⁹⁶

11 In its Response to the MUR 7674 Complaint, Iowa Values describes the email solicitation
12 as a “single fundraising appeal,” without elaborating whether its other fundraising appeals
13 differed from that message.⁹⁷ Given the circumstances, including Iowa Values’ receipt of other
14 significant funds during the relevant time period, it is reasonable to infer that its other
15 fundraising solicitations likely included similar language. Similarly, while Iowa Values
16 questions the Complainant’s reliance on language from its strategy memo to determine the

⁹³ See *id.* at 5605 (the Commission determined MoveOn.Org Voter Fund’s major purpose by reviewing “statements regarding its objectives in e-mail solicitations” and SwiftBoat Vets’ major purpose was evidenced by statements to prospective donors and public statements). See also, *RTAA*, 681 F.3d at 556 (upholding the Commission’s case-by-case analysis approach because determining “the major purpose of an organization, and not simply a major purpose, is inherently a comparative task, and in most instances it will require weighing the importance of some a group’s activities against others”).

⁹⁴ MUR 7672 Compl. at Ex. B.

⁹⁵ *Id.*

⁹⁶ Supplemental E&J at 5605.

⁹⁷ MUR 7674 Resp at 13.

1 group's major purpose, it does not present additional documents from 2019 or later to aid in
2 clarifying its purpose.⁹⁸ The documents presented on the group's website focus on policy issues,
3 but those appear to be original documents from 2017, when the group was established, while
4 more recent additions to the website show a change in focus for the group — that is, supporting
5 Ernst's reelection.⁹⁹

6 Additionally, as discussed further below, the new focus of the group's spending and ads
7 indicate that Iowa Values' major purpose changed to the nomination or election of a federal
8 candidate in 2019.¹⁰⁰ Therefore, it appears that the Iowa Values became a political committee in
9 2019 and was required to file a statement of organization and file reports of receipts and
10 disbursements.¹⁰¹

11 *ii. Iowa Values' Spending*

12 Iowa Values states that it expects its 2019 Form 990 filing to reflect \$839,000 in total
13 spending, and that at most, 41% of that was for political activity at the federal and state levels.¹⁰²
14 On its own, such spending might be below the comparative spending the Commission has
15 previously found indicative of a major purpose to nominate or elect a candidate.¹⁰³ The full
16 extent of the group's spending, however, is unclear. Iowa Values reported \$268,014 and
17 \$295,680 in overall spending in 2017 and 2018, respectively, on its IRS filings, and we do not

⁹⁸ *Id.*

⁹⁹ *See, e.g.,* <https://ouriowavalues.com/rightforourvalues/> (last accessed Sept. 18, 2020).

¹⁰⁰ *See*, F&LA at 14-15, MUR 6538R (Americans for Job Security); *cf. CREW I*, 209 F. Supp. 3d at 94.

¹⁰¹ 52 U.S.C. §§ 30103(a), 30104(a)(1).

¹⁰² *See* MUR 7674 Resp. at 4, 12.

¹⁰³ *See* Supplemental E&J, 72 Fed. Reg. at 5605 (providing three examples of organizations whose major purpose was federal campaign activity where the organizations respectively spent 91%, 50-75%, and 68% of their budgets on federal campaign activity).

1 know what kind of activity it determined to exclude from its political spending disclosure for
2 those years. For instance, the group’s argument that not all of the ads featuring Ernst were the
3 functional equivalent of express advocacy may indicate that Iowa Values may not necessarily be
4 including in its political spending estimates many of the Ernst-related ads we have reviewed.¹⁰⁴
5 Iowa Values publicly acknowledged through its June 2019 Press Release that it had already
6 “invested six-figures” on its efforts, including ads and door-to-door canvassing, supporting Ernst
7 by that point. Iowa Values’ Response to the Complaint also does not identify the other activity
8 on which it spent money and does not identify other federal or state races in which it also
9 engaged in political spending. And we have seen no evidence that it paid for ads for any
10 candidates other than Ernst since 2019. Regardless, even just 41% of the \$839,000 in total
11 spending that it plans to disclose in its 2019 Form 990 IRS filing is a substantial portion
12 (\$343,990) of its overall spending, and considered together with the questions surrounding the
13 group’s actual proportion of spending related to federal campaign activity compared to its total
14 spending, provides a sufficient basis to further investigate the matter.¹⁰⁵

15 Iowa Values’ advertising since June 2019 also supports a conclusion that its mission had
16 shifted to an effort to reelect Ernst. As an initial matter, the timing of the ads appeared to be
17 geared toward influencing Ernst’s reelection. Prior to 2019, Iowa Values’ Facebook ads focused
18 on issues such as agriculture, education, and renewable energy.¹⁰⁶ Its last issue ad ran in August
19 of 2018, and the group did not post anything to its Facebook page between July 2018 and June

¹⁰⁴ MUR 7674 Resp. at 12; *infra* at 29-35.

¹⁰⁵ *See, e.g.*, Supplemental E&J at 5605 (finding that the League of Conservation Voters’ organization’s budget, which included 50-75% directed to the Presidential election, was also evidence of the group’s major purpose).

¹⁰⁶ *See* Iowa Values Facebook Ad Library, *supra* note 19.

1 2019, until it started running ads featuring Ernst.¹⁰⁷ A similar gap exists between its Twitter
 2 posts: the group did not post anything on its Twitter account between July 16, 2018 and June 26,
 3 2019.¹⁰⁸ Iowa Values' activities appeared to ramp up after Ernst filed her Statement of
 4 Candidacy in April 2019. Its first Facebook post in 2019 was the June 27, 2019, announcement
 5 of its advertising blitz and voter canvassing effort and included a YouTube link to a video
 6 supporting Ernst.¹⁰⁹ More recently, the group paid for a Facebook ad supporting Ernst that ran
 7 just days before the June 2, 2020 primary election in Iowa,¹¹⁰ and on July 27, 2020, it ran a
 8 Google ad attacking her opponent in the general election.¹¹¹ Its most recent ad ran on Facebook
 9 in September; it states that "Joni Ernst has consistently stood up for our Iowa Values during
 10 these uncertain times" and asks the viewer to "click to thank Joni Ernst for defending Iowa
 11 Values."¹¹² Clicking on the link below the video takes the viewer to the Iowa Values website
 12 displaying the text, "JONI ERNST" "Stands up for us, protecting values that keep us strong"
 13 above a large photo of Ernst.¹¹³

¹⁰⁷ <https://www.facebook.com/pg/ouriowavalues/posts/>.

¹⁰⁸ <https://twitter.com/ouriowavalues>.

¹⁰⁹ *Supra* note 18; *Iowa Values- Values* (June 25, 2019), Iowa Values You Tube, <https://www.youtube.com/watch?v=07ba3T737r0&feature=share>.

¹¹⁰ *See* Iowa Values Facebook Ad Library, *supra* note 19. The ad stated "Senator Joni Ernst is working hard to provide relief for Iowa families and small businesses," and included a photo of Ernst with the text, "Joni Ernst, Strong Compassionate Leadership." Clicking on the link to "Thank Our Leaders," leads to a landing page displaying Ernst, Senator Chuck Grassley and Iowa Governor Kim Reynolds. *See* <https://landing.ouriowavalues.com/>. Although this ad was distributed within thirty days of a primary election, it would not be considered an electioneering communication because this ad was not a broadcast, cable or satellite communication. 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29.

¹¹¹ *See Theresa Greenfield's Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664>.

¹¹² *See* Iowa Values Facebook Ad Library, *supra* note 19 (showing that its latest ad started running on September 16, 2020 and was still active) (last accessed Sept. 17, 2020).

¹¹³ *See* <https://ouriowavalues.com/rightforourvalues/>.

1 Iowa Values contends that most of its ads, including many of those featuring Ernst, were
2 issue ads, but most of the paid ads we have reviewed feature Ernst and advocate her support in
3 some manner.¹¹⁴ Under section 100.22(a) of the Commission’s regulations, a communication
4 expressly advocates the election or defeat of a clearly identified federal candidate if it uses
5 certain phrases, such as “re-elect your Congressman,” “‘vote Pro-Life’ or ‘vote Pro-Choice’
6 accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice,”
7 “or communications of campaign slogan(s) or individual word(s), which in context can have no
8 other reasonable meaning than to urge the election or defeat of one or more clearly identified
9 candidate(s), such as posters, bumper stickers, advertisements, etc. which say ‘Nixon’s the One,’
10 ‘Carter ’76,’ ‘Reagan/Bush’ or ‘Mondale!’”¹¹⁵

11 Section 100.22(b) sets forth whether a communication is also deemed to contain express
12 advocacy. That regulation provides:

13 when taken as a whole with limited reference to external events, such as
14 the proximity to the election, could only be interpreted by a reasonable
15 person as containing advocacy of the election or defeat of one or more
16 clearly identified candidate(s) because — (1) The electoral portion of the
17 communication is unmistakable, unambiguous, and suggestive of only one
18 meaning; and (2) Reasonable minds could not differ as to whether it
19 encourages actions to elect or defeat one or more clearly identified
20 candidate(s) or encourages some other action.”¹¹⁶

21
22 The Commission has found that a communication contains express advocacy where it uses a
23 slogan referencing the candidate’s character, qualifications or accomplishments.¹¹⁷

¹¹⁴ MUR 7674 Resp. at 12.

¹¹⁵ 11 C.F.R. § 100.22(a).

¹¹⁶ 11 C.F.R. § 100.22(b).

