

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL’S REPORT**

3 **MUR 7813**

4 DATE COMPLAINT FILED: Oct. 16, 2020

5 DATE OF NOTIFICATION: Oct. 16, 2020

6 DATE OF LAST RESPONSE: Dec. 8, 2020

7 DATE ACTIVATED: Aug. 20, 2021

8 EXPIRATION OF SOL: Sept. 17 – 26, 2025

9 ELECTION CYCLE: 2020

10
11 **COMPLAINANT:**

Wesley E. Enos III

12 **RESPONDENTS:**

13 Iowa Democratic Party and Ken Sagar in his
14 official capacity as treasurer

15 SMP and Rebecca Lambe in her official capacity
16 as treasurer

17 Theresa Greenfield

18 Theresa Greenfield for Iowa and Theresa Kehoe
in her official capacity as treasurer

19 **RELEVANT STATUTE
20 AND REGULATIONS:**

21 52 U.S.C. § 30116(a)(1)(A), (f)

22 11 C.F.R. § 109.20

23 11 C.F.R. § 109.21

24 11 C.F.R. § 110.1(b)

25 11 C.F.R. § 110.9

26 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:**

29 **I. INTRODUCTION**

30 The Complaint alleges that SMP and Rebecca Lambe in her official capacity as treasurer
31 (“SMP”) coordinated with the Iowa Democratic Party and Ken Sagar in his official capacity as
32 treasurer (“IDP”), Theresa Greenfield, and Theresa Greenfield for Iowa and Theresa Kehoe in
33 her official capacity as treasurer (the “Greenfield Committee”) by creating and disseminating an
34 advertisement attacking Greenfield’s opponent in the 2020 general election for U.S. Senate in
35 Iowa, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

1 Specifically, the Complaint alleges that SMP paid \$900,000 for an advertisement on television
2 and digital media opposing Joni Ernst in response to a tweet by IDP spokesperson Jeremy Busch
3 that requested or suggested an advertisement be disseminated with such content. SMP denies
4 paying for or producing an advertisement as described in the Complaint. The Respondents
5 further argue that the activity alleged in the Complaint fails to satisfy the conduct prong of
6 Commission's three-part coordinated communication test because the alleged "request or
7 suggestion" occurred on public websites. Finally, the Respondents assert that the Complaint
8 does not allege any conduct by Greenfield or the Greenfield Committee.

9 As explained below, the record is insufficient to satisfy the Commission's three-part
10 coordinated communication test. The Complaint does not attach or link to the advertisement
11 allegedly disseminated by SMP and the Office of General Counsel have been unable to locate an
12 advertisement matching the general description in the Complaint disseminated after Busch's
13 tweet. Accordingly, we are unable to conclude that the payment prong is satisfied because there
14 is no clear record of SMP paying for the alleged advertisement. Similarly, we are unable to
15 conclude the content prong is satisfied because the record is incomplete as to the precise contents
16 of the alleged advertisement. Finally, even if SMP did purchase an advertisement as described in
17 the Complaint that satisfies the payment and content prongs, the available information is
18 insufficient to conclude the conduct prong is satisfied. The Complaint does not allege any direct
19 contact between Respondents other than the tweet and an IDP web page, which were publicly
20 available, not clearly targeted at a specific audience, and did not mention advertising. Thus, the
21 available information is insufficient to support a reasonable inference that SMP coordinated with
22 either IDP, Greenfield, or the Greenfield Committee.

1 Therefore, we recommend that the Commission dismiss the allegations that: (1) SMP
2 violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind
3 contribution to IDP, Greenfield, or the Greenfield Committee; (2) IDP violated 52 U.S.C.
4 § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-kind contribution; and
5 (3) Greenfield and the Greenfield Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R.
6 § 110.9 by knowingly accepting an excessive in-kind contribution.

