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VIA E-MAIL
CELA@fec.govJeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463**Re: MUR 7813**

Dear Mr. Jordan:

We write as counsel to SMP and Rebecca Lambe, in her official capacity as Treasurer (collectively, “*Respondents*”), in response to the complaint in MUR 7813 (the “*Complaint*”) filed by Mr. Wesley E. Enos III, alleging a violation of the Federal Election Campaign Act of 1971, as amended (the “*Act*”), and Federal Election Commission (“*FEC*” or the “*Commission*”) regulations. The Complaint fails to set forth specific facts which, if proven true, would constitute a violation of the Act, and the Complaint should be dismissed immediately.

The Complaint falsely alleges that Respondents coordinated with the Iowa Democratic Party in connection with an advertisement concerning the 2020 U.S. Senate race in Iowa, and that Respondents made an impermissible in-kind contribution to Theresa Greenfield as a result of the advertisement. The Complaint’s sole basis for these allegations is that an individual named Jeremy Busch, who may be affiliated with the Iowa Democratic Party, posted a public message on Twitter critical of Senator Joni Ernst, accompanied by a link to the Iowa Democratic Party’s public website, and Respondents sponsored advertisements concerning widely-known facts about Senator Ernst. The Commission has made clear on numerous occasions that such activity does not constitute “coordination” for purposes of the Act.

Moreover, the advertisement which the Complaint alleges constitutes a coordinated communication was not produced by Respondents. The Complaint claims that nine days after Mr. Busch posted a message on Twitter, Respondents produced an advertisement “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.”¹ However, Respondents did not produce, disseminate, or distribute an advertisement with those contents. Accordingly, the Complaint is factually baseless.

As previous Commissioners have explained, “[u]nwarranted legal conclusions from asserted facts [] or mere speculation [] will not be accepted as true.”² Unsubstantiated speculative assertions simply cannot serve as the basis for the Commission to open an investigation. Accordingly, the Commission should dismiss this Complaint immediately.

FACTUAL BACKGROUND

Theresa Greenfield was a candidate for U.S. Senate in Iowa in 2020,³ and Theresa Greenfield for Iowa was her principal campaign committee (“*the Campaign*”).⁴ Senator Joni Ernst was Theresa Greenfield’s opponent in the 2020 race for the U.S. Senate in Iowa.⁵

The Iowa Democratic Party is a state committee of the Democratic Party.⁶ The Iowa Democratic Party maintains a public website at iowademocrats.org to provide the public with information on the party’s activities and elections in Iowa.

SMP is a federally registered super PAC.⁷ As a super PAC, SMP operates completely separately from both the Iowa Democratic Party and Theresa Greenfield and her Campaign.

On September 17, 2020, Jeremy Busch, listed on Twitter as “Comms @IowaDemocrats,” posted a public message on Twitter stating, “Iowa voters need to know that Senator Ernst has changed. Here’s how:”—along with a link to a page on the Iowa Democratic Party’s public website.⁸ This webpage contains widely-known information concerning Senator Joni Ernst’s political record, including her votes on healthcare-related legislation, that her campaign was penalized by the FEC

¹ Compl. at 2.

² FEC MUR 4960 (Clinton for U.S. Senate), Statement of Reasons, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 2 (Dec. 21, 2000).

³ Theresa Greenfield, FEC Form 2, Statement of Candidacy (Oct. 21, 2020), <https://docquery.fec.gov/pdf/877/202010219326737877/202010219326737877.pdf>.

⁴ Theresa Greenfield for Iowa, FEC Form 1, Statement of Organization (Oct. 21, 2020), <https://docquery.fec.gov/pdf/885/202010219326737885/202010219326737885.pdf>.

⁵ Joni Ernst, FEC Form 2, Statement of Candidacy (Nov. 13, 2020), <https://docquery.fec.gov/pdf/319/202011139336989319/202011139336989319.pdf>.

⁶ Iowa Democratic Party, FEC Form 1, Statement of Organization (Oct. 13, 2020), <https://docquery.fec.gov/pdf/347/202010139285500347/202010139285500347.pdf>.

⁷ SMP, FEC Form 1, Statement of Organization (Oct. 1, 2019), <https://docquery.fec.gov/pdf/667/201910019163579667/201910019163579667.pdf>.