¹¹⁷ See 11 C.F.R. § 100.22(a) and (b); Explanation and Justification, 60 Fed. Reg. 35,292, 35,295 (July 6, 1995) (“[C]ommunications discussing or commenting on a candidate’s character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question.”). See also F&LA at 8, MUR 5831 (Softer

1 Iowa Values has spent over \$107,000 on advertisements, most of which expressly
2 advocate support for Ernst, and it appears that the organization intends to continue with such
3 spending for the remainder of the election cycle. So far, since 2019 Iowa Values has spent
4 \$60,909 for a mixture of political and issue ads on Facebook; all but two of those ads since June
5 2019 expressed support for Ernst.¹¹⁸ The Complaint in MUR 7674 cites to a Facebook ad that
6 ran in June and July 2019 and cost between \$1,000 and \$5,000, which featured footage of Ernst
7 with the following narration: “We deserve leaders who have walked in our shoes and share these
8 beliefs-like Joni Ernst. Standing up for Iowans all across our state.”¹¹⁹ A review of Facebook’s
9 ad library reveals additional examples of such expenditures. Specifically, Iowa Values paid for
10 eight different Facebook ads, which each ran multiple times, that all supported Ernst. For
11 example, one ad that ran between February 21 and March 21, 2020, at a cost between \$3,000 and
12 \$3,500, used the statement “Joni Ernst, A Fighter for Iowa Families.”¹²⁰ Other ads included
13 statements such as “Joni Ernst, Fighting for Our Iowa Values,” “Joni Ernst Knows: Iowans want
14 a healthcare system with choices for care,” and “Joni Ernst, Strong Leadership in Difficult
15 Times,” all alongside a photo of Ernst.¹²¹ More recently, Iowa Values spent between \$2,000 and
16 \$2,500 on a Facebook ad that ran from June 1 through June 4, 2020, that displayed a photograph

Voices) (Mar. 26, 2009) (identifying a slogan “centered on the candidate and referenc[ing] personal characteristics unrelated to any issue” as evidence of 100.22(a) express advocacy).

¹¹⁸ *Supra* at 4-5.

¹¹⁹ MUR 7674 Compl. at 4.

¹²⁰ *See* Iowa Values Facebook Ad Library, *supra* note 19.

¹²¹ *Id.*

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1 of Ernst and the statement “Joni Ernst, Strong Compassionate Leadership.”¹²² Screenshots of
 2 some these Facebook ads are displayed below:

3



4



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[https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

1 Similarly, the group spent \$46,500 on Google ads, all of which advocate the election of
2 Ernst or the defeat of her opponent.¹²³ One of its ads shows a text overlay on a photo of Ernst
3 stating, “We Deserve Leaders Who Share Our Values Like Joni Ernst.” Another focuses on
4 Ernst’s work on health care issues; it features various shots of Ernst with constituents and
5 includes the statements “Joni Ernst is Fighting for Us, Quality Care, Iowa Values, Joni Ernst,” in
6 both the audio and text.¹²⁴ Another video titled “Iowa Values – Values,” focuses on how Ernst’s
7 congressional work represents “Iowa values.” It features news footage of Ernst along with
8 reprinted news headlines, and audio narration stating that “We deserve leaders who have walked
9 in our shoes and share these beliefs, like Joni Ernst. Standing up for Iowans all across our state
10 and fighting for what we believe in. We are Iowans. These are our Iowa Values.”¹²⁵ A recent
11 ad entitled “Theresa Greenfield’s Values,” which ran on July 27, 2020, does not mention Ernst,
12 but states “we just can’t support Theresa Greenfield,” who is Ernst’s opponent for the November
13 2020 general election.¹²⁶ The ad further states, that Greenfield “does not share our values.”¹²⁷
14 Iowa Values’ Google ads included the following:

¹²³ See Iowa Values Google Ads Report, *supra* note 20.

¹²⁴ *Iowans Deserve Quality, Affordable Choices*, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR427988543244075008?hl=en>.

¹²⁵ *Iowa Values- Values*, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR59102392125227008?hl=en>.

¹²⁶ *Theresa Greenfield’s Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664?hl=en>

¹²⁷ *Id.*



Paid for by
IOWA VALUES
6/28/19 - 7/27/19 (30 days)

👁 100k-1M 📺 \$1k-\$50k



Paid for by
IOWA VALUES
6/28/19 - 7/27/19 (30 days)

👁 ≤ 10k 📺 ≤ \$100

1
2 Here, it appears that Iowa Values sponsored ads that expressly advocated Ernst’s election
3 under the definitions at 11 C.F.R. § 100.22(a) and (b). Commission precedent supports the
4 conclusion that the language used in the Iowa Values’ ads constitutes express advocacy. For
5 instance, in MUR 5024R (Council for Responsible Government/Kean), the Commission
6 concluded that the phrase “Tell Tom Kean Jr . . . , New Jersey Needs New Jersey Leaders,”
7 constituted express advocacy under 11 C.F.R. § 100.22(a) because, after identifying Kean as
8 someone who had spent years living outside of New Jersey in another state, it was akin to
9 identifying the candidate as “pro-choice” or “pro-life” then telling the reader to “vote pro-
10 choice” or “vote pro-life” as illustrated in the regulation.¹²⁸ Similarly, in another matter, the
11 Commission found that language praising one candidate’s qualifications and attacking another
12 candidate’s lack of experience would also constitute express advocacy.¹²⁹ The Commission

¹²⁸ F&LA at 13-14, MUR 5024R (Council for Responsible Government/Kean).

¹²⁹ See, e.g., F&LA at 6-8, MUR 5831 (Softer Voices) (finding that ad that praised Rick Santorum and attacked the qualifications of his opponent by stating “Can we really risk Bob Casey learning on the job?” constituted express advocacy under 11 C.F.R. § 100.22(a) by effectively directing readers to vote against Casey); see also, F&LA at 6-7 and Conciliation Agreement ¶¶ IV.24-28, MUR 5511/5525 (Swift Boat Veterans) (finding

1 further concluded that the statements at issue in these matters also constituted express advocacy
2 under section 100.22(b) because the electoral portions were “unmistakable, unambiguous and
3 suggestive of only one meaning” — to vote against the particular candidate, and that taken
4 outside the context of the upcoming election, the ads were virtually meaningless.¹³⁰

5 In the same way, Iowa Values’ ads use language identifying Ernst’s experience, personal
6 qualities, characteristics in a positive light, and repeated slogans, all of which appeared aimed at
7 directing viewers to vote for Ernst. For instance, the Google video ad displaying news footage
8 and headlines describing Ernst’s work, and the Facebook ad discussing “Joni’s Record” on
9 health care issues, served to tout her accomplishments.¹³¹ That ad also includes the statement,
10 “We deserve leaders who share our values like Joni Ernst” which, uses the term “Leaders” as a
11 reference to the upcoming election for Senator, and has no reasonable meaning other than to call
12 for the reelection of Joni Ernst.¹³² Further, Iowa Values’ repeated use of slogans in its ads
13 describing Ernst as a “fighter” and as someone exhibiting “strong compassionate leadership in
14 difficult times,” essentially serve as commentary on her work in the Senate and her qualifications
15 for office. Indeed, Ernst’s official campaign uses similar language pertaining to her “fighting”
16 for Iowa values; a quote from her featured on her campaign website states: “That’s why I’m

that language stating that “Mr. Kerry is clearly unfit for command of the armed forces of the United States,” was express advocacy by directing readers to contribute toward Kerry’s defeat in the upcoming presidential election).

¹³⁰ See F&LA at 6-8, MUR 5831 (Softer Voices); F&LA at 6-7 and Conciliation Agreement ¶¶ IV.24-28, MUR 5511/5525 (Swift Boat Veterans); F&LA at 14-15, MUR 5024R (Council for Responsible Government/Kean).

¹³¹ *Iowa Values – Values*, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR59102392125227008?hl=en>.

¹³² *Id.*

1 fighting every day for our values. . . .”¹³³ The Iowa Values ads also describe Ernst as someone
2 who has “walked in our shoes” and “shares our beliefs,” tied to references to “Our Iowa Values.”
3 Even its most recent Google ad focused on her opponent, advocates defeat of Greenfield by
4 stating that Iowans cannot support her because “she does not share our values.”¹³⁴ Utilizing the
5 “values” language is yet another reference to Ernst. Presenting Ernst’s personal qualities in a
6 favorable light and indicating that she demonstrate “Iowa Values” suggests that Ernst would be a
7 good representative for Iowans and can have no other reasonable meaning than to urge Ernst’s
8 reelection.

9 Iowa Values argues that its ads were issue or policy ads because none of its ads
10 “mentioned an election or referred to a ‘candidate’ for an election but instead discuss policy
11 issues.”¹³⁵ However, this position ignores Commission precedent finding that communications
12 using slogans and describing a candidate’s qualities or qualifications constitute express
13 advocacy. The ads include statements such as “Joni Ernst, A Fighter for Iowa Families,” “We
14 deserve leaders who share our values like Joni Ernst,” “Joni Ernst is fighting for us,” “Joni Ernst,
15 Fighting for Iowa Values,” Joni Ernst, Strong Compassionate Leadership in Difficult Times,”
16 and other similar language. While some of these ads may discuss specific issues, such as health
17 care, the addition of such Ernst-focused statements makes it such that there is no reasonable

¹³³ Notably, many of the Iowa Values ads that state that Ernst will “fight back,” she will “lead the fight,” ask for people to “join the fight,” appear to use similar language as Ernst’s own campaign website and social media pages where she makes statements, such as she is “fighting every day for our values.” <https://joniernst.com/>.

¹³⁴ *Theresa Greenfield’s Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664>.

