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Re: MUR 7674; Response to Complaint from Iowa Values

Dear Mr. Jordan:

We are writing this letter on behalf of Iowa Values ("IAV" or "Respondent") in response to the Complaint filed in the above-referenced matter by the Campaign Legal Center ("CLC") and its "Researcher/Investigator," Margaret Christ (collectively, the "Complainants"). The Complaint is just the latest edition in a long line of purely speculative, politically-charged complaints by CLC – filed disproportionately against conservative organizations and their donors. It should be promptly dismissed.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). *See* 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id*.

The Complaint contains numerous unsubstantiated and specious claims against Respondent. Specifically, the Complaint alleges, with few actual facts and in a conclusory manner, that IAV should have registered and reported as a federal political committee on account of an internal strategy memo emailed to a single prospective donor and a handful of digital advertisements placed by IAV in 2019. These bogus accusations are not supported by the law and facts. IAV is unquestionably **not** a political committee, and it is in full compliance with the Act and the Commission's regulations. For the reasons set forth below, the Complaint has no merit and the Commission should immediately dismiss it.

I. SUMMARY OF ARGUMENT

A complaint must contain a "clear and concise recitation of the facts which describe a violation" of the Act. 11 C.F.R. § 111.4(d)(3). The CLC Complaint has not done so. The Complaint alleges that IAV is a "political committee." In order to be a federal political committee, the nomination or election of federal candidates must be "**the** major purpose" of an organization. The Complaint provides brief descriptions for a handful of IAV digital communications from 2019, on which it heavily relies to make its allegations, but such communications did not even qualify as independent expenditures or electioneering communications under the Act—and even if they had, they would have accounted for only a fraction of IAV's overall spending in 2019. CLC's reliance on this minimal amount of spending does not and cannot establish IAV's "major purpose" as one that is to nominate or elect federal candidates.

CLC also places primary emphasis on the content of a single strategy memo to support its speculative theory that IAV's "major purpose in 2019 has been the nomination of election of federal candidates."[1] Specifically, CLC pulls a number of selective quotes from a strategy memo provided to a single potential donor, and suggests that those statements somehow transform all of IAV's non-political, educational, issue advocacy, and policy activities—which comprises the majority of its spending—into disbursements for candidate advocacy. Such a bootstrapping argument has no grounding in actual law and does nothing to bolster CLC's spurious allegation that IAV should have registered and reported as a political committee.

In sum, the Complaint does not allege sufficient facts to demonstrate that there is "reason to believe" that IAV violated the law by failing to register and report as a political committee. Furthermore, the limited evidence on which CLC relies is belied by the fact that IAV's spending on political campaign activities in 2019, which will be reflected on IAV's IRS Form 990 Annual Information Return to be filed this coming fall, was not more than 41 percent of its overall spending last calendar year. Importantly, this percentage was not based solely on IAV's political spending related to Senator Ernst, as portions of its political spending referenced state candidates. This means that even less than 41 percent of IAV's overall spending in 2019 was focused on the nomination or election of federal candidates, which entirely negates CLC's contention that IAV should have registered and reported as a federal political committee. This is not to mention the fact that IAV did not spend any of its funds on political campaign activities in

[1] Compl. at 12.

2018, and only $5,000 in 2017, as reflected in its Form 990s for those years,[2] which further disproves CLC's sham allegations.

These critical deficiencies render the Complaint entirely speculative. The Act, the Commission's regulations, and judicial precedent, therefore, require that the Commission find no reason to believe that a violation has occurred, and the Complaint should be dismissed.