7 **II. FACTUAL BACKGROUND**

8 The Iowa Democratic Party is a state committee of the Democratic Party.¹ SMP is an
9 independent expenditure-only political committee registered with the Commission.² Theresa
10 Greenfield was a candidate for the U.S. Senate in Iowa in 2020 and Theresa Greenfield for Iowa
11 is her principal campaign committee.³ Greenfield's opponent in the general election was the
12 incumbent U.S. Senator Joni Ernst.⁴ During the 2020 election cycle, SMP reported making
13 \$229,911,901 in independent expenditures, including \$34,035,542 in opposition to Ernst and
14 \$7,328,667 in support of Greenfield.⁵

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

² SMP, Amended Statement of Organization at 1-2 (Oct. 1, 2019), <https://docquery.fec.gov/pdf/667/201910019163579667/201910019163579667.pdf>; see Senate Majority PAC, Amended Statement of Organization at 1 (Nov. 1, 2016), <https://docquery.fec.gov/pdf/439/201611019037017439/201611019037017439.pdf>.

³ Theresa Greenfield, Amended Statement of Candidacy at 1 (July 14, 2020), <https://docquery.fec.gov/pdf/764/202007149244570764/202007149244570764.pdf>; Theresa Greenfield for Iowa, Amended Statement of Organization at 2 (July 14, 2020), <https://docquery.fec.gov/pdf/877/202007149244570877/202007149244570877.pdf>.

⁴ Joni Ernst, Amended Statement of Candidacy at 1 (Sept. 10, 2020), <https://docquery.fec.gov/pdf/265/2009109267128265/202009109267128265.pdf>.

⁵ See *SMP: Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00484642/?tab=spending&cycle=2020#independent-expenditures> (last visited Nov. 17, 2021).

1 On September 17, 2020, IDP spokesperson Jeremy Busch tweeted: “Iowa voters need to
2 know that Senator Ernst has changed. Here’s how: [link to an IDP web page].”⁶ The linked IDP
3 web page contained two paragraphs of text that criticized Ernst on various issues and linked to a
4 PDF document containing talking points on those issues.⁷ The Complaint alleges the PDF
5 document is a “professionally created opposition research” document with “substantiation for
6 each specific line of attack” on the IDP web page.⁸ The PDF document is organized by talking
7 points attacking Ernst — relating to her FEC enforcement history, pharmaceutical industry
8 support, opposition to Medicare prescription coverage, and sponsorship of legislation allowing
9 insurers to deny coverage based on pre-existing conditions — each followed by a list of sources
10 and quotations.⁹ The web page was publicly accessible from the main IDP homepage under the
11 “Latest News” tab.¹⁰

12 According to the Complaint, nine days after Busch’s tweet, on September 26, 2020, SMP
13 spent \$900,000 to distribute an advertisement on television and digital platforms.¹¹ The
14 Complaint alleges that SMP reported the advertisement as an independent expenditure to the

⁶ Jeremy Busch (@JeremyCBusch), TWITTER (Sept. 17, 2020, 3:39 PM), <https://twitter.com/JeremyCBusch/status/1306679093937799168?s=20>; Compl. at 1 & n.2 (Oct. 16, 2020); Iowa Democratic Party Resp. at 1 & nn.1-2 (Dec. 8, 2020) [hereinafter IDP Resp.].

⁷ *Sen. Ernst Has Changed on the Issues That Matter Most to Voters*, IOWA DEMOCRATIC PARTY (Sept. 17, 2020) [hereinafter IDP Web Page], <https://iowademocrats.org/hear/> [<https://web.archive.org/web/20201023222412/https://iowademocrats.org/hear/>]. The web page states that “[v]oters need to hear from Iowans in their own words” and repeats that “Joni Ernst has changed” on important issues: buying a “big fancy house” in Washington, taking campaign contributions from Big Pharma and the insurance industry, and opposing allowing Medicare prescription drug negotiations. *Id.*

⁸ Compl. at 2.

⁹ IOWA DEMOCRATIC PARTY, BACKGROUND (2020), <https://iowademocrats.org/wp-content/uploads/2020/09/Sen.-Ernst-has-Changed-on-the-Issues-That-Matter-Most-to-Voters.pdf> [<https://web.archive.org/web/20210709100815/https://iowademocrats.org/wp-content/uploads/2020/09/Sen.-Ernst-has-Changed-on-the-Issues-That-Matter-Most-to-Voters.pdf>].

¹⁰ *Latest News*, IOWA DEMOCRATIC PARTY (Sept. 20, 2020) <https://iowademocrats.org/latest-news/> [<https://web.archive.org/web/20200920203737/https://iowademocrats.org/latest-news/>] (linking to IDP Web Page).

