

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

**MUR: 7717**

DATE COMPLAINT FILED: Mar. 11, 2020

DATE OF NOTIFICATION: Mar. 18, 2020

DATE SUPP. COMPLAINT FILED: June 4, 2020

DATE OF SUPP. NOTIFICATION: June 9, 2020

DATE OF LAST RESPONSE: July 24, 2020

DATE ACTIVATED: July 31, 2020

EXPIRATION OF SOL: Feb. 1 – May 18, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:** Foundation for Accountability and Civic Trust

**RESPONDENTS:** Theresa Greenfield for Iowa and Theresa L. Kehoe  
in her official capacity as treasurer  
Theresa Greenfield  
SMP and Rebecca Lambe in her official capacity  
as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30104(b)  
52 U.S.C. § 30116(a), (f)  
11 C.F.R. § 104.3  
11 C.F.R. § 109.21  
11 C.F.R. § 109.23  
11 C.F.R. § 110.1(b)  
11 C.F.R. § 110.9

**INTERNAL REPORTS CHECKED:** Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint alleges that Theresa Greenfield for Iowa and Theresa L. Kehoe in her official capacity as treasurer (the “Greenfield Committee”), Theresa Greenfield, and SMP and Rebecca Lambe in her official capacity as treasurer (“SMP”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations when SMP republished the Greenfield Committee’s campaign materials in coordinated communications it

1 made at the request or suggestion of the Greenfield Committee. For the reasons set forth below,  
2 we recommend that the Commission find reason to believe that SMP violated 52 U.S.C.  
3 § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions to the  
4 Greenfield Committee when it republished the latter's campaign materials and 52 U.S.C.  
5 § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the in-kind contributions. However,  
6 because the record is insufficient to raise a reasonable inference that SMP coordinated with  
7 Theresa Greenfield and the Greenfield Committee, we recommend the Commission dismiss the  
8 allegations that Greenfield and the Greenfield Committee violated 52 U.S.C. § 30116(f) and  
9 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions and 52 U.S.C.  
10 § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report in-kind contributions.

## 11 **II. FACTUAL BACKGROUND**

12 Theresa Greenfield is a candidate for the U.S. Senate in Iowa in 2020.<sup>1</sup> Theresa  
13 Greenfield for Iowa is her principal campaign committee.<sup>2</sup> SMP is an independent-expenditure-  
14 only political committee registered with the Commission.<sup>3</sup> As of August 31, 2020, SMP has

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<sup>1</sup> FEC Form 2, Theresa Greenfield, Amended Statement of Candidacy at 1 (July 14, 2020),  
<https://docquery.fec.gov/pdf/764/202007149244570764/202007149244570764.pdf>.

<sup>2</sup> *Id.*; FEC Form 1, Theresa Greenfield for Iowa, Amended Statement of Organization at 2 (July 14, 2020),  
<https://docquery.fec.gov/pdf/877/202007149244570877/202007149244570877.pdf>.

<sup>3</sup> FEC Form 1, SMP, Amended Statement of Organization at 1-2 (Oct. 1, 2019),  
<https://docquery.fec.gov/pdf/667/201910019163579667/201910019163579667.pdf>; *see also* SMP Resp. at 2  
(May 4, 2020) ("SMP is a federal Super PAC."); SMP Supp. Resp. at 2 (July 24, 2020) (same). SMP was formerly  
known as Senate Majority PAC. *See* FEC Form 1, Senate Majority PAC, Amended Statement of Organization at 1  
(Nov. 1, 2016), <https://docquery.fec.gov/pdf/439/201611019037017439/201611019037017439.pdf>; FEC Form 1,  
SMP, Amended Statement of Organization at 1 (Nov. 15, 2017) (indicating a name change),  
<https://docquery.fec.gov/pdf/356/201711169086695356/201711169086695356.pdf>; *see also* Compl. at 1 n.2  
(Mar. 11, 2020).