II. FACTUAL BACKGROUND

IAV is organized under Section 501(c)(4) of the Internal Revenue Code as a social welfare organization and filed its Notice of Intent to Operate Under Section 501(c)(4) with the IRS on February 27, 2017. IAV is **not** a Section 527 political organization, nor a Commission-regulated "political committee." IAV's primary purposes, as set forth in its Articles of Incorporation, include:

> 1. To promote and further social welfare purposes as defined in Section 501(c)(4) of the Internal Revenue Code of 1986, as the same may be amended or supplemented (hereinafter referred to as the "IRC"), and, specifically, to educate the public about common-sense solutions to various public policy issues of national importance including limited government, defending life, cutting wasteful spending, finding solutions for the challenges facing rural America, and building a strong national defense; and
> 2. To exercise any other powers conferred upon corporations organized pursuant to the provisions of the Act; provided, however, that the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income taxation under IRC Section 501(c)(4).[3]

IAV's Form 990 filings state that it "seeks to educate the public about common-sense solutions to various public policy issues of national importance including limited government, defending life, cutting wasteful spending, finding solutions for the challenges facing rural America, and building a strong national defense."[4] Its Form 990 tax filings reflect "policy

[2] Iowa Values, Form 990 (2017 and 2018). In 2017, IAV spent $5,000 on political campaign intervention, which amounted to only 1.8 percent of its overall spending that year.
[3] Iowa Values, Form 990 (2017 and 2018).
[4] Iowa Values, Form 990 (2017 and 2018).

development, voter education, and outreach on policy issues," as its program service accomplishments for 2017 and 2018.[5]

IAV further explains on its website that it "is a nonprofit, nonpartisan forum guided by free-market principles," and that "[i]t champions conservative values and is rooted in the belief that Iowa's greatest asset is its people." IAV focuses on the following policy and issue areas, as explained in the "Our Focus" section of its website: Increasing economic security for Iowa's middle class; tax reform; health care access and affordability; agriculture and manufacturing; trade; renewable energy; the Farm Bill; educating the next generation; affordability, performance and accountability in our education system; caring for seniors and veterans; affordable long-term care for seniors; reintegration and employment of our veterans; and, Veterans Administration reform. IAV's website contains detailed policy descriptions and proposals in these areas.[6] IAV spent all of its funds in 2018 and a majority of its funds in 2019 in furtherance of these policy priorities. This included spending for public opinion research, data development, message testing, grassroots targeting, policy white papers, educational communications, fundraising, and compliance.

As discussed above, IAV also engaged in a limited amount of spending (approximately 41 percent) in 2019 on what the IRS considers to be political campaign intervention on both the federal and state levels. However, despite CLC's misguided contention that the handful of communications cited in the Complaint "are susceptible to no reasonable interpretation other than as advocacy for Joni Ernst," none of IAV's spending was for activities or communications that would have triggered any reporting with the Commission. In fact, such activities are in full compliance with the Act, the Commission's regulations, and applicable IRS standards. IRS standards permit a Section 501(c)(4) organization to engage in "political activity" so long as the organization's primary purpose is not the "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[7] Given the rough equivalence of the IRS "primary purpose" test and the Commission's "major purpose" test, a Section 501(c)(4) organization that is in compliance with IRS standards, which is the case here, cannot qualify as a "political committee" under the Commission's test.

[5] *Id*.
[6] Iowa Values website, "Our Focus," https://ouriowavalues.com/issues.
[7] *See* Rev. Rul. 81-95; Treas. Reg. § 1.501(c)(4)-l(a)(2)(ii).

III. LEGAL FRAMEWORK

A. The Commission's Standards for Making a "Reason to Believe" Finding

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

Accordingly, a "reason to believe" determination must be made "without any investigation" by the Commission, which precludes any type of independent inquiry into the substance of the allegations. *Stockman v. FEC*, 138 F.3d 144,147 n.2 (5th Cir. 1998).[8] The Supreme Court reaffirmed that adjudications involving political speech must not entail "burdensome" inquiries, *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) ("WRTL II"), should "resolve disputes quickly without chilling speech," *id*, and "avoid threats of criminal liability and the heavy costs of defending against FEC enforcement" due to the uncertain application of federal law. *Citizens United v. FEC*, 558 U.S. 310, 335 (2010). This is particularly true even at the earliest stages of the Commission's enforcement process, where a "reason to believe" finding can be treated as evidence of at least some guilt and stigmatizes a respondent in the public's eye.