¹¹ Compl. at 2.

1 Commission.¹² The record, however, is unclear on the precise details of SMP's alleged
2 advertisement. The Complaint does not attach or link to the alleged advertisement and this
3 Office has been unable to identify or locate an advertisement paid for, produced, or disseminated
4 by SMP that fits the description alleged in the Complaint.¹³ The only independent expenditure
5 reported by SMP on September 26, 2020, was \$19,386 for "Media Production — Estimate."¹⁴
6 The only independent expenditures reported by SMP approximating or exceeding the \$900,000
7 figure alleged in the Complaint after the date of Busch's tweet — September 17, 2020 — and
8 before the date on the Complaint — October 2, 2020 — were \$2,135,105 for "Media Buy —
9 Estimate" on September 22, 2020, and \$2,495,663 for "Media Buy — Estimate" on
10 September 29, 2020,¹⁵ but it is not clear that those reported expenditures include the \$900,000
11 expenditure alleged in the Complaint nor do they precisely match the timing alleged in the
12 Complaint.

13 Although the Complaint does not attach or link to the advertisement, it provides a brief
14 summary of its contents. The Complaint alleges that the advertisement contained the "same
15 attacks pushed by Busch in his tweet and IDP on its website . . . [and] also followed IDP's
16 explicit direction to a tee by portraying Senator Ernst 'in her own words' in the beginning of the

¹² *Id.* at 4 & n.6

¹³ The Office of General Counsel reviewed a range of publicly available resources in this search, including Commission disclosure reports, databases of media buys hosted by the Federal Communications Commission, YouTube, Facebook Ad Library, Snap Political Ads Library, Google Transparency Report, and news articles.

¹⁴ SMP, 24/48 Hour Report of Independent Expenditures (Sept. 28, 2020), <https://docquery.fec.gov/pdf/626/202009289284979626/202009289284979626.pdf> (reflecting \$19,386 expenditure to Dixon/Davis Media Group LLC on September 26, 2020).

¹⁵ SMP, 24/48 Hour Report of Independent Expenditures at 4 (Sept. 24, 2020), <https://docquery.fec.gov/pdf/741/202009249284961741/202009249284961741.pdf> (reflecting \$2,135,104.60 expenditure to Waterfront Strategies on September 22, 2020); SMP, 24/48 Hour Report of Independent Expenditures at 6 (Oct. 1, 2020), <https://docquery.fec.gov/pdf/582/202010019284989582/202010019284989582.pdf> (reflecting \$4,495,663.03 expenditure to Waterfront Strategies on September 29, 2020).

1 ad, and depicting Iowa residents commenting on Senator Ernst ‘in their own words’ throughout
2 the remainder of the ad.”¹⁶ Further, the Complaint contends the “backup document” SMP
3 provided to Iowa television stations as substantiation is “virtually identical” to the PDF
4 document on the IDP website.¹⁷

5 The Complaint alleges that SMP made, and IDP, Greenfield, and the Greenfield
6 Committee knowingly accepted, an excessive in-kind contribution in the form of a coordinated
7 communication.¹⁸ According to the Complaint, Busch’s tweet and the linked IDP web page
8 constituted a request or suggestion for a communication that included “specific content,” such as
9 the “content and language on IDP’s website and that both Senator Ernst and Iowa voters are
10 depicted in the ad ‘in [her/their] own words.’”¹⁹

11 SMP specifically denies producing any advertisements with the content described in the
12 Complaint.²⁰ IDP identifies several advertisements published by itself, SMP, and the Greenfield
13 Committee with similar content (*i.e.*, Ernst or Iowa voters speaking in their own words) that were
14 disseminated before Busch’s tweet and link to the IDP web page and PDF document on
15 September 17, 2020.²¹ The Respondents further argue that the allegations fail to satisfy the
16 conduct prong of the Commission’s three-part coordinated communication test because Busch’s
17 tweet and IDP web page cannot constitute a “request or suggestion” because they were posts on

¹⁶ Compl. at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4 (alleging the tweet and linked IDP web page were “susceptible of no reasonable interpretation other than a request or suggestion for SMP to run ads” with that content and language).

²⁰ SMP Resp. at 1-3 (Dec. 1, 2020).

²¹ IDP Resp. at 2 & n.6.

