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OFFICE OF GENERAL COUNSEL

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October 2, 2020

Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Complaint Submission By:
Mr. Wesley E. Enos III

Bondurant, IA 50035

Dear Sir or Madam:

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Iowa Democrat Senate candidate, Theresa Greenfield, Theresa Greenfield for Iowa, and Theresa Kehoe in her official capacity as Treasurer (the “Campaign”), the Iowa Democratic Party, and Ken Sagar in his official capacity as Treasurer (“IDP”), and Senate Majority PAC, and Rebecca Lambe in her official capacity as Treasurer (“SMP”) (collectively, the “Respondents”) for violating provisions of the Federal Election Campaign Act of 1971 (the “Act”) and the Federal Election Commission’s (the “Commission”) regulations.

Specifically, as described below, there is reason to believe Greenfield, her Campaign, and IDP violated the Act by soliciting and accepting an illegal contribution from SMP in the form of coordinated communications amounting to over \$900,000. Not surprisingly, this is not the first time Greenfield and her liberal cronies have flouted the coordination regulations. In fact, Greenfield pulled the same coordination stunt with SMP in early March of this year, illegally coordinating with SMP on a seven-figure television and digital ad buy that generated headlines and a complaint from a nonpartisan watchdog group.¹ Accordingly, the Commission should open an immediate investigation into Respondents and impose sanctions for any and all violations.

Facts

On September 17, 2020, IDP’s spokesman, Jeremy Busch tweeted “Iowa voters need to know that Senator Ernst has changed. Here’s how:”. The tweet includes a link to a page on IDP’s website that states, “Sen. Ernst has Changed on the Issues That Matter Most to Voters.”² The page then contains two paragraphs of attacks and false allegations against Senator Ernst that are clearly intended to serve as the script for a Super PAC or dark money advertisement. IDP does not even attempt to be discrete in sending smoke signals to its liberal allied groups, stating, “During her last campaign, Joni Ernst said **(in her own words)**...,” and “Voters need to hear from Iowans **in their own words.**” *Id.*

¹ Joe Schoffstall, *Iowa Dem, Schumer’s Super PAC Hit With Illegal Coordination Complaint*, WASH. FREE BEACON (Mar. 9, 2020), https://freebeacon.com/politics/iowa-dem-schumers-super-pac-hit-with-illegal-coordination-complaint/?mc_cid=ae84b62668&mc_eid=b94e6925da.

² See Iowa Democratic Party Website, <https://iowademocrats.org/hear/>.

The page also includes a “Learn more here” link that brings the user to a professionally created opposition research “Background” document contains substantiation for each specific line of attack on the prior page.³

Nine days after Busch sent his tweet, SMP made an ad buy for \$900,000 to run a television and digital ad throughout Iowa containing the exact same attacks requested and suggested by IDP. Not only did SMP’s ad contain the same attacks pushed by Busch in his tweet and IDP on its website, but the ad also followed IDP’s explicit direction to a tee by portraying Senator Ernst speaking “in her own words” in the beginning of the ad, and depicting Iowa residents commenting on Senator Ernst “in their own words” throughout the remainder of the ad.

Furthermore, the backup document submitted by SMP to Iowa television stations as substantiation is virtually identical to the “Background” document created by IDP and linked to in the website tweeted by Busch.

Applicable Law

In the 2020 election cycle, the statutory limit on the amount a federal candidate or her authorized campaign committee may accept from an individual donor is \$2,800 per election. 52 U.S.C. § 30116(a)(1). Contributions from a multicandidate committee to a candidate or his authorized committee may not exceed \$5,000 per calendar year. 52 U.S.C. § 30116(a)(2)(A). The Act also prohibits a corporation or labor union from making a contribution to a federal candidate. 52 U.S.C. § 30118(a).

A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or 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); *see also* 11 C.F.R. §§ 100.52(a), 114.1(a)(1). “Anything of value” includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1). An in-kind contribution includes the provision without charge (or at less than the usual and normal charge) of any goods or services, including, but not limited to, “facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.” *Id.*

An “expenditure” includes “any purchase, payment . . . or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A). Any expenditure made in coordination with a candidate—i.e., “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents”—is an in-kind contribution to the candidate, 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20, and must be reported as a contribution to that candidate by the person that made the payment, 11 C.F.R. §§ 109.20(b), 109.21(b).

Within the universe of coordinated expenditures, the Commission additionally enacted regulations at 11 C.F.R. § 109.21 governing “coordinated communications.” Those provide that a communication is coordinated with a candidate and/or that candidate’s authorized committee, and is thus a contribution to that candidate’s committee, when the communication (1) is paid for,

³ *See* Iowa Democratic Party Website, Ernst Background Document, <https://iowademocrats.org/wp-content/uploads/2020/09/Sen.-Ernst-has-Changed-on-the-Issues-That-Matter-Most-to-Voters.pdf>.

in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the “content standards” in the regulation; and (3) satisfies at least one of the “conduct standards” in the regulation. *Id.* § 109.21(a).

The “content standard” is met if the communication “expressly advocates . . . the election or defeat of a clearly identified candidate for Federal office.” *Id.* § 109.21(c)(3). The “conduct standard” is satisfied if “the communication is created, produced, or distributed at the request or suggestion of a candidate [or] authorized committee,” *id.* § 109.21(d)(1)(i), or an agent thereof, *id.* § 109.20(a).⁴ As the Commission has noted, the “request or suggest” standard is derived from *Buckley v. Valeo*, 424 U.S. 1, 47 (1976), and “[a] request or suggestion encompasses the most direct form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them.” Explanation & Justification, 68 Fed. Reg. 421, 431-32 (Jan. 3, 2003).