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

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

complainant's allegations as to any presumed," dismissal is likewise warranted. *Democratic Senatorial Campaign Comm.*, 745 F. Supp. at 744.[9]

B. The Commission's Determination of Political Committee Status

1. Major Purpose Test

To be a "political committee," an organization must satisfy both a statutory and a constitutional test. As to the statutory component, the Act defines "political committee," in pertinent part, as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." 52 U.S.C. § 30101(4)(A).

Beyond the statutory requirements, however, the Supreme Court and lower federal courts consistently have "construed the words 'political committee' ... narrowly [to] only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *see also FEC v. Mass. Citizens for Life. Inc.*, 479 U.S. 238, 252 n.6 (1986) ("MCFL") (reaffirming *Buckley*). *Buckley* "explicitly recognized the potentially vague and overbroad character of the 'political committee' definition in the context of FECA's disclosure requirements.'" *Machinists*, 655 F.2d at 391.[10] To "avoid questions of unconstitutionality,"[11] and to limit the "chilling effects worked upon"[12] speakers, the Supreme Court incorporated the "major purpose" requirement as a prerequisite that regulators must consider in determining an organization's status. Otherwise, Congress would subject many organizations "to an elaborate panoply of FEC regulations requiring the filing of dozens of forms [and] the disclosing of various activities" without adequate justification or concern for "First Amendment values." *GOPAC*, 917 F. Supp. at 858 (D.D.C. 1996) (quoting *Machinists*, 655 F.2d at 392), 859 (quoting *Buckley*, 424 U.S. at 79); *see*

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

[10] The Court held that the "major purpose" narrowing construction, was necessary to save the statute not only from vagueness concerns, but also from overbreadth. The definition of "political committee" was "defined in this way by the [*Buckley*] Court for the purpose of 'focusing precisely' FECA's broadly worded provisions on 'the narrow aspect of political association' which could constitutionally be restricted." *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (quoting *Machinists*, 655 F.2d at 392) ("GOPAC"); *see also Buckley*, 424 U.S. at 79 (explaining that to "fulfill the purposes of the [FECA]," the political committee definition need "only encompass organizations ... the major purpose of which is the nomination or election of a candidate").

[11] *Buckley*, 424 U.S. at 79 n.106.

[12] *ACLU v. Jennings*, 366 F. Supp. 1041, 1056-57 (D.D.C. 1973) (three-judge court), *vacated as moot sub nom.*, *Staats v. ACLU*, 422 U.S. 1030 (1975).

also N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 287 (4th Cir. 2008) ("NCRL III") (noting that "designation as a political committee often entails a significant regulatory burden").

Buckley made clear that only organizations that have "the major purpose" of electing candidates may be regulated as political committees. 424 U.S. at 79 (emphasis added). The Commission has also explained that an organization "must…have the major purpose of engaging in Federal campaign activity" before it may be regulated as a political committee. *Supplemental Explanation and Justification*, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (emphasis added).

When determining an organization's major purpose, courts have repeatedly cautioned that issue advocacy must be excluded from the calculation. In *Buckley v. Valeo*, 519 F.2d 821, 863 (D.C. Cir. 1975) (en banc), *aff'd in part and reversed in part*, 424 U.S. 1 (1976), the United States Court of Appeals for the District of Columbia Circuit emphasized that the political committee definition had to be narrowly construed "since it potentially reaches ... the activities of nonpartisan issue groups which [are limited to] influencing the public to demand of candidates that they take certain stands on the issues." In citing this language approvingly, the Supreme Court confirmed that the political committee definition should not be stretched to apply "to reach groups engaged purely in issue discussion." *Buckley*, 424 U.S. at 79. Instead, *Buckley* defined a "political committee as including only those entities that have as [the] major purpose engaging in express advocacy in support of a candidate ... by using words such as 'vote for,' 'elect,' 'support,' 'vote against,' 'defeat,' or 'reject.'" *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 712 (4th Cir. 1999).