1 public websites geared to the general public and not a select audience.²² Finally, the
2 Respondents assert that the Complaint does not allege any conduct by the Greenfield Committee
3 in connection with the alleged coordination.²³

4 **III. LEGAL ANALYSIS**

5 The Act prohibits any person from making, and any candidate or committee from
6 knowingly accepting, an excessive contribution.²⁴ Independent expenditure-only political
7 committees, such as SMP, are prohibited from making contributions to candidates and their
8 authorized committees.²⁵ Committee treasurers are required to disclose the identification of each
9 political committee that makes a contribution to the reporting committee during the reporting
10 period, along with the date and amount of any such contribution.²⁶ If a committee makes a
11 contribution, it shall disclose the name and address of the recipient.²⁷

12 The Act provides that an expenditure made by any person “in cooperation, consultation,
13 or concert, with, or at the request or suggestion of, a candidate, his authorized political

²² See SMP Resp. at 4-5; IDP Resp. at 3-4; Theresa Greenfield for Iowa and Theresa Greenfield Resp. at 2-3 (Nov. 30, 2020) [hereinafter Greenfield Comm. Resp.].

²³ SMP Resp. at 6; Greenfield Comm. Resp. at 2-3.

²⁴ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

²⁵ See Advisory Opinion 2017-10 at 2 (Citizens Against Plutocracy) (“An independent expenditure-only political committee ‘may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.’”) (quoting Advisory Opinion 2016-21 at 3-4 (Great America PAC)); Factual & Legal Analysis (“F&LA”) at 4, MUR 7168 (Catherine Cortez Masto, *et al.*) (“Super PACs are prohibited from making contributions to candidates and their authorized committees.”); F&LA at 8, MUR 7124 (Katie McGinty for Senate, *et al.*) (“[Independent expenditure-only political committees] and nonprofit corporations are prohibited from making contributions to candidates and their authorized committees.”); see also Advisory Op. 2010-11 at 2-3 (Commonsense Ten) (stating that independent expenditure-only committees may receive unlimited funds and funds from corporations and labor organizations).

²⁶ 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

²⁷ 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

1 committees, or their agents” constitutes an in-kind contribution.²⁸ The Commission’s
2 regulations provide a three-part test for determining when a communication is a coordinated
3 expenditure, which is treated as an in-kind contribution.²⁹ A communication is coordinated with
4 a candidate, an authorized committee, a political party committee, or their agent, if it: (1) is paid
5 for, in whole or in part, by a person other than the candidate or committee (the “payment
6 prong”); (2) satisfies one of the enumerated content standards set out at 11 C.F.R. § 109.21(c)
7 (the “content prong”); and (3) satisfies one of the five enumerated conduct standards set out at
8 11 C.F.R. § 109.21(d) (the “conduct prong”).³⁰ All three prongs are required for a
9 communication to be considered a coordinated communication.³¹

10 The Complaint alleges that SMP made an in-kind contribution to IDP, Greenfield, and
11 the Greenfield Committee in the form of an advertisement that was disseminated on television
12 and digital media. As explained below, under the Commission’s three-part test, the available
13 information does not provide a reasonable basis to conclude that SMP’s alleged advertisement
14 was a coordinated communication.

15 **A. The Payment Prong**

16 The payment prong is satisfied when the communication is paid for, in whole or in part,
17 by a person other than the candidate, her authorized committee, or a political party.³² SMP

²⁸ 52 U.S.C. § 30116(a)(7)(B)(i); *accord* 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

²⁹ 11 C.F.R. § 109.21(a)-(b).

³⁰ *Id.* § 109.21(a). With respect to communications that satisfy the content standard by republication of campaign materials, three of the conduct prong standards — request or suggestion, material involvement, and substantial discussion — may be satisfied only on the basis of conduct between the campaign and third party “that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished.” *Id.* § 109.21(d)(6).

³¹ *Id.* § 109.21(a).

³² *Id.* § 109.21(a)(1).

1 reported spending an aggregate \$34,035,542 in opposition to Ernst during the 2020 election
2 cycle.³³ The Complaint alleges that SMP spent \$900,000 on the advertisement.³⁴ Assuming,
3 *arguendo* that SMP paid for an advertisement opposing Ernst on television and digital media, as
4 the Complaint alleges, the payment prong would likely be satisfied.

