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July 23, 2020

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VIA E-MAIL
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Jeff S. Jordan, Esq.
 Assistant General Counsel
 Federal Election Commission
 1050 First Street, NE
 Washington, D.C. 20463

Re: Supplement to MUR 7717

Dear Mr. Jordan:

We write again as counsel to Theresa Greenfield, Theresa Greenfield for Iowa (the “*Campaign*”), and Theresa Kehoe, in her official capacity as Campaign Treasurer (collectively, the “*Respondents*”) regarding the complaint in MUR 7717 (the “*Original Complaint*”). While Respondents already submitted a response to the Original Complaint on May 4, 2020 (the “*Original Response*”), the Foundation for Accountability and Civic Trust (“*FACT*”) has since filed a supplement to the Original Complaint (the “*Supplement*”) alleging another violation of the Federal Election Campaign Act of 1971, as amended (the “*Act*”), and Federal Election Commission (“*FEC*” or the “*Commission*”) regulations. Accordingly, Respondents submit this letter in response to the Supplement.

In what likely feels like a déjà vu for the Commission, the Supplement accuses Respondents of engaging in prohibited coordination with SMP yet again but fails to provide any facts in support of its claim. Just like the Original Complaint, FACT’s only basis is the advertisement’s use of short b-roll video clips, photographs of Theresa Greenfield, and references to publicly-available facts about her policy positions. As was the case when FACT filed its Original Complaint, the FEC has repeatedly made clear that such activity does not constitute “coordination” for purposes of the Act. Because the Supplement does not allege any additional facts to demonstrate that the Campaign engaged in illegal coordination with SMP, the Commission should dismiss the Supplement as well as the Original Complaint and close the file on this matter for good.

FACTUAL BACKGROUND

The facts at issue are nearly identical to those described in the Original Complaint. Theresa Greenfield is a candidate for U.S. Senate in Iowa in 2020,¹ and Theresa Greenfield for Iowa is

¹ Theresa Greenfield, FEC Form 2 - Statement of Candidacy (Apr. 10, 2020), <https://docquery.fec.gov/pdf/314/202004109216632314/202004109216632314.pdf>.

Jeff S. Jordan, Esq.
 July 23, 2020
 Page 2

her principal campaign committee.² The Campaign maintains a publicly available website, which it uses to communicate with the general public about Theresa's background, her candidacy, her policy positions and more.³ The Campaign also maintains a YouTube page, a Facebook page and an Instagram account.⁴

SMP is a federal super PAC registered with the FEC.⁵ As a super PAC, SMP was formed and operates completely separately from Respondents. According to the Supplement, SMP ran a television advertisement featuring Theresa Greenfield on May 13, 2020 ("*SMP Ad*" herein) which allegedly included content from the Campaign's website and Instagram account.⁶

LEGAL ANALYSIS

For the same reasons outlined in the Original Response, the Supplement alleges that Respondents coordinated with SMP in the production of the SMP Ad yet fails to provide any facts establishing that the SMP Ad was a coordinated communication under the law. Rather than reiterating the same arguments made in our Original Response, and in order to save the Commission's valuable time and resources, we incorporate our Original Response herein.

Specifically, we reiterate that:

- Despite the Commission's repeated confirmation that communications appearing on a campaign's publicly available website are never sufficient to find that the conduct prong has been satisfied, the Supplement's only basis for coordination is the SMP Ad's use of video footage and photographs from a publicly available website. Thus, the SMP Ad cannot constitute a coordinated communication under FEC regulations because it failed to satisfy the conduct prong.
- The Supplement's claim that the footage and photographs were "not publicly published on Greenfield's webpage because it was not made for the public" is patently false.⁷ The link to the video was posted on the Committee's publicly

² *Id.*; Theresa Greenfield for Iowa, FEC Form 1 - Statement of Organization (Apr. 10, 2020), <https://docquery.fec.gov/pdf/282/202004109216632282/202004109216632282.pdf>.

³ www.greenfieldforiowa.com.

⁴ Theresa Greenfield for Iowa, YouTube, *available at* https://www.youtube.com/channel/UC8Vxm_O_tRZcBTFLhegQZuQ/about; Theresa Greenfield for Iowa, Facebook, *available at* https://www.facebook.com/pg/GreenfieldForIowa/videos/?ref=page_internal; Theresa Greenfield for Iowa, Instagram, *available at* <https://www.instagram.com/theresagreenfield/?hl=en>.