¹³⁵ MUR 7674 Resp. at 12.

1 interpretation that they are advocating for Ernst and that the group’s major purpose was to reelect
2 Ernst to the Senate.¹³⁶

3 Additionally, taking into context the timing of these statements also supports a
4 conclusion that these ads expressly advocated Ernst’s reelection. In particular, Iowa Values did
5 not begin paying for ads featuring Ernst until after she had already announced her reelection
6 campaign in April 2019. And the group ran three different ads touting Ernst’s “strong
7 compassionate leadership” in May and June 2020, shortly before the June 2, 2020 primary
8 election. Therefore, the electoral portions were “unmistakable, unambiguous and suggestive of
9 only one meaning” — that the viewer should vote for Joni Ernst. Taking away the context of the
10 upcoming 2020 election would render these ads meaningless.

11 c. Conclusion

12 Iowa Values has exceeded the threshold for becoming a political committee by receiving
13 over \$1,000 in contributions and making well over \$1,000 in expenditures. Additionally, the
14 available information overall, including the focus of its ads and the language used in its
15 fundraising emails and the strategy memo, along with its overall spending indicate that the
16 organization’s “major purpose” was nominating or electing a federal candidate. Therefore, the
17 Commission finds reason to believe that Iowa Values violated 52 U.S.C. §§ 30102, 30103, and
18 30104 by failing to organize, register, and report as a political committee.

¹³⁶ Even if the ads were not express advocacy, their focus on Ernst are still indicative of the major purpose to influence her reelection. *See, e.g.*, F&LA at 12-16, MUR 6535R (Americans for Job Security) (examining electioneering communications that did not contain express advocacy, in addition to its independent expenditures, to determine major purpose).

B. Reports of Independent Expenditures

Under the Act, unauthorized political committees, as well as other persons, must disclose independent expenditures. Non-connected political committees must itemize each independent expenditure which exceeds \$200 or which, when added to previous independent expenditures made on behalf of (or in opposition to) the same candidate, aggregates over \$200 during a calendar year.¹³⁷ Additionally, “every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year” must file a statement disclosing information about the expenditures.¹³⁸ An independent expenditure is an expenditure that “expressly advocat[es] the election or defeat of a clearly identified federal candidate,” and “is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents.”¹³⁹

As discussed above, Iowa Values paid for advertisements and door-to-door canvassing that expressly advocated the election of Joni Ernst and thus required the filing of independent expenditure reports with the Commission. Independent of the question about Iowa Values’ status as a political committee, it was required to file reports of independent expenditures for its

¹³⁷ 52 U.S.C. § 30104(b)(6)(B)(iii). Independent expenditures of \$200 or less must be subtotaled and reported as unitemized expenditures. In addition to a political committee’s regular reporting obligations, when a committee makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before, the date of an election, the Act requires the committee to file an additional report describing those expenditures within 24 hours. *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). Further, a political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day, must file a report describing those expenditures within 48 hours. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). *See, e.g.*, MUR 7286 (Indivisible Kentucky) (finding reason to believe that respondent failed to report independent expenditures and identify contributors of funds received for the purpose of funding billboards advocating the defeat of a federal candidate); MUR 6816 (Americans for Job Security) (finding reason to believe that respondent failed to disclose donor that made contributions for the purpose of furthering independent expenditures).

¹³⁸ 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(b), (e)(1)(i)-(v).

¹³⁹ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of “expressly advocating”).

1 Facebook and Google ads supporting Joni Ernst. The group spent \$60,909 on Facebook ads
2 from 2018 through September 2020 and spent \$46,500 on Google ads from June through
3 September 2020.¹⁴⁰ All but one of the group’s Google ads advocated Ernst’s re-election, using
4 slogans such as “Joni Ernst is Fighting for Us,” “Quality Care, Iowa Values, Joni Ernst,” and
5 “We Deserve Leaders who have Walked in Our Shoes and Share these beliefs, like Joni Ernst;”
6 its most recent Google ad urges defeat of Ernst’s opponent, Theresa Greenfield.¹⁴¹ In 2018, the
7 group’s Facebook ads focused primarily on issues such as agriculture, education and renewable
8 energy, but starting in June 2019, most of its ads featured Ernst.¹⁴² It ran eight different ads, on
9 multiple dates, with statements such as “Joni Ernst, Strong Compassionate Leadership in
10 Difficult Times” and “Joni Ernst, Fighting for Iowa Values.”¹⁴³ Only two ads focused on an
11 issue and did not mention a candidate.¹⁴⁴ A recent Facebook ad in support of Ernst launched on
12 June 1, 2020, the day before the Iowa primary election at a cost between \$2,000 and \$2,500, and
13 a different ad ran between May 14 and May 30, 2020, within 20 days of the primary at a cost
14 between \$5,000 and \$6,000.¹⁴⁵ Iowa Values should have filed 24-hour reports of independent
15 expenditures in connection with the May and June Facebook ads, and it was required to file
16 independent expenditure reports for the remainder of its ads advocating Ernst’s reelection.
17 Additionally, it was required to file independent expenditure reports if it spent funds on a “paid

¹⁴⁰ See Iowa Values Facebook Ad Library, *supra* note 19; Iowa Values Google Ads Report, *supra* note 20.

¹⁴¹ Iowa Values Google Ads Report; *Theresa Greenfield’s Values*, Ad by Iowa Values, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR3102615655153664?hl=e>.

¹⁴² See Iowa Values Facebook Ad Library, *supra* note 19.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

1 door to door effort” to garner support for Ernst, as explained in the strategy memo.¹⁴⁶
 2 Accordingly, the Commission finds reason to believe that Iowa Values violated 52 U.S.C.
 3 § 30104(b)(6)(B)(iii), (c) or (g) by failing to file reports of independent expenditures.

4 **C. Republication**

5 Commission regulations treat as a “contribution” the “financing of the dissemination,
 6 distribution, or republication, in whole or in part, of any . . . campaign materials prepared by the
 7 candidate [or] the candidate’s authorized committee;” the regulations provide that payments for
 8 such communications “shall be considered a contribution for the purposes of contribution
 9 limitations and reporting responsibilities of the person making the expenditure.”¹⁴⁷ The
 10 republication of campaign materials prepared by a candidate’s authorized committee is also
 11 “considered a[n in-kind] contribution for the purposes of contribution limitations and reporting
 12 responsibilities of the person making the expenditure”¹⁴⁸ because the person financing the
 13 communication “has provided something of value to the candidate [or] authorized committee.”¹⁴⁹
 14 The candidate who prepared the original campaign material does not receive or accept an in-kind
 15 contribution, and is not required to report an expenditure, unless the dissemination, distribution,

¹⁴⁶ MUR 7672 Compl. at Ex. B.

¹⁴⁷ 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii) (providing that “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or authorized agents shall be considered an expenditure.”).

¹⁴⁸ 11 C.F.R. § 109.23(a).

¹⁴⁹ *See* Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (“Coordinated and Independent Expenditures E&J”). The purpose of the republication provision of the Commission’s regulations is to “distinguish between independent expressions of an individual’s views and the use of an individual’s resources to aid a candidate in a manner indistinguishable in substance for the direct payment of cash to a candidate.” H.R. Conf. Rep. 94-1057, 59, 1976 U.S.C.C.A.N. 946, 974 (1976).

1 or republication of the campaign material is a coordinated communication under Commission
2 regulations.¹⁵⁰

3 It does appear here that Iowa Values republished Ernst campaign materials. At least
4 three photos appearing in Iowa Values' Facebook and Google ads appear to have been taken
5 from the Joni for Iowa Facebook page.¹⁵¹ For each of those ads, the republished photos are the
6 only images used in the ad and are accompanied by a message: one ad included the message
7 "Iowa is waiting for a leader like you. Join the team and help canvas for Iowa Values" above a
8 photo of Ernst.¹⁵² Another ad consisted of a large photo of Ernst and with a text overlay that
9 stated "We Deserve Leaders Who Share Our Values Like JONI ERNST," and in a different
10 version using the same photo states "We are Iowans."¹⁵³ A more recent ad that ran in June 2020
11 features a photograph of Ernst and states "Joni Ernst, Strong Compassionate Leadership;" that
12 photograph also appears on the main page of Ernst's campaign website, <https://joniernst.com/>.¹⁵⁴
13 Below are some of the republished photos, alongside the originals that appeared on Ernst's
14 campaign website and Facebook page.

¹⁵⁰ 11 C.F.R. § 109.23(a).

¹⁵¹ @joniforiowa, FACEBOOK, <https://www.facebook.com/joniforiowa/>. One of the campaign photos had also been used in Joni's Roast and Ride "campaign kickoff" materials. <https://www.eventbrite.com/e/joni-ernsts-campaign-kick-off-at-roast-and-ride-saturday-june-15th-2019-tickets-60526489359#>.

¹⁵² See Iowa Values Facebook Ad Library, *supra* note 19; Joni for Iowa, Facebook (June 16, 2019), https://www.facebook.com/joniforiowa/photos/a.600921606606422/2473410696024161/?type=3&_tn=-R.

¹⁵³ <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960/creative/CR507759692387188736?hl=en>; Joni for Iowa, Facebook Posts (June 3 and 5, 2019), https://www.facebook.com/joniforiowa/posts/2448093778555853?_tn=-R and https://www.facebook.com/joniforiowa/posts/2452102291488335?_tn=-R.

¹⁵⁴ See Iowa Values Facebook Ad Library, *supra* note 1919. The photograph was also posted on Joni for Iowa's Facebook and Flickr pages. See https://www.facebook.com/joniforiowa/posts/3470100479688506?_tn=-R and <https://www.flickr.com/photos/joniforiowa/>.