1 reported making \$42,649,654.23 in independent expenditures in support of or opposition to  
2 federal candidates in the 2020 cycle, including \$6,996,328.00 in support of Greenfield.<sup>4</sup>

3 On January 27, 2020, the Greenfield Committee uploaded a video to its YouTube channel  
4 entitled “Heartland,” which is three minutes long, lacks audio, and is comprised of clips of  
5 Greenfield interacting with people in various settings.<sup>5</sup> The Heartland Video is “unlisted” on the  
6 Greenfield Committee’s YouTube profile, and therefore appears to only be accessible via its  
7 unique, direct URL link.<sup>6</sup>

8 In February 2020, the Greenfield Committee posted a link to the Heartland Video and a  
9 PDF document containing talking points to a sub-page of its campaign website entitled  
10 “Important Update.”<sup>7</sup> The Important Update sub-page exhorts the reader that “[a]t this early  
11 stage of the race for Senate, Iowa voters need to hear about Theresa Greenfield’s compelling  
12 personal story and how she’ll fight to take on the special interests in Washington.”<sup>8</sup> On  
13 February 25, 2020, SMP reported making \$1,452,129 in independent expenditures in support of  
14 Greenfield that appear to correspond to a television and digital advertisement entitled “Tough.”<sup>9</sup>

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<sup>4</sup> See *SMP: Spending*, FEC, <https://www.fec.gov/data/committee/C00484642/?tab=spending#independent-expenditures> (last visited Oct. 14, 2020).

<sup>5</sup> Theresa Greenfield for Iowa, *Heartland*, YOUTUBE (Jan. 27, 2020) [hereinafter Heartland Video], [https://www.youtube.com/watch?v=MqW\\_QMPsAAQ](https://www.youtube.com/watch?v=MqW_QMPsAAQ); see also Compl. at 3 & n.7.

<sup>6</sup> See Supp. Compl. at 6 (June 4, 2020) (alleging the Heartland Video “was not available to the general public but was only available if a person has the direct link to it”); Theresa Greenfield for Iowa, *Videos*, YOUTUBE, <https://www.youtube.com/c/greenfieldforiowa/videos> (last visited Oct. 14, 2020) (listing the Greenfield Committee’s videos, but not listing the Heartland Video).

<sup>7</sup> Compl. at 2-3 (including screenshot of the “Important Update” sub-page); *id.*, Ex. B (attaching PDF document with talking points on Greenfield’s familial and professional background and the issues on which she is running for U.S. Senate).

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> SMP, 48 Hour Report of Independent Expenditures, Sched. E (Feb. 27, 2020), <https://docquery.fec.gov/pdf/435/202002279203325435/202002279203325435.pdf>; Senate Majority PAC 2020,

MUR 7717 (Theresa Greenfield for Iowa, *et al.*)  
 First General Counsel's Report  
 Page 4 of 14

1 The Tough ad (“Tough”) is 31 seconds long, approximately eight seconds of which feature  
 2 portions of the Heartland Video b-roll and an additional seven seconds of which display two  
 3 photographs of Greenfield previously posted to her campaign’s social media accounts.<sup>10</sup> On-  
 4 screen text and audio describe Greenfield’s familial and professional background and tout her  
 5 toughness.<sup>11</sup>

6 On May 7, 2020, the Greenfield Committee updated its Important Update sub-page with  
 7 new text and a new PDF document containing new talking points, but retained the link to the  
 8 Heartland Video.<sup>12</sup> Six days later, on May 13, 2020, SMP reported making \$695,760 in  
 9 independent expenditures in support of Greenfield that appear to correspond to an advertisement  
 10 entitled “Fights.”<sup>13</sup> The Fights ad (“Fights”) is 30 seconds long, approximately three seconds of  
 11 which feature portions of the Heartland Video b-roll and an additional eight seconds of which  
 12 display two photographs of Greenfield previously posted to her campaign’s social media

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*Tough*, YOUTUBE (Feb. 23, 2020) [hereinafter Tough Ad], <https://www.youtube.com/watch?v=kSIz2gLoRtY>; *see also* Compl. at 3 & n.8 (citing Alex Rogers, *Super PAC Spending More Than \$1 Million Backing Democratic Challenger to Ernst*, CNN (Feb. 24, 2020, 12:27 PM), <https://www.cnn.com/2020/02/24/politics/iowa-senate-democrat-ad/index.html>).

<sup>10</sup> Compare Tough Ad, with Heartland Video, Theresa Greenfield, FACEBOOK (Aug. 8, 2017), <https://www.facebook.com/GreenfieldForIowa/photos/a.699515050259689/714101258801068/?type=3&theater>, and theresagreenfield, INSTAGRAM (Dec. 11, 2019), [https://www.instagram.com/p/B58jvZegQ\\_v/](https://www.instagram.com/p/B58jvZegQ_v/).

<sup>11</sup> See Tough Ad.