5 However, as explained above, the record lacks specific information about payment for the
6 alleged media buy other than the Complaint's assertions. This Office has been unable to locate
7 an advertisement disseminated by SMP with the content and timing alleged by the Complaint,
8 through publicly available resources such as Commission reports, FCC databases, YouTube and
9 other social media sites, and news articles. There is no record of an independent expenditure
10 made by SMP that matches the date and amount alleged by the Complaint and this Office has
11 been unable to verify whether any of SMP's reported independent expenditures on other dates or
12 in other amounts correspond to the advertisement alleged in the Complaint.³⁵ SMP denies
13 producing, disseminating, or distributing the alleged advertisement.³⁶ Furthermore, IDP's
14 Response identifies several advertisements, one from each Respondent, similar to that described
15 in the Complaint that pre-date Busch's tweet, raising the possibility that the Complaint
16 misidentified one of those advertisements for an SMP advertisement that post-dated Busch's
17 tweet, yet it is still unclear how the Complaint came up with the \$900,000 figure or why the

³³ See *supra* note 5.

³⁴ Compl. at 4 & n.6.

³⁵ See *supra* notes 14-15 and accompanying text.

³⁶ SMP Resp. at 3-4.

1 Complaint identified September 26, 2020 as the specific date of the media buy.³⁷ Nonetheless,
 2 beyond the unsupported allegations in the Complaint, the available information does not satisfy
 3 the payment prong.³⁸

4 **B. The Content Prong**

5 The content prong is satisfied if the communication at issue is an electioneering
 6 communication or is a “public communication” that (i) republishes a candidate or authorized
 7 committee’s campaign materials, (ii) contains express advocacy or the functional equivalent
 8 thereof, or (iii) refers to a candidate and is distributed in that candidate’s jurisdiction within a set
 9 period of time before a primary or general election in which that candidate is running.³⁹ “Public
 10 communication[s]” include, *inter alia*, broadcast, cable, or satellite advertisements,
 11 “communications placed for a fee on another person’s Web site,” and other forms of “general
 12 public political advertising.”⁴⁰

13 The Complaint alleges that SMP paid for advertisements that satisfy the content prong
 14 because they were “broadcast public communications that expressly advocated for the defeat of
 15 Senator Ernst.”⁴¹ Assuming, *arguendo* that the advertisement expressly advocated the defeat of
 16 Ernst, a clearly identified candidate, and was distributed as alleged on television and digital

³⁷ IDP Resp. at 2 & n.6. For example, SMP posted an unlisted video on its YouTube page on September 11, 2020, depicting an Iowa resident criticizing Ernst for taking contributions from drug and insurance companies, and IDP tweeted a video on August 26, 2020, including clips of Ernst speaking on issues and Iowa voters asking questions of Ernst at town halls. *See* Senate Majority PAC 2020, *Polly* — :30, YOUTUBE (Sept. 11, 2020), https://www.youtube.com/watch?v=5fHJN9z_kV0; Iowa Democrats (@iowademocrats), TWITTER (Aug. 26, 2020, 11:25AM), <https://twitter.com/iowademocrats/status/1298642609020305410>.

³⁸ *Cf.* Statement of Reasons, Comm’rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”).

³⁹ 11 C.F.R. § 109.21(c)(1)-(5).

⁴⁰ *Id.* § 100.26.

⁴¹ Compl. at 4.

1 media, as the Complaint alleges, the advertisement would likely satisfy the content standard.⁴²
2 However, as described above, the record lacks specific information about the content of the
3 alleged advertisement other than the Complaint's assertions because the Complaint does not
4 identify and this Office has been unable to locate the alleged advertisement. Here again, beyond
5 the unsupported allegations in the Complaint, the available information does not satisfy the
6 content prong.