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Inactive
Jul 20, 2019 - Jul 23, 2019
ID: 857407117976725

Our Iowa Values
Sponsored • Paid for by Iowa Values

Iowa is waiting for a leader like you. Join the team and help canvass for Iowa Values.

IOWA NEEDS YOU
Help Canvass for Iowa Values

JOIN THE TEAM

Joni Ernst
June 16, 2019

In order for our grassroots movement to be successful I am counting on the support of folks all across the Hawkeye State. Share this post today if you're on #TeamJoni.

I'm on Team Joni

SHARE >>

joni

1
2
3

Joni Ernst · 0:36 Thanks for tuning in! Join our team at <https://joniernst.com>

JONIERNST.COM
Home - Joni for Iowa

1y

4
5

We Deserve Leaders Who Share Our Values Like **JONI ERNST.**

LEARN MORE

Paid for by Iowa Values. Not authorized by any candidate or committee.

Paid for by
IOWA VALUES
6/28/19 - 7/27/19 (30 days)

≤ 10k ≤ \$100

WE ARE IOWANS.

LEARN MORE

Paid for by Iowa Values. Not authorized by any candidate or committee.

Paid for by
IOWA VALUES
6/28/19 - 7/27/19 (30 days)

100k-1M \$1k-\$50k

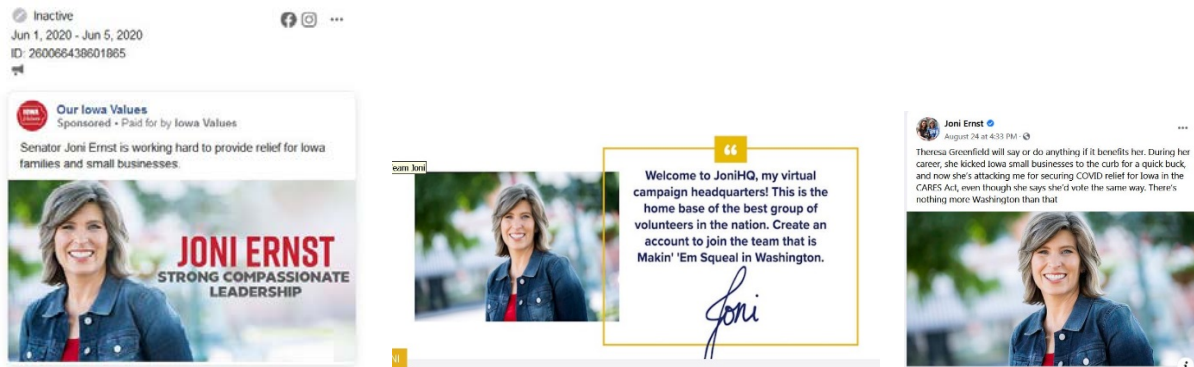
Joni Ernst
June 3, 2019

There are less than two weeks until this year's Roast and Ride! Join me, Nikki Haley, Kim Reynolds, Chuck Grassley and more at this year's event! We hope to see you June 15th! Get your tickets here:

Joni's Roast and Ride

6

MURs 7672 and 7674 (Iowa Values)
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1
2 Another photo appearing in the group's ads is Ernst's official Senate portrait, but we do
3 not know the source of the remaining photos or the video footage the group used in its other
4 communications. Accordingly, the Commission finds reason to believe that the Iowa Values
5 made a prohibited in-kind contribution to Joni for Iowa in the form of republished campaign
6 materials in violation of 52 U.S.C. § 30118(a).¹⁵⁵

¹⁵⁵ In the past, the Commission has dismissed matters where the use of a republished photo was incidental or *de minimis* and typically where the republication involved only one advertisement, but here Iowa Values used photos and videos of Ernst as the central part of multiple ads. *See, e.g.*, MUR 5743 (Betty Sutton) (Commission admonished a committee after determining that a republished candidate photo was incidental and likely had a *de minimis* value); MUR 5996 (Tim Bee) (Commission exercised prosecutorial discretion to dismiss the allegation that a group republished photo of a candidate that comprised two seconds of a 30-second ad, and was downloaded at no charge from candidate's publicly available website). *C.f.* MUR 6783 (Indian Americans for Freedom) (entering into a conciliation agreement with group that made excessive or prohibited contributions by republishing a candidate's campaign materials in one mailing).

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4

5 **RESPONDENTS:** Senator Joni Ernst **MURs 7672 and 7732**
6 Joni for Iowa and Cabell Hobbs,
7 in his official capacity as treasurer
8

9 **I. INTRODUCTION**
10

11 These matters were generated by complaints filed with the Federal Election Commission
12 (the “Commission”) by the Campaign for Accountability and End Citizens United, making
13 various allegations regarding a 501(c)(4) organization named Iowa Values and its activities in
14 support of Iowa U.S. Senator Joni Ernst’s candidacy for reelection in 2020.¹ The MUR 7672
15 Complaint alleges that Ernst, Ernst’s principal campaign committee, Joni for Iowa, Ernst’s
16 Leadership PAC, Jobs Opportunity and New Ideas PAC (“New Ideas PAC”), and their agents
17 solicited non-federal funds for Iowa Values, and that Iowa Values used such funds to pay for
18 coordinated communications including the republication of Ernst campaign materials, in
19 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The MUR
20 7732 Complaint alleges that Joni for Iowa allegedly failed to itemize payroll disbursements in
21 order to hide funds paid to campaign employees who may have been working simultaneously for
22 Iowa Values.

23 Respondents generally deny the allegations. Ernst, her campaign committee, and her
24 leadership PAC deny that any of the named individuals acted as agents of the campaign in
25 soliciting nonfederal funds for Iowa Values, and deny that Iowa Values coordinated its
26 communications with Ernst or her committees. Joni for Iowa similarly denies any attempt to
27 hide the names of committee staff by failing to itemize disbursements.

¹ See 52 U.S.C. § 30109(a)(1).

1 As discussed in further detail below, while there appears to be insufficient information to
2 support the allegation that two of the named individuals acted as Ernst's agents when they
3 performed services for Iowa Values, there is information that Ernst may have played a role with
4 soliciting funds for Iowa Values by connecting a potential contributor to Iowa Values'
5 fundraising consultant. Thus, the Commission finds reason to believe that Ernst and Joni for
6 Iowa violated 52 U.S.C. § 30125 by soliciting non-federal funds through Iowa Values. Further,
7 in light of the amendments it filed with the Commission, the Commission dismisses the
8 allegation that Joni for Iowa failed to itemize payroll disbursements in violation of 52 U.S.C.
9 § 30104(b)(5).

10 II. FACTUAL BACKGROUND

11 Joni Ernst is a candidate for reelection to the U.S. Senate for Iowa during the 2020
12 election cycle.² Joni for Iowa is her principal campaign committee.³ New Ideas PAC has been
13 Ernst's Leadership PAC since 2014.⁴ Joni for Iowa is also a participant, along with New Ideas
14 PAC, in the joint fundraising committee, Joni's Roast and Ride.⁵

² See *Meet Joni*, U.S. Senate, <https://www.ernst.senate.gov/public/index.cfm/meet-joni> (last accessed July 20, 2020); Amended Statement of Candidacy (Apr. 4, 2019).

³ See Amended Statement of Organization (June 26, 2020). Ernst's campaign website can be found at <https://joniernst.com/>.

⁴ See Statement of Organization (Aug. 6, 2014) (initially registering as "JONI PAC") and Amended Statement of Organization (Sept. 16, 2014) (changing its name to "Jobs Opportunity and New Ideas PAC" after being advised by the Reports Analysis Division ("RAD") that it could not include the name of a candidate as part of the committee's name).

⁵ A nonfederal committee named Joni PAC Iowa, is the third participant for the joint fundraiser. See Statement of Organization (Apr. 7, 2016), Joni's Roast and Ride, <https://docquery.fec.gov/pdf/177/201604070300061177/201604070300061177.pdf>; Statements of Organization (Feb. 9, 2016, Oct. 17, 2016, and Apr. 29, 2020), Joni PAC Iowa, IECDB Web Reporting System, available at https://webapp.iecdb.iowa.gov/PublicView/?d=organization%2fPACs%2fJONI+PAC+Iowa_9870. Other federal joint fundraising committees benefitting Ernst have included Ernst Victory Iowa, Ernst Victory, Great Iowa Fund, Tillis-Ernst Victory Fund, Scott Roberts Gardner Ernst Victory Fund (SRGE Victory Fund) (terminated), McFadden Ernst Cotton Sullivan Victory Fund (MECS Victory Fund) (terminated) and Ernst Victory Fund (terminated).

1 Iowa Values was established in 2017 and that same year registered as a 501(c)(4) tax-
2 exempt organization with the Internal Revenue Service (“IRS”) stating that its mission is “[t]o
3 educate the public about common-sense solutions to various public policy issues of national
4 importance, including limited government, defending life, cutting wasteful spending, finding
5 solutions for the challenges facing rural America, and building a strong national defense.”⁶ It
6 appears, however, that the group did not become publicly active until 2018.⁷ Jon Kohan, a
7 former Ernst campaign manager and Senate Deputy Chief of Staff, was the group’s Executive
8 Director in 2017 and 2018, and Derek Flowers, another former Ernst campaign manager,
9 replaced him in 2019.⁸ The group’s IRS filings reflect that it received \$390,000 in contributions
10 in 2017 and \$187,000 in 2018, and reported \$268,014 in expenses in 2017 and \$295,680 in 2018.
11 Iowa Values reported spending \$5,000 on political campaign activity in 2017 but reported no

⁶ See Form 990 Initial Return, Iowa Values (Nov. 13, 2018) (“2017 Form 990”), https://apps.irs.gov/pub/epostcard/cor/815224793_201712_990O_2019020816074301.pdf. The group is also registered as a nonprofit corporation in the District of Columbia and as a foreign nonprofit corporation in the state of Iowa. See Application for Certificate for Authority (Nonprofit) for Iowa Values (June 26, 2017) and 2019 Biennial Report for a Foreign Nonprofit Corporation (Feb. 26, 2019), available at *Business Entity Search*, IOWA SEC. OF STATE, <https://sos.iowa.gov/search/business/search.aspx> (last accessed July 20, 2020).