<sup>12</sup> Supp. Compl. at 2-3 (including screenshot of the “Important Update” sub-page); *id.*, Ex. B (attaching PDF document with talking points on Greenfield’s positions on healthcare, drug prices, and special interests); *see also* *Important Update*, THERESA GREENFIELD FOR IOWA (May 7, 2020), <https://web.archive.org/web/20200518141656/https://greenfieldforiowa.com/important-update/>. Notably, the Important Update sub-page no longer used the “Iowa voters need to hear about” language it used in the February 2020 post.

<sup>13</sup> SMP, 48 Hour Report of Independent Expenditures, Sched. E (May 15, 2020), <https://docquery.fec.gov/pdf/274/202005159232749274/202005159232749274.pdf>; Senate Majority PAC 2020, *Fights - :30*, YOUTUBE (May 13, 2020) [hereinafter Fights Ad], [https://www.youtube.com/watch?v=FWvD5O0\\_6Xo&feature=youtu.be](https://www.youtube.com/watch?v=FWvD5O0_6Xo&feature=youtu.be).

1 accounts.<sup>14</sup> On-screen text and audio praise Greenfield's fights against insurance and drug  
2 companies and her refusal to accept corporate PAC money.<sup>15</sup> The Greenfield Committee's  
3 "Important Update" sub-page is no longer accessible.

4         The Complaint alleges that SMP republished the Greenfield Committee's campaign  
5 materials in Tough and Fights and impermissibly coordinated with the Greenfield Committee in  
6 making expenditures related thereto.<sup>16</sup> The Respondents assert that the advertisements contained  
7 unique messages and content and that incorporation of short snippets of campaign materials, use  
8 of similar themes, and temporal proximity are insufficient to establish republication under  
9 Commission precedent.<sup>17</sup> The Greenfield Committee further contends that a candidate's  
10 committee does not receive or accept a contribution via republished campaign material unless the  
11 republication is a coordinated communication, which the Greenfield Committee asserts it was  
12 not.<sup>18</sup> The Respondents argue the communications were not coordinated because the campaign  
13 materials used were posted on a publicly available website, the Complaint fails to allege any  
14 non-public communications between the Respondents or any actual request or suggestion by the  
15 Greenfield Committee, and temporal proximity and thematic similarities between the talking

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<sup>14</sup>         *Compare* Fights Ad, *with* Heartland Video, theresagreenfield, INSTAGRAM (Dec. 9, 2019),  
<https://www.instagram.com/p/B53lYCbAVDS/>, and theresagreenfield, INSTAGRAM (Nov. 12, 2019),  
<https://www.instagram.com/p/B4yIZeMjGx6/> (third photo in series).

<sup>15</sup>         *See* Fights Ad.

<sup>16</sup>         *See* Compl. at 2-4; Supp. Compl. at 1-5.

<sup>17</sup>         SMP Resp. at 4-6; Theresa Greenfield for Iowa and Theresa Greenfield Resp. at 5-6 (May 4, 2020)  
("Greenfield Comm. Resp."); SMP Supp. Resp. at 5-7; Theresa Greenfield for Iowa and Theresa Greenfield Supp.  
Resp. at 3 (July 23, 2020) ("Greenfield Comm. Supp. Resp.").

<sup>18</sup>         Greenfield Comm. Resp. at 6.

1 points and the advertisements are insufficient to satisfy the conduct prong of the Commission's  
2 coordination framework.<sup>19</sup>

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

4 The Act prohibits any person from making, and any candidate or committee from  
5 knowingly accepting, an excessive contribution.<sup>20</sup> For the 2020 election cycle, contributions by  
6 persons other than multicandidate committees to any candidate and his or her authorized political  
7 committees are limited to \$2,800 per election.<sup>21</sup> Authorized committee treasurers are required to  
8 disclose the identification of each person who makes one or more contributions to the committee  
9 aggregating in excess of \$200 within the election cycle, together with the date and amount of any  
10 such contribution.<sup>22</sup> If a committee makes a contribution, it shall disclose the name and address  
11 of the recipient and the contribution amount.<sup>23</sup>

#### 12 **A. There Is Reason to Believe That SMP Made and Failed to Report Excessive** 13 **In-Kind Contributions to Theresa Greenfield for Iowa by Republishing** 14 **Campaign Materials**

15 Under the Act, the financing by any person of the dissemination, distribution, or  
16 republication, in whole or in part, of any broadcast or any written, graphic, or other form of  
17 campaign materials prepared by the candidate, her campaign committee, or their authorized

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<sup>19</sup> *Id.* at 2-5; SMP Resp. at 2-4; SMP Supp. Resp. at 3-5; Greenfield Comm. Supp. Resp. at 2-3.