7 C. The Conduct Prong

8 The conduct prong is satisfied by one of five types of interactions between the payor and
9 the candidate or campaign regarding the communication: (1) request or suggestion; (2) material
10 involvement; (3) substantial discussion; (4) use of a common vendor; or (5) involvement of a
11 former employee or independent contractor.⁴³ Here, the relevant standard is the "request or
12 suggestion" standard, which requires that a communication is "created, produced, or distributed
13 at the request or suggestion of a candidate, authorized committee, . . . political party committee,"

⁴² If the Complaint's allegation that SMP reported the described advertisement as an independent expenditure is accurate, the content prong would likely be satisfied because independent expenditures, by definition, expressly advocate the election or defeat of a clearly identified candidate. *See* Compl. at 4 n.6; 52 U.S.C. § 30101(17) (defining "independent expenditure"); 11 C.F.R. § 109.21(c)(3) (explaining public communications that include express advocacy satisfy the content prong); *see also* F&LA at 13, MUR 6888 (Republican National Committee, *et al.*) ("Given that [communications] were reported as independent expenditures, such communications presumably also satisfy the content standard as public communications that expressly advocate the election or defeat of a clearly identified candidate for federal office."). Furthermore, although not specifically alleged by the Complaint, the alleged advertisement might also satisfy the content prong as a public communication referencing a clearly identified Senate candidate publicly distributed or disseminated in the candidate's jurisdictions 90 days or fewer before the general election. *See* 11 C.F.R. § 109.21(c)(4)(i).

⁴³ 11 C.F.R. § 109.21(d)(1)-(5); *see also id.* § 109.21(e) (stating that an agreement or formal collaboration "is not required for a communication to be a coordinated communication").

1 or their agent, or alternatively, “at the suggestion of a person paying for the communication and
2 the candidate, authorized committee, or political party committee assents to the suggestion.”⁴⁴

3 The Complaint alleges that IDP made a “request or suggestion” when Busch tweeted on
4 September 17, 2020, that “Iowa voters need to know that Senator Ernst has changed” and linked
5 to an IDP web page and a PDF document.⁴⁵ The allegation that Busch’s tweet was a “request or
6 suggestion” is based on inferences from circumstantial information: (1) the advertisement
7 allegedly distributed by SMP purportedly containing the “same attacks and language” on the IDP
8 web page and linked PDF document, (2) the text of Busch’s tweet that “Iowa voters need to
9 know” including a “ready-made script for SMP” and a professional opposition research
10 document, and (3) the temporal proximity between Busch’s tweet on September 17, 2020, and
11 SMP’s alleged purchase of an advertisement buy on September 26, 2020.⁴⁶ The Complaint does
12 not allege any direct or indirect contact between IDP and SMP regarding the alleged
13 advertisement.

14 It does not appear the conduct prong is satisfied. The Commission has explained that a
15 request or suggestion is the “most direct form of coordination” whereby “the candidate or
16 political party committee communicates desires to another person who effectuates them,” and
17 that the determination of whether a third party acted in response to a request or suggestion must
18 be “based on specific facts, rather than presumed.”⁴⁷ Additionally, the Commission has
19 explained that the standard “is intended to cover requests or suggestions made to a select

⁴⁴ *Id.* § 109.21(d)(1)(i)-(ii).

⁴⁵ Compl. at 4.

⁴⁶ *See id.*

⁴⁷ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 431-32 (Jan. 3, 2003).

1 audience, but not those offered to the public generally.”⁴⁸ As a way of explaining when a
2 request or suggestion is aimed at a particular audience, the Commission offered the example that
3 “a request that is posted on a web page that is available to the general public is a request to the
4 general public and does not trigger the [request or suggestion] conduct standard,” but an email to
5 a discrete group of recipients would meet the standard.⁴⁹

6 The Commission has previously looked to these examples and found no reason to believe
7 with respect to coordination allegations arising from general requests or suggestions posted on
8 committee websites that were followed by ostensibly related third-party advertisements.⁵⁰ In
9 MUR 6821 (Shaheen for Senate, *et al.*), the Commission found no reason to believe when an
10 authorized committee posted a message and related document on its public website with
11 information on the candidate and allegations about her opponent; the message was not targeted at
12 a specific audience and did not advocate for or mention advertising or media.⁵¹ In MUR 7124
13 (Katie McGinty for Senate, *et al.*), the Commission similarly found no reason to believe when an
14 authorized committee published a “Notice” page on its public website that contained a list of
15 specific messages about the candidate and her opponents, specified who needed to know them
16 (*e.g.* “[v]oters in Philadelphia”), and offered a general sense of timing (*e.g.*, “[a]t this point of the
17 campaign”); the page did not appear to target a specific audience and did not advocate for or
18 mention advertising or media.⁵² In MUR 7168 (Catherine Cortez Masto, *et al.*), the Commission

⁴⁸ *Id.* at 432.