A similarly named group, Iowa Values (“Super PAC”), is registered with the Commission as an independent expenditure only committee, but it appears the Super PAC has had little activity since 2014. See <https://iowavalues.com/>; <https://www.fec.gov/data/committee/C00565846/>. The Iowa Values 501(c)(4) group subject of these matters has been confused with the Super PAC, however. See, e.g., Elizabeth Meyer, *Iowa Super PAC Launches Voter Outreach Efforts To Help Joni Ernst*, June 28, 2019, IOWA STARTING LINE, <https://iowastartingline.com/2019/06/28/iowa-super-pac-launches-voter-outreach-efforts-to-help-joni-ernst/> (discussing an Iowa Values June 2019 press release but citing to the Super Pac’s FEC filings).

⁷ Erin Murphy, *Tom Tauke Co-founds Iowa Values Conservative Think Tank*, THE GAZETTE, May 23, 2018, <https://www.thegazette.com/subject/news/government/tom-tauke-co-founds-iowa-values-conservative-think-tank-20180523>.

⁸ See 2017 Form 990; 2018 Form 990, Iowa Values (Nov. 13, 2019), https://apps.irs.gov/pub/epostcard/cor/815224793_201812_990O_2020021017129842.pdf (Flowers signed the 2018 report in his capacity as Executive Director).

1 such spending in 2018.⁹ Information about its 2019 and 2020 activities is not yet available with
2 the IRS.¹⁰ Available information indicates that Iowa Values expects its 2019 Form 990 to reflect
3 \$839,000 in total spending.

4 Iowa Values operates a website at www.ouriowavalues.com. The website's main page
5 includes a statement describing the group as "a nonprofit, nonpartisan forum" and features an ad
6 supporting Ernst.¹¹ The ad, entitled "Iowa Values - Values," states that "we deserve leaders who
7 have walked in our shoes and share these beliefs, like Joni Ernst."¹² The same ad is shown on
8 the "Our Videos" page of the website, along with four additional ads: three supporting Ernst and
9 one issue ad.¹³ One of the additional ads is entitled "Iowans Deserve Quality, Affordable
10 Choices" and states that "Joni Ernst is Fighting for Us," and "Quality Care, Iowa Values, Joni
11 Ernst."¹⁴ Another ad is entitled "Won't Stand for It" and states that "Joni Ernst is fighting for
12 our Iowa values in Washington" and "Joni Ernst, A Fighter for Iowa Families," while another
13 one is entitled "Right for Our Values."¹⁵ The issue ad, called "Lost," focuses on opposing

⁹ 2017 Form 990; 2018 Form 990. Kohan's compensation listed on the IRS filings was \$95,000 in 2017 and \$85,000 in 2018, which Iowa Values paid through Kohan's employer, Jamestown Associates, LLC. Holloway Consulting Inc., is listed as the group's fundraiser for both years.

¹⁰ The Form 990 for a previous tax year ending on December 31 has an initial return due date of May 15 and an extended due date of November 15 of the following year. *See* Return Due Dates for Exempt Organizations: Annual Return, IRS, <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>.

¹¹ *See* <https://ouriowavalues.com/> (last accessed Sept. 24, 2020).

¹² *Id.*

¹³ *See Our Videos*, <https://ouriowavalues.com/our-videos> (last accessed Sept. 24, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

1 Medicare for all and does not mention Ernst.¹⁶ The Iowa Values website does not advocate on
2 behalf of, or even reference, any current federal candidate other than Ernst.

3 The group's Facebook and Twitter pages likewise mostly feature ads, videos, or articles
4 focusing on Ernst.¹⁷ Facebook's ad library shows that the group has spent \$60,909 on ads about
5 "social issues, elections or politics" from June 23, 2018 through September 22, 2020.¹⁸ Iowa
6 Values spent \$46,500 on Google ads from June 27, 2019 through September 21, 2020.¹⁹

7 On June 27, 2019, Iowa Values posted a press release on its Facebook page announcing a
8 six-month "Digital Advertising Blitz and Door to Door Canvassing," that would kick off "the
9 beginning of an election-long effort by Iowa Values to highlight the work of Sen. Joni Ernst."²⁰
10 The announcement stated that Iowa Values "invested six-figures in a digital advertising
11 campaign that will touch swing voters in all 99 counties."²¹ The release described the planned
12 canvassing operation as a "large-scale effort" to knock on 150,000 doors across the state in 2019

¹⁶ *Id.*

¹⁷ @ouriowavalues, FACEBOOK, <https://www.facebook.com/pg/ouriowavalues/posts/> (showing most recent post, dated Apr. 2, 2020) (last accessed Sept. 24, 2020); @OurIowaValues, TWITTER, <https://twitter.com/ouriowavalues> (showing most recent post, dated Apr. 2, 2020) (last accessed Sept. 24, 2020). Iowa Value's YouTube Channel contains the same videos as those that appear on the website. Our Iowa Values, YOUTUBE, <https://www.youtube.com/channel/UCwseruNKP4IgtkpCXWhzX6w/videos>.

¹⁸ See Iowa Values, @OurIowaValues, Facebook Ad Library ("Iowa Values Facebook Ad Library"), [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impressi on search field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impressi_on_search_field=has_impressions_lifetime&view_all_page_id=785144711668660&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last accessed Sept. 24, 2020).

¹⁹ See Advertiser: Iowa Values, Google Transparency Report ("Iowa Values Google Ads Report"), <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960?hl=en> (last accessed Sept. 24, 2020). Although Iowa Values started running its ads in June 2019, it did not distribute any ads between September 2019 and June 2020.

²⁰ Iowa Values Announces Digital Advertising Blitz and Door to Door Canvassing (June 27, 2019), @OurIowaValues, FACEBOOK, https://www.facebook.com/ouriowavalues/posts/1130033023846492?__tn__=-R (including link to Iowa Values Press Release (June 27, 2019), <https://us3.campaign-archive.com/?e=&u=1e7cc07d8991b902eb884256d&id=f04d90419f>).

²¹ See Iowa Values Press Release (June 27, 2019), <https://us3.campaign-archive.com/?e=&u=1e7cc07d8991b902eb884256d&id=f04d90419f>.

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1 in order to make “high-quality, in person, face-to-face contacts with important segments of the
2 electorate.”²² It also included a preview of the group’s “2020 Election Planning”; specifically, it
3 stated that the group “plans to be a consistent and strong advocate for the conservative and free
4 market principles it was founded to promote during the 2020 election” and that “in particular will
5 highlight the work of Sen. Joni Ernst.”²³ One Iowa Values board member is quoted in the press
6 release reiterating the group’s focus on Ernst’s reelection, stating that “Iowa Values is going to
7 make sure everyone knows how [Ernst is] fighting for all Iowans in Washington.”²⁴

8 The advertising campaign was followed by a fundraising solicitation sent by Iowa
9 Values’ fundraising vendor, Claire Holloway Avella of Holloway Consulting, Inc.,²⁵ which
10 attached a strategy memo outlining the work that Iowa Values planned for the 2020 election
11 cycle.²⁶ The email appears to be directed to a specific individual and based on the language of
12 the email, it appears that the solicitation came about after Ernst introduced Holloway Avella to
13 this individual.²⁷ The July 2019 fundraising email contained the subject line “Funding Request

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ According to the firm’s website, Holloway Avella established Holloway Consulting in 2003, and “has successfully coordinated fundraising efforts for a roster of prominent members of the U.S. Senate, including the Honorable John McCain and Joni Ernst.” *See Our Team*, <http://www.hollowayconsulting.net/ourteam.html> (last accessed Aug. 27, 2020). It appears that that the consulting firm has been providing fundraising work for Ernst’s various committees since 2013. *See Disbursements Search*, www.fec.gov (showing that Joni for Iowa first paid Holloway Consulting in 2013, New Ideas PAC, Ernst Victory and Ernst Victory Fund started paying the firm in 2015, Ernst Victory Iowa started paying in 2016, Joni’s Roast and Ride began paying in 2017, and Great Iowa Fund began paying the firm in 2019).

²⁶ *See* MUR 7672 Compl. at Ex. B (Dec. 16, 2019). A redacted version of the email is available at <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html> (last accessed Sept. 24, 2020).

²⁷ The email begins as follows: “As a follow up to our introduction by Senator Ernst.” *See* <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html> (last accessed Sept. 24, 2020).