⁸ Jeremy Busch (@JeremyCBusch), Twitter (Sept. 17, 2020), <https://twitter.com/JeremyCBusch/status/1306679093937799168?s=20>.

for knowingly accepting thousands of dollars in impermissible contributions, and that her campaign received nearly \$600,000 in contributions from the drug and insurance industries.⁹

The remaining facts at issue are unclear due to the Complaint's failure to set forth specific and accurate information. The Complaint claims that "nine days after Busch sent his tweet," Respondents "made an ad buy for \$900,000 to run a television and digital ad throughout Iowa containing the exact same attacks" as those on the Iowa Democratic Party's website and "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."¹⁰ Although Respondents sponsored several advertisements featuring widely-known facts about Senator Ernst in Iowa during 2020, Respondents did not produce, disseminate, or distribute an advertisement in September 2020 "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."¹¹

LEGAL ANALYSIS

A. The Complaint Alleges No Facts that Establish that Respondents Produced a Coordinated Communication

The Complaint alleges that Respondents coordinated with the Iowa Democratic Party on an advertisement. However, no coordination occurred, and the Complaint fails to establish that any advertisement produced by Respondents is a coordinated communication.

1. The Complaint Fails to Identify an Advertisement Produced by Respondents

In order to allege that an advertisement is a coordinated communication, the Complaint must first establish that a communication exists. However, the Complaint fails to identify an advertisement produced by Respondents.

The Complaint claims that nine days after Mr. Busch's posted a message on Twitter, Respondents produced an advertisement "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."¹² However, Respondents did not produce, disseminate, or distribute an advertisement with those contents. Accordingly, the Complaint's allegations are factually baseless. The Commission may find "reason to believe" only if a complaint sets forth specific facts, which, if proven true, would constitute a violation of the Act.¹³ As the Complaint

⁹ Iowa Democratic Party, *Sen. Ernst has Changed on the Issues That Matter Most to Voters* (Sept. 17, 2020), <https://iowademocrats.org/hear/>.

¹⁰ Compl. at 2.

¹¹ *Id.*

¹² *Id.*

¹³ See 11 C.F.R. § 111.4(a), (d); FEC MUR 4960 (Clinton for U.S. Senate), Statement of Reasons, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).

has failed to set forth even basic, specific facts about the advertisement at issue, the Commission should immediately dismiss the Complaint.

2. The Complaint Alleges No Facts that Establish that Respondents Produced a Coordinated Communication Because the Complaint Alleges No Facts that Establish that the Conduct Prong Is Met

Moreover, even if the Complaint had identified an advertisement produced by Respondents, there would be no basis to find that Respondents produced coordinated communications because the legal analysis put forward in the Complaint is incorrect.

A communication is a “coordinated communication” under 11 C.F.R. § 109.21 only if it satisfies all three prongs of the regulation: the payment prong, the content prong, and the conduct prong. The Complaint alleges no facts that demonstrate that the conduct prong was satisfied in connection with any advertisement. As the Complaint fails to provide any facts that establish that the conduct prong has been met, the advertisement at issue (although, again, it is unclear that there is an advertisement at issue) is not a coordinated communication.

The Complaint’s allegations rest only on the public message posted by Jeremy Busch on Twitter and the link to a page on the Iowa Democratic Party’s website. The Complaint claims that the message posted by Busch on Twitter and the wording present on the webpage constituted a “request or suggestion” to produce an advertisement and that subsequent advertisements sponsored by Respondents were thus coordinated communications.

However, a statement posted on a public website and not sent to a select audience does not constitute a “request or suggestion” under 11 CFR § 109.21(d)(1). As part of the revision of the coordination regulations in 2003, the Commission established that the conduct prong would be satisfied if a campaign made a “request or suggestion” that a third party disseminate a communication on its behalf.¹⁴ In the accompanying Explanation and Justification, the Commission clarified that “[t]he ‘request or suggestion’ conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1), but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1).”¹⁵ As this language demonstrates, a request or suggestion made on a publicly available website does not, as a matter of law, satisfy the conduct prong.

The Commission has re-affirmed this basic principle through the enforcement process. In MUR 6821, the FEC dismissed a complaint which alleged that a coordinated communication occurred when Senate Majority PAC began to air an advertisement with themes similar to those contained in a message posted on the publicly available website of the principal campaign committee of Senator Jeanne Shaheen. In finding that there was no reason to believe that any violation of the

¹⁴ 11 C.F.R. § 109.21(d)(1).