Although the four other conduct standards at 11 C.F.R. § 109.21(d)(2-5) include a “safe harbor” if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source, in crafting the coordinated communication regulations, the Commission expressly declined to extend this publicly available information exception for communications created, produced, or distributed at the “request or suggestion” of a candidate or his agent under 11 C.F.R. § 109.21(d)(1). Explanation & Justification, 71 Fed. Reg. 33190, 33205 (June 8, 2006) (“...the new [publicly-available information] safe harbor does not apply to the ‘request or suggestion’ conduct standard in 11 CFR 109.21(d)(1)”).

Commission regulations make clear that “agreement or formal communication between the person paying for the communication and the candidate” or his agents “is not required for a communication to be a coordinated communication. *Id.* § 109.21(e)

Analysis

Nine days after IDP requested and suggested that SMP broadcast ads containing the false allegations against Senator Ernst highlighted in IDP’s “Background” document, SMP bought over \$900,000 in anti-Senator Ernst ads doing exactly that. As a result, there is reason to believe that SMP and IDP violated the law by making excessive in-kind contributions to the Campaign in the form of coordinated communications, and that the Campaign violated the law by accepting those excessive contributions.

An entity makes a “coordinated communication” when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the “content standards” in the regulation, for example by “expressly advocat[ing] . . . the election or defeat of a clearly identified candidate for Federal office”; and (3) satisfies at least one of the “conduct standards” in the regulation, such as being created, produced, or distributed at the

⁴ For purposes of the Commission’s coordination regulations in 11 C.F.R. subpart C, “any reference to a candidate, or a candidate’s authorized committee, or a political party committee includes an agent thereof.” 11 C.F.R. § 109.20(a) (emphasis added).

“request or suggestion” of the candidate, political party committee, or their agents. 11 C.F.R. § 109.21(a)-(d).

The communications satisfy the “content” prong because they were broadcast public communications⁵ that expressly advocated for the defeat of Senator Ernst.⁶ *Id.* § 109.21(c)(2). The communications satisfy the “conduct” prong at 11 C.F.R. § 109.21(a)(3) and (d)(1) because they were created, produced, or distributed at the request or suggestion of IDP’s agent, Jeremy Busch, who works as IDP’s spokesman.⁷ On September 17, 2020, Busch tweeted, “Iowa voters need to know that Senator Ernst has changed. Here’s how:” and included a link to IDP’s website that contained a ready-made script for SMP and a professional opposition research “Background” document.

Busch’s tweet and the linked page on IDP’s website constitutes a “request or suggestion” because they requested and suggested that the communications be created to include specific content—namely, that the communications contain the content and language on IDP’s website and that both Senator Ernst and Iowa voters are depicted in the ad “in [her/their] own words.” The tweet from Busch and the linked page on IDP’s website are susceptible of no reasonable interpretation other than a request or suggestion for SMP to run ads parroting these false attacks, and, indeed, that is precisely what happened.⁸ Just nine days after Busch’s tweet, SMP bought over \$900,000 in anti-Ernst ads in Iowa, echoing the same attacks and language contained in the linked IDP web page and the IDP Background document.

A payment for a coordinated communication is an in-kind contribution to the candidate committee or political party committee with which it is coordinated. 11 C.F.R. § 109.21(b). Therefore, because SMP’s communications attacking Senator Ernst satisfy Section 109.21’s three-prong test for coordinated communications, SMP has made, and Greenfield and IDP have accepted, in-kind contributions in the form of coordinated communications, in excess of the Act’s limit on contributions. 52 U.S.C. §§ 30116(a), 30116(f).

Conclusion

In light of the foregoing, the Commission should find reason to believe that Respondents violated 52 U.S.C. 30101, *et seq.*, and should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). The Commission should seek appropriate sanctions for any and all

⁵ A public communication is a “communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26.

⁶ SMP reported the communications as “independent expenditures,” which by definition are communications “expressly advocating the election or defeat of a clearly identified candidate.” 52 U.S.C. § 30101(17)(A); 11 C.F.R. § 100.16(a).

⁷ *See* 11 C.F.R. § 109.20(a). Busch is an “agent” of IDP for purposes of the coordination rules, since as IDP’s spokesman he has actual authority to request, suggest, make, or authorize communications that meet the content standards at 11 C.F.R. § 109.21(c). 11 C.F.R. § 109.3(b). Given that Busch’s Twitter bio identifies him as “Comms @IowaDemocrats,” and his account is used almost exclusively to tweet about Greenfield’s campaign, Busch tweeted the request/suggestion in his capacity as spokesman for IDP.

⁸ It is immaterial that Busch’s request was made publicly, since there is no “publicly available” exception for communications created, produced or distributed at the request or suggestion of a candidate, a party committee, or their agents under 11 C.F.R. § 109.21(d)(1).

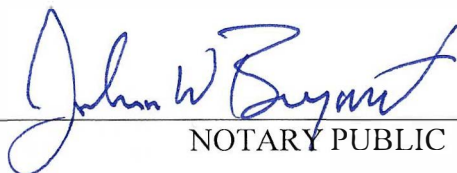
violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the Act.

Respectfully submitted,



Wesley Enos

Signed and sworn before me this 2nd day of October, 2020.



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