⁵ SMP, FEC Form 1 - Statement of Organization (Oct. 1, 2019), <https://docquery.fec.gov/pdf/667/201910019163579667/201910019163579667.pdf>.

⁶ Fights, YouTube (May 13, 2020), https://youtu.be/FWvD5O0_6Xo.

⁷ Suppl. Compl. at 6.

Jeff S. Jordan, Esq.
 July 23, 2020
 Page 3

available website and the photographs were posted on the Campaign's publicly available Instagram account.⁸

- Commission precedent confirms that the Supplement's speculation based on proximity between an update to a publicly available website and a subsequent advertisement is not sufficient to establish coordination.⁹
- The Supplement's insistence that "[a]ny republication of photographs or video prepared by a campaign is a contribution, even if the campaign materials are only a small part of a larger advertisement" completely ignores FEC precedent and federal regulations.¹⁰
- Republication is not intended to address situations where Respondents "did not repeat verbatim the [candidate's] message" but instead create their own message, using publicly available materials.¹¹ "[M]ere thematic similarities between a candidate's campaign materials and a third-party communication are insufficient to establish republication,"¹² and "similar sentences...do not rise to the level sufficient to indicate republication of campaign materials because of differences in wording or phrasing."¹³ Similarly, the Commission has consistently failed to find reason to believe that an advertisement that contains short snippets of b-roll video footage from a campaign has violated the Act or FEC regulations.¹⁴ Here, while the SMP Ad may use brief snippets of b-roll footage and photographs from the Campaign's publicly available Instagram account, it is clear that the SMP Ad contains its own words and reflects its own message.

CONCLUSION

⁸ See *supra* note 4.

⁹ See FEC Matter Under Review 6902 (Al Franken for Senate 2014), Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Lee E. Goodman at 2 (Dec. 17, 2015).

¹⁰ Suppl. Compl. at 6; see 11 C.F.R. § 109.23(b)(4); FEC Matter Under Review 6603, Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Lee E. Goodman (Dec. 17, 2015) citing FEC Matter Under Review 6357.

¹¹ FEC Matter Under Review 6603, Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Lee E. Goodman (Dec. 17, 2015) citing FEC Matter Under Review 6357.

¹² FEC Matter Under Review 7124 (Katie McGinty for Senate), Factual and Legal Analysis at 11 (May 4, 2017).

¹³ *Id.* at 10 (citing to FEC Matter Under Review 6502 (Nebraska Democratic State Central Committee Campaign), Factual & Legal Analysis at 9 (citing FEC Matter Under Review 2766 (Auto Dealers and Drivers for Free Trade PAC) for the proposition that "similar sentences . . . do not rise to the level sufficient to indicate republication of campaign materials because of differences in wording or phrasing.")).

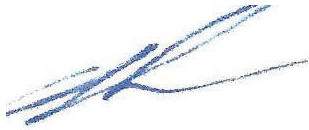
¹⁴ See, e.g., FEC Matter Under Review 7432 (John James for Senate, et al.), Statement of Reasons, Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter (Aug. 30, 2019).

Jeff S. Jordan, Esq.
July 23, 2020
Page 4

The Act requires that the Commission find “reason to believe that a person has committed, or is about to commit, a violation” of the Act as a precondition to opening an investigation into the alleged violation.¹⁵

Put simply, there is no “distinct violation” at issue here because there was no violation alleged in the Original Complaint and similarly no violation alleged now in the Supplement.¹⁶ Just like the Original Complaint, the Supplement fails to allege facts that provide a sufficient basis for the Commission to find “reason to believe” that the Act or Commission regulations have been violated. Accordingly, the Commission must reject the Supplement’s request for an investigation and put an end to this matter for good.¹⁷

Sincerely,



Marc E. Elias
Aria C. Branch
Courtney T. Weisman
Counsel to Respondents

¹⁵ 52 U.S.C. § 30109(a)(2).

¹⁶ Suppl. Compl. at 1.

¹⁷ FEC Matter Under Review 4960 (Clinton for U.S. Senate), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 1 (Dec. 21, 2000).