¹⁵ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003).

Act occurred, and dismissing the complaint, the Commission emphasized that “a communication resulting from a general request to the public or the use of publicly available information, including information contained on a candidate’s campaign website, does not satisfy the conduct standards.”¹⁶ Further, in MUR 7124, the Commission dismissed a complaint filed by FACT against Katie McGinty, a candidate for U.S. Senate. The complaint alleged that third party organizations had produced coordinated communications because they sponsored television advertisements supporting McGinty, which contained themes similar to those posted on McGinty’s publicly available campaign website. The Commission voted 5-0 to dismiss the complaint, and made clear once again that “the ‘request or suggestion’ ‘conduct’ standard refers to requests or suggestions ‘made to a select audience, but not those offered to the public generally,’” and therefore, a request that is posted on a web page that is available to the general public does not trigger the request or suggestion standard.¹⁷

The facts at issue are nearly identical to those the Commission considered in MUR 6821 and MUR 7124. Here, the Complaint claims that the Iowa Democratic Party requested or suggested an advertisement by posting a communication on a public website.¹⁸ Since the content appeared on a public website and was not sent to a select audience, it cannot constitute a “request or suggestion” under 11 C.F.R. § 109.21(d)(1), and as a matter of settled law, it is insufficient to establish coordination.

Accordingly, even if the Complaint had identified an advertisement produced by Respondents, the Complaint alleges no facts that demonstrate that an advertisement produced by Respondents is a coordinated communication because the Complaint alleges no facts that establish that the conduct prong has been satisfied.

B. The Complaint Alleges No Facts that Establish that Respondents Made an Impermissible In-Kind Contribution in the Form of a Coordinated Communication

The Complaint also baselessly claims that Respondents made an in-kind contribution to the Iowa Democratic Party and Theresa Greenfield and her Campaign in the form of a coordinated communication.¹⁹

As explained in the FEC regulations, payment for a coordinated communication “is an in-kind contribution [] to the candidate, authorized committee, or political party committee **with whom or which it is coordinated**”²⁰ Although the Complaint fails to specify an advertisement produced by Respondents, Respondents can attest that Respondents do not and have not coordinated with the Iowa Democratic Party or Theresa Greenfield or her Campaign on any advertisements.

¹⁶ See FEC MUR 6821 (Shaheen for Senate), Factual and Legal Analysis at 8 (Dec. 2, 2015).

¹⁷ FEC MUR 7124 (Katie McGinty for Senate), Factual and Legal Analysis at 8-9 (May 4, 2017).

¹⁸ Compl. at 4.

¹⁹ *Id.*

²⁰ 11 C.F.R. § 109.21(b)(1) (emphasis added).

Additionally, the sparse facts put forth by the Complaint only assert that Respondents created an advertisement at the request or suggestion of the Iowa Democratic Party, which, as explained previously, is simply incorrect. The Complaint provides no facts to suggest that any “request or suggestion” was made by Theresa Greenfield and her Campaign, or that any other coordination took place between Respondents and Theresa Greenfield or her Campaign. Since the Complaint never alleges that any communication produced by Respondents was coordinated with Theresa Greenfield or her Campaign, the Complaint alleges no facts to establish that any communications produced by Respondents constitute an in-kind contribution to the Campaign. Accordingly, there is no basis for the Complaint’s allegation that Respondents made an in-kind contribution to Theresa Greenfield and her Campaign.

As the Complaint fails to allege any facts establishing that Respondents made an impermissible in-kind contribution to either the Iowa Democratic Party or the Campaign, the Complaint should be dismissed immediately.

CONCLUSION

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.²¹ In turn, the Commission may find “reason to believe” only if a complaint sets forth specific facts, which, if proven true, would constitute a violation of the Act.²²

The Complaint has not alleged 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 Complaint’s request for an investigation. It should instead immediately dismiss the Complaint and close the file.

Very truly yours,



Marc E. Elias
Ezra W. Reese
Rebecca K. Mears
Counsel to Respondents

²¹ 52 U.S.C. § 30109(a)(2).

²² See 11 C.F.R. § 111.4(a), (d); FEC MUR 4960 (Clinton for U.S. Senate), Statement of Reasons, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).