1 from Iowa Values 501(c)(4) – promoting issues Senator Joni Ernst advocates” and stated that the
2 group was formed to educate Iowans about “issues of national, state and local importance for
3 which Senator Ernst advocates.”²⁸ As a basis for the funding request, the email described that
4 another group made “a six-figure ad buy in media markets across the state attacking Senator
5 Ernst.”²⁹ It stated that the “purpose of our group, Iowa Values, is to push back against these type
6 of negative attacks.”³⁰ The email asked the recipient to “consider an investment of \$50,000” and
7 stated that contributions to 501(c)(4) groups are not publicly disclosed.³¹

8 The strategy memo attached to the email discusses an “Operation Firewall” aimed at
9 engaging voters who “represent the ‘firewall’ between winning and losing in 2020 for Senator
10 Ernst,” and that “there is critical work with segments of the electorate that must begin now in
11 2019 so that Senator Ernst has the best possible jumping off point in 2020.”³² It describes a
12 “ground game apparatus” as its approach to reach voters that would include a “paid door to door
13 effort” and a “complimentary long-term digital messaging plan.”³³

14 The Complaints discussed below pertain to various aspects of Iowa Values’ work in
15 connection with Ernst’s 2020 candidacy for reelection to the Senate. The Complaints make
16 allegations concerning possible violations of provisions of the Act and the Commission’s
17 regulations, including reporting violations, the solicitation of nonfederal funds, and the failure to
18 itemize disbursements.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² MUR 7672 Compl. at Ex. B (attaching copy of memo).

³³ *Id.*

1 **A. MUR 7672**

2 The Complaint in MUR 7672 alleges that Iowa Values, Joni for Iowa, and New Ideas
3 PAC have been coordinating communications in support of Ernst's reelection campaign.³⁴
4 Specifically, it alleges that Ernst and her agents established Iowa Values for the purpose of
5 supporting her campaign and that Iowa Values republished Joni for Iowa campaign materials.³⁵
6 The Complaint points to alleged ties between Iowa Values employees and consultants, and Ernst,
7 as well as the Ernst campaign, and questions why Washington, DC-based consultants who
8 previously or concurrently worked for Ernst would establish an Iowa-focused 501(c)(4)
9 organization for any reason other than to support Ernst's reelection.³⁶

10 The Complaint focuses on three individuals in connection with its allegations as to agents
11 of Ernst soliciting nonfederal funds for Iowa Values. First, it identifies Jon Kohan, who served
12 as the Executive Director of Iowa Values from its founding in 2017 through 2018, worked as
13 Ernst's campaign manager in 2014, as Ernst's Deputy Chief of Staff in the Senate until 2015, and
14 in 2017, went to work with Jamestown Associates, a political consulting firm that has been
15 providing services to Joni for Iowa, New Ideas PAC, and Joni's Roast and Ride since 2017.³⁷
16 Next, the Complaint identifies fundraising consultant Holloway Avella basing that contention on
17 her apparently simultaneous work for Joni for Iowa and New Ideas PAC and her work on behalf
18 of Iowa Values, including the July 2019 email, which references Senator Ernst providing the

³⁴ *Id.* at 1-2, 12

³⁵ *Id.* at 1-2.

³⁶ *Id.* at 4-6, 10-11.

³⁷ *See id.* at 4-5; *see also Disbursements Search*, www.fec.gov (showing that Joni's Roast and Ride and New Ideas PAC reportedly made their first disbursements to Jamestown Associates on Apr. 11, 2017, and Joni for Iowa first paid the firm on May 8, 2017).

1 potential donor with an introduction to the fundraiser, and seeking “an investment of \$50,000” in
2 Iowa Values’ efforts on behalf of Ernst.³⁸ The Complaint notes that Iowa Values listed
3 Holloway Consulting’s address on its corporate registration documents filed with the District of
4 Columbia.³⁹ Finally, the Complaint identifies Ernst’s former campaign manager, Derek Flowers,
5 who also allegedly acted as an agent for both Ernst and Iowa Values.⁴⁰ Flowers’ condominium
6 address was initially used as Iowa Values’ “principal office” address in 2017, as well as by his
7 company Midland Strategies, LLC, a consultant used by Ernst’s committees, before he was later
8 named Executive Director of Iowa Values in 2019.⁴¹

9 The Complaint states that because of their close ties to the Ernst campaign, Kohan,
10 Holloway Avella, and Flowers acted as agents of Ernst and as such, “Sen. Ernst, through her
11 agents, established Iowa Values.”⁴² The Complaint alleges that “supporting Sen. Ernst and
12 defending her record appears to be a key priority of Iowa Values,” based on the language of a
13 fundraising email and strategy memo that Holloway Avella sent out.⁴³ The Complaint concludes
14 that because Ernst’s agents were raising and spending funds outside the federal limits to support
15 Ernst’s reelection through Iowa Values, Ernst and her campaign were in violation of 52 U.S.C.
16 § 30125(e)(1).⁴⁴

³⁸ MUR 7672 Compl. at 5.

³⁹ *Id.* at Ex. A.

⁴⁰ *Id.* at 6, 10.

⁴¹ *Id.* at 6.

⁴² *Id.* at 10-11.

⁴³ *Id.* at 7 and Ex. B.

⁴⁴ *Id.* at 11-12.

1 A Response was submitted on behalf of Ernst, Joni for Iowa, and New Ideas PAC
2 denying that Ernst established or had any role with Iowa Values and that any of the named
3 individuals acted as her agents.⁴⁵ It also argues the Complaint does not present sufficient facts to
4 show that any of these individuals played a role in establishing the 501(c)(4) group, but rather
5 they just performed work as consultants for both the group and Ernst’s campaign committee.⁴⁶
6 The Response notes that Holloway Avella was “perfectly free to solicit funds for Iowa Values as
7 long as she is not acting as Senator Ernst’s agent when doing so.”⁴⁷ Additionally, the Response
8 describes the timing of Kohan and Flower’s employment to support its contention that neither
9 individual was an agent of the Senator or her campaign at the time of their work for Iowa Values
10 and states that “[n]ot a single word in the Complaint suggests that any of the individuals
11 mentioned was acting at the direction of Senator Ernst.”⁴⁸ The Response does not address the
12 part of the email solicitation indicating that Ernst introduced the potential donor to Holloway
13 Avella for the purpose of being solicited by the Iowa Values fundraiser.⁴⁹

14 **B. MUR 7732**

15 The Complaint in MUR 7732 sets forth distinct but related allegations that Joni for Iowa
16 failed to itemize salary payments on three of its disclosure reports (its 2019 October Quarterly,
17 2019 Year-End, and 2020 April Quarterly Reports) filed with the Commission in violation of the
18 Act’s reporting provisions in an effort to hide its list of campaign staffers and “cover up”

⁴⁵ MUR 7672 Resp. (May 8, 2020).

⁴⁶ *Id.* at 5-7. The Response also notes that the Iowa Values 2017 Form 990 lists three board members, none of which are the individuals identified in the Complaint. *Id.* at 5.

⁴⁷ *Id.* at note 10.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 10-13.

1 possible coordination between Joni for Iowa and Iowa Values.⁵⁰ The Complaint asserts that the
2 Committee reported lump sum payments to its payroll vendor, Insperity, Inc., totaling over
3 \$390,000 without itemizing the ultimate recipients of the payments.⁵¹ According to the
4 Complaint, the disclosure reports should have included memo entries listing the individual
5 recipients of the salary payments.⁵² The Complaint states that the “undeniable” “close
6 connection between Senator Ernst and a group with undisclosed donors only intensifies the
7 public need to identify the Committee’s salaried staff” and that the same staff could be working
8 for both organizations.⁵³

9 Joni for Iowa has reportedly paid over \$689,000 to Insperity so far during the 2020
10 election cycle.⁵⁴ Joni for Iowa requests a dismissal, arguing that neither the Act nor the
11 Commission’s regulations requires committees to itemize salary payments, arguing that such
12 payroll payments are analogous to vendor payments made to subvendors, which the Commission
13 has not always required to be itemized.⁵⁵ Its Response asserts that the Commission’s 2013
14 interpretive rule regarding itemization did not address payroll payments and that the
15 Commission’s written guidance regarding the issue was “buried within the Commission’s
16 website” and “did not have the force of law.”⁵⁶

⁵⁰ MUR 7732 Compl. at 1 (Apr. 30, 2020).

⁵¹ *Id.* at 3.

⁵² *Id.* at 4-5.

⁵³ *Id.* at 6.

⁵⁴ *See Disbursements Search*, www.fec.gov.

⁵⁵ MUR 7732 Resp. at 2 (May 26, 2020).

⁵⁶ *Id.* at 3; *infra* at 18-19 (discussing Commission’s guidance for reporting of salary payments).

1 The Response additionally contends that even if itemization were required for payments
2 made to payroll vendors generally, itemization would still not be required in the Committee’s
3 particular circumstances because Insperty served as a “co-employer” to Committee staff
4 pursuant to a “client service agreement.”⁵⁷ However, the Committee did not provide a copy of
5 that agreement, identify any additional services that Insperty provided beyond payroll work, or
6 further elaborate why the affected employees would not be considered Committee staff.

7 Finally, the Response notes that although “not legally required to do so,” it filed amended
8 reports to itemize the disbursements at issue through the use of memo entries because staff “felt
9 it was easier to track cash flow and payments” that way.⁵⁸

10 The Committee submitted amended 2019 October Quarterly, 2019 Year-End, and
11 2020 April Quarterly Reports on April 30, 2020, itemizing the payments to individual salary
12 recipients made through Insperty as memo entries.⁵⁹ Earlier reports from 2019 also reflect
13 disbursements made to Insperty (\$17,702.92), but in those earlier instances, salary payments had
14 been disclosed as separate disbursements to the individual campaign staff members.⁶⁰

⁵⁷ *Id.* at 4. The Response does not elaborate but seems to suggest that Committee staff were being paid as Insperty employees. However, this may be contrary to the Insperty’s apparent terms of service. Insperty’s website states that it provides “full-service HR solution[s]” and includes a description of its co-employment option that is referenced in Joni for Iowa’s Response. See <https://www.insperty.com/services/hr-outsourcing/?ref=footer> and <https://www.insperty.com/blog/what-is-co-employment/>. Under a co-employment agreement, Insperty “supplies services and benefits to a business and its existing workforce,” but it does not supply a workforce and the company “remains the primary employer.” <https://www.insperty.com/blog/what-is-co-employment/>.