<sup>20</sup> 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

<sup>21</sup> 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. *See* 52 U.S.C. § 30116(a)(2).

<sup>22</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

<sup>23</sup> 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

1 agents is an expenditure.<sup>24</sup> The republication of campaign materials shall be considered a  
2 contribution for the purposes of the Act's contribution limitations and reporting responsibilities  
3 for the person making the expenditure.<sup>25</sup>

4 SMP republished the Greenfield Committee's campaign materials when it disseminated  
5 Tough and Fights. The available information indicates that the Heartland Video b-roll and the  
6 Greenfield Committee's social media posts constituted approximately one-half of Tough's visual  
7 content and one-third of Fights's visual content.<sup>26</sup> SMP acknowledges that both advertisements  
8 include campaign materials from the Heartland Video b-roll footage and campaign photographs  
9 of Greenfield.<sup>27</sup> By republishing this footage and photographs, SMP made excessive in-kind  
10 contributions to the Greenfield Committee.

11 The Respondents' contentions on the republication allegation are unavailing. First, the  
12 argument that the advertisements included only "short snippets" of the Heartland Video b-roll  
13 and photographs is unpersuasive where the Act and Commission regulations expressly describe  
14 "republication, *in whole or in part, of any... campaign materials*" as a contribution,<sup>28</sup> and

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<sup>24</sup> 52 U.S.C. § 30116(a)(7)(B)(iii); *accord* 11 C.F.R. § 109.23(a).

<sup>25</sup> 11 C.F.R. § 109.23(a).

<sup>26</sup> According to our calculations, the Greenfield Committee's campaign materials constitute approximately 15 of 31 seconds in Tough and approximately 11 of 30 seconds in Fights. *See supra* notes 10, 14. The Complaint alleges that Tough's visual content contained approximately 30% of campaign material. *See* Compl. at 3-4. However, it is unclear how it arrived at that calculation, and it does not appear the Complaint included one of the two photos posted by Greenfield's campaign Facebook account in its calculations. *See id.*, Ex. A. The Supplemental Complaint alleges that the ad's visual content contained approximately 30% of campaign material. *See* Supp. Compl. at 5.

<sup>27</sup> *See* SMP Resp. at 6 (acknowledging the relevant advertisement contains "short snippets" of the Heartland Video and "two photographs of Theresa Greenfield, each of which is only shown on screen for a few seconds"); SMP Supp. Resp. at 7 (same).

<sup>28</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (emphasis added); *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 455 (Jan. 3, 2003) ("Coordination E&J") (explaining that Congress addressed the republication provision of 52 U.S.C. § 30116(a)(7)(B)(iii) "in a context where the

1 moreover, where the republication constituted between one-third and one-half of the  
2 communication's visual content. The "brief quote" exception is likewise inapplicable because  
3 the republished visual material is neither a brief portion of the advertisements nor does it  
4 demonstrate Greenfield's position or view on any issue.<sup>29</sup> Next, SMP's addition of its own  
5 unique messaging to the advertisements does not undermine the conclusion that it republished  
6 the Greenfield Committee's campaign materials as one-third and one-half, respectively, of the  
7 advertisements' visual components.

8         The Complaint also alleges republication based on the similarities between the  
9 advertisements' substantive content and the talking points uploaded to the Important Update sub-  
10 page.<sup>30</sup> It appears that the messaging and substantive content in Tough and Fights are  
11 thematically similar to the respective talking points posted on the Important Update sub-page.<sup>31</sup>  
12 The Respondents argue that thematic similarities do not constitute republication under  
13 Commission precedent.<sup>32</sup> Regardless of the apparent substantive overlap between the  
14 advertisements and the talking points, the available information demonstrates that SMP

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candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit" (emphasis added)).

<sup>29</sup> 11 C.F.R. § 109.23(b)(4) (exempting "a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views"); *see* Greenfield Comm. Resp. at 5 (citing the brief quote exception); Greenfield Comm. Supp. Resp. at 3 (same); SMP Resp. at 4 (same); SMP Supp. Resp. at 5 (same).

<sup>30</sup> *See* Compl. at 3-4, 7 (alleging the Greenfield Committee's talking points comprised approximately 70% of Tough's substantive content); Supp. Compl. at 5, 7 (alleging the Greenfield Committee's talking points comprised approximately 73% of Fights's audio content).