While *Buckley* excluded organizations that engaged "purely" in issue advocacy, subsequent cases made clear that an organization need not refrain from all candidate advocacy in order to be exempted from the definition of a political committee. In *MCFL*, the Court emphasized that *Buckley*'s teaching would exclude from regulation an entity whose "central organizational purpose is issue advocacy, although it occasionally engages in activities on behalf of political candidates." *MCFL*, 479 U.S. at 252 n.6. *Machinists* similarly cautioned that "issue-oriented groups, lobbying organizations,... and other groups concerned with the open discourse of views on prominent national issues" should be excluded from the definition of a political committee. 655 F.2d at 391, 394; *see also N.M. Youth Organized v. Herrera*, 611 F.3d 669, 678 (10th Cir. 2010) (evaluating whether a "group spends a preponderance of its expenditures on express advocacy") (emphasis added). Moreover, placing political committee burdens on organizations "primarily engaged in speech on political issues unrelated to a particular candidate" would "not only contravene both the spirit and the letter of *Buckley*'s 'unambiguously campaign related' test, but it would also subject a large quantity of ordinary political speech to regulation." *NCRL III*, 525 F.3d at 288.

Until somewhat recently, relevant case law strongly suggested that the Commission's major purpose test was limited solely to an examination of an organization's express advocacy activities.[13] However, the U.S. District Court for the District of Columbia in 2016, in a case involving a challenge to the Commission's dismissal of another political committee status-related complaint, stated that the controlling Commissioners' Statement of Reasons justifying the dismissal contained an "erroneous understanding that the First Amendment effectively required the agency to exclude from its consideration all non-express advocacy in the context of disclosure."[14] The District Court remanded the case back to the Commission "for its reconsideration in light of the correction,"[15] effectively forcing the Commission to analyze electioneering communications, in addition to express advocacy communications, in performing the Commission's "judicially approved case-by-case approach to adjudicating political committee status."[16]

With that said, even if electioneering communications are not per se excluded from the major purpose analysis, many electioneering communications still would not count against the major purpose threshold. The Supreme Court, "made clear in [*WRTL II*] that the distinction between issue advocacy and express advocacy can be paramount in the context of electioneering communications." *Colo. Right to Life Comm.*, 498 F.3d at 1153 n.11. In *WRTL II*, the Supreme Court held that an electioneering communication can advocate for issues or candidates. *See* 551 U.S. at 470-71. The Court determined that an electioneering communication would constitute candidate advocacy only if the ad "is the functional equivalent of express advocacy," which occurs "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL II*, 551 U.S. at 469-70. The Court explicitly rejected the Commission's view that "any ad" that fits within the statutory definition of an electioneering communication "is the 'functional equivalent' of an ad saying defeat or elect that candidate." *Id*. at 470. To hold otherwise "would effectively eliminate First Amendment protection for genuine issue ads." *Id*. at 471.

The District Court in *CREW v. FEC*[17] also spoke to the timeframe that may be considered when performing a major purpose analysis, stating that "[g]iven the FEC's embrace of a totality-of-the circumstances approach to divining an organization's 'major purpose,' it is not *per se* unreasonable that the Commissioners would consider a particular organization's full spending

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[13] *See* MUR 5541, Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Donald F. McGahn, at 14 n.63 (Jan. 22, 2009) (stating that there is "serious doubt on the validity of examining anything other than the amount of express advocacy in the major purpose test analysis").
[14] *CREW v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016).
[15] *Id*.
[16] *Id*.; *see also Supplemental Explanation and Justification on Political Committee Status*, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).
[17] *CREW v. FEC*, 209 F. Supp. 3d 77 (D.D.C. 2016).

history as relevant to its analysis."[18] Thus, according to the court, the Commission is not limited to considering a group's spending in a single calendar year when conducting a "major purpose" inquiry. However, the court concluded that a "lifetime-only rule" is contrary to law when it "tends to ignore crucial facts indicating whether an organization's major purpose has changed."[19] Therefore, under the court's holding, the Commission may, when examining major purpose, consider a group's full spending history provided it also considers whether the group's major purpose has changed as evidenced by its recent spending activity.[20]