⁵⁸ *Id.* at 4-5.

⁵⁹ Joni for Iowa’s amendments itemized salary payments to the following individuals: Josie Beecher, Jacqueline Cale, Maureen Clemon, Melissa Deatsch, Brett Field, Jacob Hamann, Sierra Heitkamp, Bryan Kraber, Christopher Linares, Mary Munro, Samuel Pritchard, and Morgan Theriot.

⁶⁰ See, e.g., 2019 April Quarterly Rpt. and 2019 July Quarterly Rpt.

1 III. LEGAL ANALYSIS**2 A. Raising and Spending of Non-Federal Funds**

3 The Act prohibits federal candidates, their agents, and entities that are directly or
4 indirectly established, financed, maintained, or controlled (“EFMC’d”) by or acting on behalf of
5 federal candidates and officeholders, from soliciting, receiving, directing, transferring, or
6 spending funds in connection with a federal election “unless the funds are subject to the
7 limitations, prohibitions, and reporting requirements of th[e] Act.”⁶¹ The Act limits
8 contributions to non-authorized, non-party committees to \$5,000 in any calendar year.⁶²
9 Although an independent expenditure only committee (“IEOPC”) may accept contributions from
10 corporations and individuals without regard to that \$5,000 limitation,⁶³ federal officeholders and
11 candidates may only solicit up to \$5,000 from permissible sources on behalf of such a
12 committee.⁶⁴

13 Commission regulations set out ten non-exclusive factors set out to determine whether a
14 person or entity (“sponsor”) “directly or indirectly established, financed, maintained or
15 controlled” another person or entity under 52 U.S.C. § 30125;⁶⁵ those factors include whether the
16 “sponsor, directly or through its agent,” “had an active or significant role in the formation of the

⁶¹ 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.60, 300.61; *see also* 52 U.S.C. §§ 30116(a), 30118(a) (setting out contribution limitation and corporate contribution prohibition, respectively).

⁶² 52 U.S.C. § 30116(a)(1)(C).

⁶³ *See SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals’ contributions to political committees that only make independent expenditures); Advisory Op. 2010-11 (Common Sense Ten) (“AO 2010-11”) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

⁶⁴ *See* Advisory Op. 2011-12 (Majority PAC) at 3 (“AO 2011-12”) (determining that solicitation restrictions under 52 U.S.C. § 30125(e)(1)(A) remain applicable to contributions solicited by federal candidates, officeholders, and other covered persons); Conciliation Agreement ¶¶ 7, 8, MUR 7048 (Cruz for President) (same); F&LA at 11, MURs 6563 and 6733 (Rep. Aaron Schock).

⁶⁵ 11 C.F.R. § 300.2(c)(2).

1 entity,” “owns controlling interest” in the entity, has “the authority or ability to hire appoint,
2 demote, or otherwise controls the officers or other decision-making employees or members of
3 the entity,” or “has common or overlapping officers or employees with the entity that indicates a
4 formal or ongoing relationship.”⁶⁶ An agent “means any person who has actual authority, either
5 express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any
6 election” on behalf of a federal candidate.⁶⁷

7 Through regulation, the Commission has defined “to solicit” broadly to mean “to ask,
8 request, or recommend, explicitly or implicitly, that another person make a contribution,
9 donation, transfer of funds, or otherwise provide anything of value.”⁶⁸ The regulation further
10 provides that a “solicitation” is “an oral or written communication that, construed as reasonably
11 understood in the context in which it is made, contains a clear message asking, requesting, or
12 recommending that another person make a contribution” and “may be made directly or
13 indirectly” but “does not include mere statements of political support[.]”⁶⁹

14 In 2006, the Commission revised the definition of “to solicit” following a decision by the
15 United States Court of Appeals for the District of Columbia Circuit in *Shays v. FEC* holding that

⁶⁶ *Id.* § 300.2(c)(2)(i)-(x).

⁶⁷ 11 C.F.R. § 300.2(b)(3). In promulgating this regulation in 2002, the Commission explained that the definition of agent must cover “implied” authority because “[o]therwise, agents with actual authority would be able to engage in activities that would not be imputed to their principals so long as the principal was careful enough to confer authority through conduct or a mix of conduct and spoken words.” Explanation and Justification, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,082 (July 29, 2002) (“Non-Federal Funds E&J”). Thus, a principal may be held liable under an “implied actual authority theory” where “the principal’s own conduct reasonably causes the agent to believe that he or she had authority.” *Id.* at 49,083.

⁶⁸ 11 C.F.R. § 300.2(m); *see also* Non-Federal Funds E&J, 67 Fed. Reg. at 49,086 (defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

⁶⁹ 11 C.F.R. § 300.2(m); *see also* Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13,926, 13,928 (Mar. 20, 2006) (“Solicit E&J”).

1 the Commission’s former regulation, promulgated in 2002, was too narrow and failed to include
2 “implicit requests for money.”⁷⁰ In promulgating the revised definition, the Commission
3 explained that the revision is broad in order to “ensure[] that candidates and parties may not,
4 implicitly and indirectly, raise unregulated funds for either themselves, or subject to statutory
5 exceptions, ‘friendly outsiders.’”⁷¹ The Commission further stated: “By covering implicit and
6 indirect requests and recommendations, the new definition forecloses parties and candidates from
7 using circumlocutions ‘that make their intentions clear without overtly “asking” for money” and
8 “also squarely addresses the central concern of the Court of Appeals in *Shays* that ‘indirect’ as
9 well as ‘direct’ requests for funds or anything of value must be covered.”⁷²

10 Here, Respondents argue that the Complaint presents no information indicating that
11 Ernst, or that any of the named individuals, participated in the formation of Iowa Values,
12 participated in the group’s governance, or exercised any decision-making authority over the
13 entity.⁷³ The MUR 7672 Complaint identifies Kohan, Flowers, and Holloway Avella as alleged
14 agents for Ernst in support of its allegations that Ernst’s campaign solicited non-federal funds
15 through Iowa Values in violation of section 30125. There is no information, however, that any
16 of these three individuals established Iowa Values, and indeed, they are not listed as board
17 members on the Iowa Values website or the group’s IRS filings.⁷⁴

⁷⁰ Solicit E&J, 71 Fed. Reg. at 13,927 (quoting *Shays v. FEC*, 414 F.3d 76, 104-06 (D.C. Cir. 2005)).

⁷¹ *Id.* at 13,928 (quoting *Shays*, 414 F.3d at 106).

⁷² *Id.* The standard for determining whether a communication is a solicitation is objective and does not turn on the subjective interpretations of the person making the communication or its recipients. 11 C.F.R. § 300.2(m); *see also* Solicit E&J, 71 Fed. Reg. at 13,928. This objective standard “hinges on whether the recipient should have reasonably understood that a solicitation was made.” Solicit E&J, 71 Fed. Reg. at 13,929.

⁷³ MUR 7672 Resp. at 4-7.

⁷⁴ *Id.* at 4-5; <https://ouriowavalues.com/team>.

1 While these individuals appear to have provided services to Iowa Values in their
2 capacities as consultants, it is not clear whether Kohan or Flowers did so at the behest of Ernst or
3 her campaign. The available information indicates that Kohan and Flowers were no longer
4 working for Ernst, her campaign, or her Senate office at the time they provided services to Iowa
5 Values. Kohan left Ernst's Senate office staff in 2015 and Flowers worked for New Ideas PAC
6 until 2015.⁷⁵ Both initially went on to work for consultant companies but eventually began
7 providing services to Iowa Values years later: Kohan was Executive Director for Iowa Values
8 from 2017 through 2018, and Flowers replaced him in 2019.⁷⁶

9 On the other hand, Holloway Avella has been providing fundraising services to Ernst's
10 campaign, leadership PAC, and Iowa Values during the same time period, and when considered
11 along with the July 2019 fundraising email, these circumstances indicate that she solicited
12 nonfederal funds on behalf of Ernst and her campaign. First, Holloway Avella has been a
13 consultant for Joni for Iowa since 2013, for New Ideas PAC since 2015, and for Iowa Values
14 since 2017.⁷⁷ Second, the July 2019 fundraising email and attachments that Holloway Avella
15 personally sent support an inference that she was acting on behalf of Ernst. The email states that
16 Ernst personally introduced an individual to Holloway Avella, an introduction which appears to
17 have been for the purpose of making a financial contribution to Iowa Values.⁷⁸ The language in
18 the email is inconsistent with Ernst's Response to the MUR 7672 Complaint, which claims that

⁷⁵ *Supra* at 3, 8.

⁷⁶ *Id.* Although Flowers began a formal role with Iowa Values in 2019, it is unclear whether he performed any other services for the group prior to that date.

⁷⁷ *Supra* note 25 (also noting that Holloway Consulting also provided fundraising services to a number of joint fundraising committees benefitting Ernst).

⁷⁸ *See* <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html>.