<sup>31</sup> *Compare* Tough Ad, *and* Fights Ad, *with* Compl., Ex. B, *and* Supp. Compl., Ex. B. The Complaint alleges that the PDF's talking points comprised approximately 70% of ad's substantive content. Compl. at 3-4. The Supplemental Complaint alleges that the PDF's talking points comprised approximately 73% of ad's audio content. Supp. Compl. at 5.

<sup>32</sup> SMP Resp. at 4-5; Greenfield Comm. Resp. at 5-6; SMP Supp. Resp. at 5.



1 republished the Greenfield Committee's campaign materials through its significant use of the  
2 Heartland Video b-roll and photographs of Greenfield in Tough and Fights.

3 For these reasons, we recommend the Commission find reason to believe that SMP and  
4 Rebecca Lambe in her official capacity as treasurer violated 52 U.S.C. § 30116(a)(1)(A) and  
5 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions to Theresa Greenfield for  
6 Iowa and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the in-kind  
7 contributions.

8 **B. The Record Is Insufficient to Conclude That the Greenfield Committee**  
9 **Accepted Excessive In-Kind Contributions from SMP**

10 Notwithstanding a third-party's republication of campaign materials, under the  
11 Commission's regulations, the candidate who prepared the materials is not considered to have  
12 received an in-kind contribution and is not required to report an expenditure unless the  
13 dissemination, distribution, or republication of campaign materials is a coordinated  
14 communication or a party-coordinated communication.<sup>33</sup> Under the Act, "coordinated" means  
15 made in cooperation, consultation or concert with, or at the request or suggestion of, a  
16 candidate's authorized committee, a political party committee, or their agents.<sup>34</sup> An expenditure  
17 for a communication is coordinated when the communication is: (1) is paid for by a third party;  
18 (2) satisfies one of five enumerated "content" standards; and (3) satisfies one of six enumerated  
19 "conduct" standards.<sup>35</sup> The Respondents do not dispute that Tough and Fights satisfy the

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<sup>33</sup> 11 C.F.R. § 109.23(a); *see also id.* § 109.21 (coordinated communications); *id.* § 109.37 (party coordinated communications).

<sup>34</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

<sup>35</sup> 11 C.F.R. § 109.21(a).

1 payment and content prongs.<sup>36</sup> Therefore, whether Tough and Fights qualify as coordinated  
2 communications depends on whether they satisfy the conduct prong.

3         The six types of conduct that satisfy the conduct standard are: (1) request or suggestion;  
4 (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee;  
5 and (6) republication.<sup>37</sup> With respect to communications that satisfy the content standard by  
6 republication of campaign materials, three of the conduct prong standards — request or  
7 suggestion, material involvement, and substantial discussion — may be satisfied only on the  
8 basis of conduct between the campaign and third party “that occurs after the original preparation  
9 of the campaign materials that are disseminated, distributed, or republished.”<sup>38</sup>

10         The request or suggestion conduct standard is satisfied when a communication is created,  
11 produced, or distributed at the request or suggestion of a candidate or her authorized committee,  
12 or alternatively, at the request or suggestion of the person paying for the communication with the  
13 candidate or her authorized committee’s assent to the suggestion.<sup>39</sup> The Commission explained  
14 that this conduct standard is “intended to cover requests or suggestions made to a select  
15 audience, but not those offered to the public generally.”<sup>40</sup> It explicitly distinguished “a request

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<sup>36</sup> See SMP Resp. at 2; SMP Supp. Resp. at 3; Greenfield Comm. Resp. at 2-3. SMP paid for Tough and Fights, both of which satisfy the content prong by republishing Heartland Video b-roll and photographs of Greenfield. See 11 C.F.R. § 109.21(a)(1), (c)(2); *supra* Section III.A. In the alternative, moreover, it appears Tough and Fights satisfy at least one additional content standard because they both contain express advocacy of Greenfield. See 11 C.F.R. § 109.21(c)(3); *id.* § 100.22(a) (defining express advocacy as communications including phrases such as “vote for the President,” “Smith for Congress,” or “Bill McKay in ‘94”); *see, e.g.*, Tough Ad (including text “Theresa Greenfield for Senate”); Fights Ad (including text “Theresa Greenfield for Senate,” and “Vote June 2nd Democrat Theresa Greenfield,” and narrating “For Senate Democrat Theresa Greenfield”).

<sup>37</sup> 11 C.F.R. § 109.21(d)(1)-(6).

<sup>38</sup> *Id.* § 109.21(d)(6).

<sup>39</sup> *Id.* § 109.21(d)(1)(i)-(ii).