Lastly, the District Court rejected CREW's argument that applying a 50-percent spending threshold was legally erroneous. According to the court, the Commission is entitled to deference on the question of spending thresholds, and it concluded that "[a] reasonable application of a 50%-plus rule would not appear to be arbitrary and capricious."[21]

2. Case-by-Case Analysis

Although *Buckley* established the major purpose test, it provided no guidance as to the proper approach to determine an organization's major purpose. *See, e.g., Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012) ("RTAA"). The Supreme Court's discussion of major purpose in a subsequent opinion, *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) ("MCFL"), was similarly sparse. *See id*. at 262. In that case, the Court identified an organization's independent spending as a relevant factor in determining its major purpose, but examined the entire record as part of its analysis and did not chart the outer bounds of the test. 479 U.S. at 238. Following *Buckley* and *MCFL*, lower courts have refined the major purpose test—but only to a limited extent.[22] In large measure, the contours of political committee status—and the major purpose test—have been left to the Commission.

Following *Buckley*, the Commission adopted a policy of determining on a case-by-case basis whether an organization is a political committee, including whether its major purpose is the

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[18] *Id*. at 94.
[19] *Id*.
[20] *See* MUR 6589R, Statement of Reasons of Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Lee E. Goodman, at 4-5 (Oct. 19, 2016).
[21] *Id*. at 5 (quoting *CREW v. FEC*, 209 F. Supp. 3d 77, 94).
[22] *See Machinists*, 655 F.2d at 396 (stating that political committee "contribution limitations did not apply to ... groups whose activities did not support an existing 'candidate'" and finding Commission's subpoena was overly intrusive where directed toward "draft" group lacking a "candidate" to support); *GOPAC*, 917 F. Supp. at 861-62 (holding that a group's support of a "farm team" of future potential federal candidates at the state and local level did not make it a political committee under the Act); *see also Unity08 v. FEC*, 596 F.3d 861, 869 (D.C. Cir. 2010) (concluding that an organization "is not subject to regulation as a political committee unless and until it selects a 'clearly identified' candidate").

nomination or election of federal candidates. *Political Committee Status*, 72 Fed. Reg. 5596 (Feb. 7, 2007) (*Supplemental Explanation and Justification*). To determine an entity's "major purpose," the Commission explained that it considers a group's "overall conduct," including public statements about its mission, organizational documents, government filings (e.g., IRS notices), and the proportion of spending related to "federal campaign activity." *Id*. at 5597, 5605. Among other things, the Commission informed the public that it compares how much of an organization's spending is for "federal campaign activity" relative to "activities that are not campaign related." *Id*. at 5601, 5605.

IV. ANALYSIS

A. The Complaint is Factually and Legally Deficient on its Face and Should be Dismissed at the Outset

As stated above, a "reason to believe" finding must be based on the complaint, information included in "other sworn complaints," or evidence from actual "wrongdoing" learned in the Commission's routine review of the reporting data. Complaints may not be "conclusory" and must contain "legally significant facts" to support the charges alleged in the complaint.[23] The Complaint fails to meet even this most basic of tests. Despite its significant resources, CLC has failed to provide any "legally significant facts" to prove its allegations.

CLC reaches its conclusion that IAV had a "major purpose in 2019 [of] the nomination or election of federal candidates," and therefore "should have registered as a political committee," by citing IAV's "fundraising appeals, its strategy memo, and its public communications."[24] We will therefore address each category in turn below.

