

PERKINScoie

700 13th Street, NW
Suite 800
Washington, D.C. 20005-3960

T +1.202.654.6200
F +1.202.654.6211
PerkinsCoie.com

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VIA E-MAIL
CELA@fec.gov

Marc E. Elias
MElias@perkinscoie.com
D. +1.202.434.1609
F. +1.202.654.9126

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

Re: MUR 7813

Dear Mr. Jordan:

We write as counsel to Theresa Greenfield, Theresa Greenfield for Iowa (the “*Campaign*”), and Theresa Kehoe, in her official capacity as Campaign Treasurer (collectively, the “*Respondents*”) in response to the complaint in MUR 7813 filed by Mr. Wesley E. Enos III (the “*Complaint*”) 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 falsely alleges that Respondents engaged in prohibited coordination with SMP, a federal super PAC, and the Iowa Democratic Party (“*IDP*”) resulting in excessive in-kind contributions. Yet the Complaint fails to provide a single fact to substantiate these claims; instead, the Complaint relies solely on a Twitter post, a link to the IDP’s website and eventual television advertisements by SMP. Because the Commission has consistently made clear that such activity does not constitute “coordination” for purposes of the Act, the Complaint should be dismissed, and no further action should be taken on this matter.

FACTUAL BACKGROUND

Theresa Greenfield is a candidate for U.S. Senate in Iowa in 2020, and Theresa Greenfield for Iowa is her principal campaign committee.¹ The IDP is a political party committee which maintains a public website (iowademocrats.org) to provide the general public with information on its activities, candidates and upcoming elections.² SMP is a federally registered super PAC,³ and thus operates completely separate from both IDP and Respondents.

¹ Theresa Greenfield for Iowa, FEC Form 1, Statement of Organization, <https://docquery.fec.gov/pdf/885/202010219326737885/202010219326737885.pdf>; Theresa Greenfield, FEC Form 2, Statement of Candidacy, <https://docquery.fec.gov/pdf/877/202010219326737877/202010219326737877.pdf>.

² Iowa Democratic Party, FEC Form 1, Statement of Organization (amendment Oct. 13, 2020), <https://docquery.fec.gov/pdf/347/202010139285500347/202010139285500347.pdf>.

³ SMP, FEC Form 1, Statement of Organization (amended Oct. 1, 2019), <https://docquery.fec.gov/pdf/667/201910019163579667/201910019163579667.pdf>.

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On September 17, 2020, Jeremy Busch -- an IDP spokesperson -- posted a public message on Twitter stating “Iowa voters need to know that Senator Ernst has changed. Here’s how:” with a link to a page on the IDP’s public website.⁴ That page on the IDP website is available here and includes additional information on Senator Ernst’s political record and her campaign: <https://iowademocrats.org/hear/>. The Complaint highlights the IDP’s use of “in her own words” (referring to Senator Ernst and her depiction of her own record) on its website.

The Complaint goes on to say that “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...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.”⁵ While the Complaint consistently mentions advertisements produced by SMP about Senator Ernst, it does not cite to or identify a specific advertisement at issue.

LEGAL ANALYSIS

Absent any facts (or even a specific advertisement) to support its claim, the Complaint concludes that IDP coordinated with SMP on a television advertisement and that Respondents “violated the law by accepting...excessive contributions.”⁶ However, these allegations are unfounded and unsubstantiated, as the Complaint fails to provide any facts that (i) even connect Respondents to any SMP advertisements, or (ii) establish that any advertisement by SMP constitutes a coordinated communication under the Act.

A communication is a “coordinated communication,” and thus an in-kind contribution to the benefitting candidate under 11 C.F.R. § 109.21, only if it satisfies all three prongs of the coordinated communication regulation: (1) the payment prong, (2) the content prong, and (3) the conduct prong.⁷ As the Complaint fails to provide any facts that establish that the conduct prong has been met, the SMP advertisement at issue (though again, it is unclear *which* specific advertisements are at issue) is not a coordinated communication.

The Complaint’s allegations rely on only a public message posted by Mr. Busch on Twitter and a link to a page on the public IDP website. Specifically, the Complaint claims that the message and website content constitute a “request or suggestion” from Mr. Busch for SMP to produce an advertisement, thereby triggering a coordinated communication.⁸ Yet, the Complaint fails to provide any additional facts to support its allegations. In fact, the Complaint does not even include

⁴ Jeremy Busch (@JeremyCBusch), Twitter (Sept. 17, 2020), <https://twitter.com/JeremyCBusch/status/1306679093937799168?s=20>.

⁵ Compl. at 2.

⁶ Compl. at 5.

⁷ 11 C.F.R. § 109.21.

⁸ Notably, Mr. Busch is not and was never an employee of Theresa Greenfield for Iowa.

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a reference to the Respondents in connection with this alleged coordination. Instead, the Complaint simply concludes, without any basis, that Respondents “accept[ed]” excessive contributions.

As the Commission knows, the Complaint’s claim that the message and webpage constitute a “request or suggestion” is incorrect as a matter of law. Neither Mr. Busch’s message posted on Twitter nor the page on the IDP website constitute a “request or suggestion” under 11 CFR § 109.21(d)(1) because both statements were posted on publicly-available websites.

Indeed, the Commission has made clear that communications appearing on a publicly-available website directed to a general audience are *never* sufficient to find that the conduct prong has been satisfied.⁹ The Commission has confirmed 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).¹⁰ As this language makes clear, any request or suggestion made on a publicly available website simply does not satisfy the conduct prong. And the Commission has re-affirmed this basic principle time and again through its enforcement process, consistently dismissing complaints with similarly speculative coordination allegations.¹¹

Because the Twitter post and link to the IDP’s website are the only basis for the Complaint’s allegation against Respondents, and because the remaining facts alleged do not support a finding that the conduct standard was met, the Complaint has simply failed to meet its burden under the law. The Commission should dismiss the Complaint and take no further action on this matter.

Sincerely,



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

⁹ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003).

¹⁰ *Id.* at 432.

¹¹ *See, e.g.*, FEC Matter Under Review 6821 (Shaheen for Senate), Factual and Legal Analysis at 8 (Dec. 2, 2015); FEC Matter Under Review 7124 (Katie McGinty for Senate), Factual and Legal Analysis at 8-9 (May 4, 2017); FEC Matter Under Review 6902 (Al Franken for Senate 2014), General Counsel’s Report at 12; 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).