1 the Complaint contained no information to suggest “that any of the individuals mentioned was
2 acting at the direction of Senator Ernst.”⁷⁹

3 The longstanding relationship between Ernst and Holloway Avella and the language of
4 the email also show that Ernst did in fact play a role in raising funds for Iowa Values. The
5 language indicates that, at some earlier point in time, Ernst connected the donor with Iowa
6 Values’ fundraiser and did so in the context of, and for the purpose of, soliciting funds to Iowa
7 Values. Further, even without details of what previously transpired between Ernst and the
8 potential donor, the language of the email suggests that there was at least an “implicit and
9 indirect request[] and recommendation[]” that made Ernst’s intention behind the introduction
10 clear.⁸⁰ The purpose of the email, in particular that it was a fundraising solicitation, is
11 immediately clear from the subject line: “Funding Request from Iowa Values 501(c)(4) –
12 promoting issues Senator Ernst advocates.”⁸¹ The email then references the personal
13 introduction, stating “[a]s a follow up to our introduction by Senator Ernst, I am reaching out to
14 you on behalf of Iowa Values,” explains that the purpose of Iowa Values “is to push back against
15 [] negative attacks” on Ernst, and proceeds to solicit a \$50,000 contribution to Iowa Values to
16 aid in those efforts.⁸² The email also attaches “a contribution form with wiring instructions for
17 [the recipient’s] convenience” and attaches a memo outlining Iowa Values’ strategy in
18 connection with Ernst’s reelection.⁸³

⁷⁹ MUR 7672 Resp. at 4.

⁸⁰ Solicit E&J, at 13,928 (quoting *Shays*, 414 F.3d at 106).

⁸¹ See <http://www.documentcloud.org/documents/6570893-July2019-Email-From-Fundraiser.html>.

⁸² *Id.*

⁸³ *Id.*; MUR 7672 Compl. at Ex. B.

1 As such, Ernst’s introduction of a potential donor to whom a five-figure contribution
2 could be requested to her longtime fundraising consultant appears to constitute a solicitation as
3 defined under the Commission’s regulations. The \$50,000 amount requested by Holloway
4 Avella is above the \$5,000 amount the Commission has advised a federal candidate may solicit,
5 and further indicates that Ernst made an improper soft money solicitation. Therefore, given these
6 circumstances, the Commission finds reason to believe that Ernst and Joni for Iowa violated
7 52 U.S.C. § 30125(e)(1)(A) by soliciting nonfederal funds for Iowa Values.⁸⁴

8 **B. Itemization of Payroll Disbursements**

9 The Complaint in MUR 7732 alleges that Joni for Iowa violated the Act and Commission
10 regulations by reporting only the lump sum payments made to its payroll vendor and not itemizing
11 salary payments to campaign staff.⁸⁵ The Complaint alleges that by disclosing only the payments to its
12 payroll vendor, Joni for Iowa sought to hide the names of employees who may have also been working
13 simultaneously with Iowa Values.⁸⁶

14 A candidate’s authorized committee must itemize all disbursements, including operating
15 expenditures that exceed \$200 or aggregate to over \$200 when added to other disbursements in
16 the same category made to the same payee during the election cycle.⁸⁷ Although neither the Act
17 nor Commission regulations expressly address reporting of ultimate payees such as subvendors,
18 subcontractors, or vendor employees, in a 2013 interpretive rule, the Commission clarified the
19 itemization requirement and specifically addressed the proper disclosure of ultimate payees

⁸⁴ Under the Act, a federal candidate acts as an agent of his or her authorized campaign committee with regard to contributions received and disbursements made. *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2(a).

⁸⁵ *Supra* at 10-11.

⁸⁶ *Id.*

⁸⁷ 52 U.S.C. § 30104(b)(5); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9.

1 where a committee pays a credit card bill that includes charges exceeding \$200 from a single
2 vendor.⁸⁸ It explained that a committee itemizing a disbursement to a credit card company “must
3 itemize as a memo entry any transaction with a single vendor charged on the credit card that
4 exceeds the \$200 itemization threshold” in order to itemize the “ultimate payee, as the provider
5 of the goods or services to the political committee” and to reflect that the credit card company
6 was not the provider of those goods and services.⁸⁹ In explaining the rule, “the Commission
7 makes clear that this interpretation is based on long-standing Commission practice and is not
8 making any fundamental changes to its rules or processes.”⁹⁰

9 The Commission’s guide for candidates also includes instructions for interpreting the
10 regulatory requirement for itemizing operating expenditures under 11 C.F.R. § 104.3(b)(4)(i),
11 and provides specific guidance for properly itemizing operating expenditures charged on a credit
12 card using memo entries that disclose the ultimate recipient of the payment.⁹¹ Specific guidance
13 concerning the proper reporting of disbursements to payroll companies likewise appears on the
14 Commission’s website, which explains that “[t]he lump sum paid to the payroll company must
15 be followed by MEMO entries that include the individuals that were the ultimate recipients of

⁸⁸ In the rule, the Commission describes a committee’s obligation to report “ultimate payees” in three specific circumstances: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) payments by candidates who use personal funds to pay committee expenses without reimbursement. *See* Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (Jul. 8, 2013) (“Ultimate Payee Interpretive Rule”); *see also* MUR 7732 Resp. at 2-3 (discussing Commission precedent applying the Ultimate Payee Interpretive Rule).

⁸⁹ Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626

⁹⁰ *Id.*

⁹¹ Federal Election Commission Campaign Guide for Congressional Candidates and Committees at 104-105 (June 2014) (“Candidate Guide”), <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

1 the salary payments,” and that such payments “are disclosed in the same manner as credit card
2 payments and ultimate recipients.”⁹²

3 In its 2020 April Quarterly, 2019 Year-End, and 2019 October Quarterly Reports filed
4 with the Commission, Joni for Iowa initially disclosed only lump sum payments to Insperity,
5 Inc., totaling \$581,996 during the 2020 election cycle, but on April 30, 2020, the Committee
6 filed amendments to those reports to add memo entries and disclose the names of twelve
7 individual recipients for a total of \$269,452 in payments.⁹³ These amendments were not made in
8 response to RFAs, but it is possible that the forthcoming complaint in MUR 7732, which the
9 Complainant had publicized, may have been what prompted the amendments.⁹⁴

10 In its Response, Joni for Iowa argues that neither the Act nor Commission regulations
11 require itemization of payroll payments in this matter and that the Commission’s guidance on the
12 issue was difficult to find.⁹⁵ However, the Commission has interpreted the itemization
13 requirement to apply to the disclosure of payroll disbursements in the context of enforcement
14 matters as far back as 1999.⁹⁶ And the Commission’s guidance for applying the itemization
15 requirements in the regulation to the analogous credit card payment scenario has been available
16 to the public since 2013. Nevertheless, Joni for Iowa chose to amend its reports to itemize the
17 payments at issue in the Complaint. It is unclear why the Committee had itemized payroll

⁹² See *RAD FAQs for Political Action Committees*, FEC WEBSITE, https://www.fec.gov/resources/cms-content/documents/RAD_FAQs-PACs_last_visited_september_21_2020.pdf.

⁹³ *Supra* at 12 and note 59.

⁹⁴ The Complaint was dated April 30, 2020, was received by the Commission on the same date, and the Complainant issued a press release about the Complaint on May 1. See <https://endcitizensunited.org/latest-news/press-releases/end-citizens-united-files-fec-complaint-against-senator-joni-ernst/> (last accessed July 27, 2020).

⁹⁵ *Supra* at 11-12.

⁹⁶ See MUR 6818 (Allen Weh for Senate) (2017); MUR 6576 (McLeod for Congress) (2013); MUR 4822 (Friends for Harry Reid) (1999).

1 disbursements in earlier reports from the 2020 election cycle, but did not do so for the three
2 reports at issue here.⁹⁷ Regardless, Joni for Iowa filed amendments to itemize the payments on
3 its own accord and well before the date of the primary election. The Commission has dismissed
4 matters involving similar circumstances and has pursued other matters where the requisite
5 amendments were not done promptly or were completed too close to the election.⁹⁸ Consistent
6 with those matters, and in view of the fact the Committee filed its amendments before the
7 primary election and well before the general election, the Commission exercises its prosecutorial
8 discretion and dismisses the allegations that Joni for Iowa failed to report payroll disbursements
9 properly.⁹⁹

⁹⁷ See, e.g., 2019 April Quarterly Rpt. (disclosing salary payments to two individuals as well as separate payments to Insperity); 2019 July Quarterly Rpt. (disclosing salary payments to three individuals and separate disbursements to Insperity). The amended reports at issue here added memo entries to reflect the salary payments.

⁹⁸ See, e.g., F&LA at 8, MUR 6818 (Commission dismissed allegation that committee disclosed lump sum payments totaling \$285,953 made to a payroll company but failed to itemize the disbursement for the individual salary payments where committee filed corrective amendments in response to RFAIs); F&LA at 12-13, MUR 6576 (McLeod for Congress) (dismissing committee's failure to itemize payroll expenditures, among other violations, where committee corrected reports itemizing \$8,727 in payroll disbursements shortly after receiving RFAIs and before the election). See also MUR 6897 (Allen Weh for Senate) (EPS dismissal concerning 80 unitemized reimbursements made to the candidate totaling over \$70,000 that accrued over two filing quarters where committee amended its disclosure reports to include most previously excluded payee information). *But see* First Gen. Counsel's Rpt. at 13-15, MUR 7534 (recommending dismissal where amount of unitemized reimbursements was relatively modest \$14,768.93 but Commission was equally divided over recommendations); Conciliation Agreement ¶¶ IV.11-15, V, VI MUR 4822 (Friends for Harry Reid) (entering into conciliation agreement concerning \$316,737.86 in improperly itemized payroll payments across five disclosure reports that were not amended until election day).

⁹⁹ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).