1. IAV's Public Communications

One of CLC's primary arguments in the Complaint is that IAV's public communications in 2019, and specifically its digital advertising, "demonstrated its major purpose of reelecting Senator Ernst."[25] However, as purported evidence in support of this allegation, CLC cites only two digital advertising purchases—one through Google, and the other through Facebook—made by IAV over the course of a single month, from June 28, 2019 through July 27, 2019. Remarkably, CLC even cites the cost range for these advertisements. With respect to the Google ad buy, CLC states that "Google does not provide precise amounts for an ad's cost, but the

[23] *See* Commission Guidebook, *supra* n.18.
[24] Compl. at 12-13.
[25] Compl. at 11.

aggregate value of these ads fell between $1,300 and $53,000."[26] For the Facebook ad buy, CLC explains that the cost range was even lower, stating that "[t]he ad cost between $1,000 and $5,000."[27]

As an initial matter, CLC's argument is premised on the false assumption that the cited advertisements—and all of IAV's digital advertisements in 2019—amounted to reportable political activity that would have triggered political committee registration with the Commission. In short, CLC is arguing that all of IAV's ads in 2019 amounted to the "functional equivalent of express advocacy" simply because some of them depicted a federal officeholder in the context of policy and issue messages. But this line of reasoning was explicitly rejected by the Supreme Court in *WRTL II*, where the Court determined that electioneering communications would constitute candidate advocacy only if the ad "is the functional equivalent of express advocacy," which occurs "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL II*, 551 U.S. at 469-70. The Court explicitly rejected the Commission's view that "any ad" that fits within the statutory definition of an electioneering communication "is the 'functional equivalent' of an ad saying defeat or elect that candidate." *Id*. at 470.

CLC also fails to account for the factors laid out in the Commission's regulations concerning when a communication amounts to the functional equivalent of express advocacy.[28] Section 100.22(b) of the regulations make clear that a communication would be considered the functional equivalent of express advocacy,

> When taken as a whole and with limited reference to external events, such as the proximity to the election, [the communication] could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because – (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

11 C.F.R. § 100.22(b).

[26] Compl. at 3.
[27] Compl. at 3.
[28] *See* 11 C.F.R. § 100.22(b)

In this case, CLC cites two sets of digital advertisements that ran on Google and Facebook 16 months before the 2020 general election. None of the ads cited in the Complaint, or any of IAV's advertisements for that matter, mentioned an election or referred to a "candidate" for an election. Moreover, virtually all of IAV's ads discuss policy issues that are important to Iowans and all Americans, such as health care and caring for our veterans. For example, one of IAV's digital ads addressed the perils of Democrats' "Medicare For All" plan and urged Iowans to "Call your Member of Congress Today, Tell Them to Oppose Medicare for All."[29] Another IAV digital ad discusses Senator Ernst's efforts to "cut prescription drug costs," "end surprise medical billing," and "improve health care for our nation's veterans."[30] It is therefore patently false for CLC to assert that IAV's communications are "unconnected from any discussion of issues."[31] In short, IAV's digital communications do not amount to the functional equivalent of express advocacy and have never triggered a need to register or report with the Commission. CLC's arguments to the contrary are nothing more than a disingenuous political hit.

Of course, both of the ads referenced in the Complaint are digital ads and therefore, by definition, cannot ever be considered electioneering communications because they are not broadcast, cable or satellite communications.[32] This makes it even harder to claim that those ads amount to reportable activity.

It should also be noted that even if the two sets of digital advertisements cited in the Complaint did qualify as the functional equivalent of express advocacy, the total cost for those ad buys amounted to only a fraction of IAV's overall spending in 2019. When IAV files its 2019 Form 990 later this year, it will reflect approximately $839,000 in total spending for that year. As explained by CLC, the cost range for the Google and Facebook digital ads cited in the Complaint—referred to as the "aggregate value of these ads"—fell between $2,300 and $58,000.[33] Assuming *arguendo* that all of these ads qualified as the functional equivalent of express advocacy of a federal candidate, which they did not, at most they would have amounted to only six percent (6%) of IAV's spending in 2019. Such a miniscule percentage is not even remotely close to the 50%-plus percentage generally required for the Commission to make a political committee major purpose determination.