⁴⁹ *Id.*

⁵⁰ F&LA 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); F&LA at 9-10, MUR 7124 (Katie McGinty for Senate, *et al.*) (same); F&LA at 6, MUR 7168 (Catherine Cortez Masto, *et al.*) (same).

⁵¹ F&LA at 2-3, 7-8, MUR 6821 (Shaheen for Senate, *et al.*).

⁵² F&LA at 1-2, 4-5, MUR 7124 (Katie McGinty for Senate, *et al.*).

1 also found no reason to believe when an authorized committee posted two messages to its media
2 web page with information about the opponent's positions; the messages were on the publicly
3 available campaign website, there was no allegation of private communication with the payor,
4 and the only communication identified in the complaint followed the first message, which did
5 not contain allegedly "coded messages" such as "voters need to know" or "voters should hear."⁵³

6 Here, Busch's tweet, as well as the IDP web page and PDF document to which it linked,
7 appear to have been "general requests" outside the purview of the conduct standard. They were
8 publicly available, not clearly targeted at a specific audience, and did not advocate for or
9 mention advertising.⁵⁴ The Complaint does not allege, and the record contains no information
10 that, any direct or private communications were made between IDP and SMP.⁵⁵ There is also no
11 indication that Busch's tweet conveyed coded information that would require additional contacts
12 between the parties to decipher its meaning.⁵⁶

⁵³ F&LA at 2-3, 5-6, MUR 7168 (Catherine Cortez Masto, *et al.*).

⁵⁴ See First Gen. Counsel's Rpt. ("First GCR") at 20, MURs 7681 & 7715 (VoteVets, *et al.*) (recommending the Commission dismiss coordination allegations where the available information indicated that a tweet from a party campaign committee agent was a general request, publicly available, not targeted to a specific audience, and did not mention advertising);

⁵⁵ Cf. F&LA 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); F&LA at 10, MUR 7124 (Katie McGinty for Senate, *et al.*) (same); F&LA at 6, MUR 7168 (Catherine Cortez Masto, *et al.*) (same).

⁵⁶ This Office has recommended finding reason to believe that a coordinated communication occurred in matters where the communication in question was either intentionally obscured or where there was additional information suggesting that the request was made to an intended audience. See

UR 6908 (NRCC) (recommending that the Commission find that non-public communications and a request or suggestion had occurred where a committee's employees posted coded polling results on Twitter that were not readily searchable, using accounts that did not reveal their affiliation with the committee); Certification ¶ 1 (Mar. 28, 2019), MUR 6908 (NRCC) (reflecting an equally divided vote on reason-to-believe recommendations).

1 **IV. RECOMMENDATIONS**

- 2 1. Dismiss the allegation that SMP and Rebecca Lambe in her official capacity as
 3 treasurer violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b) by
 4 making an excessive in-kind contribution;
- 5 2. Dismiss the allegation that Iowa Democratic Party and Ken Sagar in his official
 6 capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by
 7 knowingly accepting an excessive in-kind contribution;
- 8 3. Dismiss the allegation that Theresa Greenfield and Theresa Greenfield for Iowa
 9 and Theresa Kehoe in her official capacity as treasurer violated 52 U.S.C
 10 § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-kind
 11 contribution;
- 12 4. Approve the attached Factual and Legal Analysis;
- 13 5. Approve the appropriate letters; and
- 14 6. Close the file.

15
 16 Lisa J. Stevenson
 17 Acting General Counsel

18
 19 Charles Kitcher
 20 Associate General Counsel for Enforcement

21
 22
 23 November 18, 2021

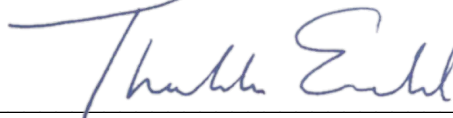
24
 25 Date

26
 27 

28
 29 Claudio J. Pavia
 30 Acting Deputy Associate General Counsel
 31 for Enforcement

32
 33 

34
 35 Mark Allen
 36 Assistant General Counsel

37
 38 

39
 Thaddeus H. Ewald
 Attorney