<sup>40</sup> Coordination E&J, 68 Fed. Reg. at 432.

1 that is posted on a web page that is available to the general public,” which does not satisfy the  
2 conduct standard, from a “request posted through an intranet service or sent via electronic mail  
3 directly to a discrete group of recipients,” which does.<sup>41</sup> The Commission has found no reason  
4 to believe with respect to coordination allegations in similar circumstances where a candidate  
5 committee’s alleged request or suggestion was posted on a committee’s publicly available  
6 website.<sup>42</sup>

7 The Complaint asserts that the Greenfield Committee made a “request or suggestion” by  
8 posting the Heartland Video b-roll footage and talking points, on at least two separate occasions,  
9 to the Important Update sub-page.<sup>43</sup> These allegations are based on the similarities between the  
10 talking points and SMP’s subsequent advertisements, the temporal proximity between the sub-  
11 page posts and the advertisements, the specific formatting of the posts, the coded language that  
12 “Iowa voters need to hear about” the referenced issues and information, and the fact that the  
13 Heartland Video was not publicly accessible and required a direct URL to access.<sup>44</sup>

14 The circumstances here are more akin to the circumstances the Commission explained do  
15 not satisfy the request or suggestion conduct standard — posts on a web page available to the  
16 general public — than to those that do satisfy the standard — requests to a discrete group of

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<sup>41</sup> *Id.*

<sup>42</sup> Factual & Legal Analysis at 7-8, MUR 6821 (Shaheen for Senate, *et al.*) (finding information posted to publicly available pages of a candidate committee’s website, thematic similarities, and temporal proximity were insufficient to satisfy the request or suggestion conduct prong standard); Factual & Legal Analysis at 9-10, MUR 7124 (Katie McGinty for Senate, *et al.*) (same).

<sup>43</sup> Compl. at 9-12; Supp. Compl. at 5-7.

<sup>44</sup> Compl. at 2-3, 9-12; Supp. Compl. at 6.

1 recipients.<sup>45</sup> Although the Greenfield Committee's posting of a direct URL to silent b-roll  
2 alongside a document containing talking points could be construed as a roadmap for third parties  
3 interested in supporting Greenfield, the information was posted on a publicly available website,  
4 and the record contains no information that any direct or private communications were made  
5 between the Greenfield Committee and SMP.<sup>46</sup> Thus, we are unable to conclude that the  
6 conduct prong is satisfied based on the current record.

7         Accordingly, we recommend that the Commission dismiss the allegations that Theresa  
8 Greenfield and Theresa Greenfield for Iowa and Theresa L. Kehoe in her official capacity as  
9 treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive  
10 in-kind contributions and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report in-  
11 kind contributions.

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<sup>45</sup> Coordination E&J, 68 Fed. Reg. at 432.

<sup>46</sup> *Cf.* Factual & Legal Analysis at 7-8, MUR 6821 (Shaheen for Senate, *et al.*) (noting the lack of information of communications beyond the post on a committee's publicly available website); Factual & Legal Analysis at 10, MUR 7124 (Katie McGinty for Senate, *et al.*) (same); First Gen. Counsel's Rpt. ("FGCR") at 16-17, MURs 7666 & 7675 (Peters for Michigan, *et al.*) (recommending dismissal of coordination allegation where a third-party disseminated an ad after the committee posted talking points and b-roll footage to campaign website with no record of direct request despite thematic similarities and temporal proximity)

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## **V. RECOMMENDATIONS**

1. Find reason to believe that SMP and Rebecca Lambe in her official capacity as treasurer violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions to Theresa Greenfield for Iowa and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the in-kind contributions;
2. Dismiss the allegations that Theresa Greenfield and Theresa Greenfield for Iowa and Theresa L. Kehoe in her official capacity as treasurer violated 52 U.S.C § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report in-kind contributions;
3. Close the file as to Theresa Greenfield and Theresa Greenfield for Iowa and Theresa L. Kehoe in her official capacity as treasurer;
4. Approve the attached Factual and Legal Analyses;

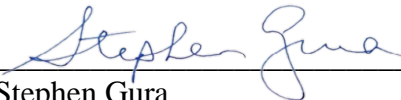
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7. Approve the appropriate letters.


Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel for Enforcement

10.19.20  
Date

  
\_\_\_\_\_  
Stephen Gura  
Deputy Associate General Counsel for Enforcement

  
\_\_\_\_\_  
Mark Allen  
Assistant General Counsel

  
\_\_\_\_\_  
Thaddeus H. Ewald  
Attorney