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[29] *See* Iowa Values video, "Lost," *available at* https://www.youtube.com/watch?v=urmj1N0LQoE&feature=emb_logo.
[30] *See* Iowa Values video, "Won't Stand For It," *available at* https://www.youtube.com/watch?v=Pbb_3Bfvx9Y&feature=emb_logo.
[31] Compl. at 11-12.
[32] *See* 11 C.F.R. § 100.29(a) (defining "electioneering communication").
[33] Compl. at 3.

Lastly, the Complaint fails to account for the District Court's conclusion in *CREW v. FEC*[34] that "[g]iven the FEC's embrace of a totality-of-the circumstances approach to divining an organization's 'major purpose,' it is not per se unreasonable that the Commissioners would consider a particular organization's full spending history as relevant to its analysis." The court made clear in that case that the Commission is not limited to considering a group's spending in a single calendar year when conducting a "major purpose" inquiry. In this case, IAV did not spend any of its funds on IRS-defined political campaign intervention in 2018, let alone any federal candidate advocacy. In fact, all of IAV's spending in 2018, which amounted to close to $300,000, went toward policy and issue-focused activities that did not even meet the standard for political campaign intervention under the IRS's much broader facts and circumstances test. The same goes for 2017, when IAV spent only 1.8 percent of its $268,014 in total spending (amounting to $5,000) on political campaign intervention. Of course, CLC does not mention any of these inconvenient facts because they cut squarely against the entire false premise of the Complaint.

2. IAV's Fundraising Appeals and Strategy Memo

Because CLC cannot back up its allegations using actual facts or real spending figures, it resorts to making speculative, conclusory statements about a single fundraising appeal and strategy memo, and then applies concocted legal theories to these conclusory statements as if they were facts. Such an application is not supported by the Act or the Commission's regulations and is frivolous on its face.

Specifically, CLC cites a strategy memo that accompanied an IAV fundraising solicitation of a potential donor as additional support for its contention that IAV's "major purpose in 2019 [was] the nomination or election of federal candidates."[35] The Complaint pulls selective quotes from this strategy memo and suggests that those statements somehow transform all of IAV's non-political, educational, issue advocacy and policy-related activities, which comprises the majority of its spending, into federal candidate advocacy disbursements. Such a bootstrapping theory of the case has no grounding in actual law and does not align with IAV's actual spending and activities in 2019, or throughout its entire existence.

CLC also takes issue with IAV's fundraising solicitation asking a potential donor for $50,000 to "help continue our efforts," and cites this seemingly generic language as support for its proposition that IAV's "documented activities in 2019 have been overwhelmingly aimed at influencing the election."[36] CLC applies the same bogus rationale to suggest that IAV's activities

[34] *CREW v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2016).
[35] Compl. at 12.
[36] Compl. at 12.

in 2019 were funded by "contributions,"[37] a legal term defined by the Act as "money or anything of value made by any person for the purpose of influencing any election for Federal office."[38] However, as a policy, IAV does not accept donations that are earmarked for any particular purpose, including donations it may ultimately use for its political activities, and all major spending decisions by IAV are overseen and authorized by its Board of Directors. Furthermore, the fact that a social welfare organization chooses to engage in some political campaign spending to complement its issue advocacy activities does not automatically transform the donations it receives into "contributions," as defined by the Act. CLC's arguments to the contrary do not hold water and should be summarily dismissed.

V. CONCLUSION

In presenting such a hollow argument, CLC identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). CLC's partisan tactics have no place before the Commission, and the Complaint should be summarily dismissed.

In presenting politically-motivated and factually and legally unsubstantiated arguments, CLC has failed to demonstrate that IAV has violated any provision of the Act or the Commission's regulations. Instead, CLC has yet again invoked an administrative process as a means to continue its assault on the First Amendment and conservative organizations. The Complaint is based on malicious speculation and innuendo. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 344-4522 with any questions.

Respectfully submitted,

James E. Tyrrell III
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[37] Compl. at 12.
[38] 52 U.S.C. § 30101(8)(A)(i).