



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 15, 2022

**VIA ELECTRONIC MAIL ONLY**

[melias@elias.law](mailto:melias@elias.law)

[ereese@elias.law](mailto:ereese@elias.law)

[rmears@elias.law](mailto:rmears@elias.law)

Marc E. Elias, Esq.  
Ezra W. Reese, Esq.  
Rebecca K. Mears, Esq.  
Elias Law Group  
10 G Street, NE  
Suite 600  
Washington, DC 20005

RE: MUR 7813  
SMP and Rebecca Lambe in her  
official capacity as treasurer

Dear Messrs. Elias and Reese and Ms. Mears:

On October 16, 2020, the Federal Election Commission notified your client, SMP and Rebecca Lambe in her official capacity as treasurer (the "Committee"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time. Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on March 8, 2022, voted to dismiss the allegation that the Committee violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b) by making an excessive in-kind contribution, and closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

MUR 7813

Letter to Marc E. Elias, Esq., Ezra W. Reese, Esq., & Rebecca K. Mears, Esq.

Page 2

If you have any questions, please contact Thaddeus H. Ewald, the attorney assigned to this matter, at (202) 694-1650 or [tewald@fec.gov](mailto:tewald@fec.gov).

Sincerely,

*Mark Allen*

Mark Allen  
Assistant General Counsel

Enclosure:

Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Iowa Democratic Party and Ken Sagar in his official capacity as treasurer  
SMP and Rebecca Lambe in her official capacity as treasurer  
Theresa Greenfield  
Theresa Greenfield for Iowa and Theresa Kehoe in her official capacity as treasurer

MUR 7813

**I. INTRODUCTION**

The Complaint alleges that SMP and Rebecca Lambe in her official capacity as treasurer (“SMP”) coordinated with the Iowa Democratic Party and Ken Sagar in his official capacity as treasurer (“IDP”), Theresa Greenfield, and Theresa Greenfield for Iowa and Theresa Kehoe in her official capacity as treasurer (the “Greenfield Committee”) by creating and disseminating an advertisement attacking Greenfield’s opponent in the 2020 general election for U.S. Senate in Iowa, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaint alleges that SMP paid \$900,000 for an advertisement on television and digital media opposing Joni Ernst in response to a tweet by IDP spokesperson Jeremy Busch that requested or suggested an advertisement be disseminated with such content. SMP denies paying for or producing an advertisement as described in the Complaint. The Respondents further argue that the activity alleged in the Complaint fails to satisfy the conduct prong of Commission’s three-part coordinated communication test because the alleged “request or suggestion” occurred on public websites. Finally, the Respondents assert that the Complaint does not allege any conduct by Greenfield or the Greenfield Committee.

As explained below, the record is insufficient to satisfy the Commission’s three-part coordinated communication test. The Complaint does not attach or link to the advertisement allegedly disseminated by SMP and the Commission is not aware of any advertisement matching

1 the general description in the Complaint disseminated after Busch's tweet. Accordingly, the  
2 Commission is unable to conclude that the payment prong is satisfied because there is no clear  
3 record of SMP paying for the alleged advertisement. Similarly, the Commission is unable to  
4 conclude the content prong is satisfied because the record is incomplete as to the precise contents  
5 of the alleged advertisement. Thus, the available information is insufficient to support a  
6 reasonable inference that SMP coordinated with either IDP, Greenfield, or the Greenfield  
7 Committee.

8 Therefore, the Commission dismisses the allegations that: (1) SMP violated 52 U.S.C.  
9 § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution to  
10 IDP, Greenfield, or the Greenfield Committee; (2) IDP violated 52 U.S.C. § 30116(f) and  
11 11 C.F.R. § 110.9 by knowingly accepting an excessive in-kind contribution; and (3) Greenfield  
12 and the Greenfield Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by  
13 knowingly accepting an excessive in-kind contribution.

## 14 **II. FACTUAL BACKGROUND**

15 The Iowa Democratic Party is a state committee of the Democratic Party.<sup>1</sup> SMP is an  
16 independent expenditure-only political committee registered with the Commission.<sup>2</sup> Theresa  
17 Greenfield was a candidate for the U.S. Senate in Iowa in 2020 and Theresa Greenfield for Iowa  
18 is her principal campaign committee.<sup>3</sup> Greenfield's opponent in the general election was the

---

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

<sup>2</sup> 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>.

<sup>3</sup> 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>.

1 incumbent U.S. Senator Joni Ernst.<sup>4</sup> During the 2020 election cycle, SMP reported making  
2 \$229,911,901 in independent expenditures, including \$34,035,542 in opposition to Ernst and  
3 \$7,328,667 in support of Greenfield.<sup>5</sup>

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

---

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

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

<sup>6</sup> 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.].

<sup>7</sup> *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/>].

<sup>8</sup> Compl. at 2.

<sup>9</sup> 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>].

<sup>10</sup> *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).

1           According to the Complaint, nine days after Busch’s tweet, on September 26, 2020, SMP  
2 spent \$900,000 to distribute an advertisement on television and digital platforms.<sup>11</sup> The  
3 Complaint alleges that SMP reported the advertisement as an independent expenditure to the  
4 Commission.<sup>12</sup> The record, however, is unclear on the precise details of SMP’s alleged  
5 advertisement. The Complaint does not attach or link to the alleged advertisement and the  
6 Commission is not aware of any advertisement paid for, produced, or disseminated by SMP that  
7 fits the description alleged in the Complaint. The only independent expenditure reported by  
8 SMP on September 26, 2020, was \$19,386 for “Media Production — Estimate.”<sup>13</sup> The only  
9 independent expenditures reported by SMP approximating or exceeding the \$900,000 figure  
10 alleged in the Complaint after the date of Busch’s tweet — September 17, 2020 — and before  
11 the date on the Complaint — October 2, 2020 — were \$2,135,105 for “Media Buy — Estimate”  
12 on September 22, 2020, and \$2,495,663 for “Media Buy — Estimate” on September 29, 2020,<sup>14</sup>  
13 but it is not clear that those reported expenditures include the \$900,000 expenditure alleged in  
14 the Complaint nor do they precisely match the timing alleged in the Complaint.

15           Although the Complaint does not attach or link to the advertisement, it provides a brief  
16 summary of its contents. The Complaint alleges that the advertisement contained the “same  
17 attacks pushed by Busch in his tweet and IDP on its website . . . [and] also followed IDP’s

---

<sup>11</sup> Compl. at 2.

<sup>12</sup> *Id.* at 4 & n.6

<sup>13</sup> 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).

<sup>14</sup> 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 explicit direction to a tee by portraying Senator Ernst ‘in her own words’ in the beginning of the  
2 ad, and depicting Iowa residents commenting on Senator Ernst ‘in their own words’ throughout  
3 the remainder of the ad.”<sup>15</sup> Further, the Complaint contends the “backup document” SMP  
4 provided to Iowa television stations as substantiation is “virtually identical” to the PDF  
5 document on the IDP website.<sup>16</sup>

6 The Complaint alleges that SMP made, and IDP, Greenfield, and the Greenfield  
7 Committee knowingly accepted, an excessive in-kind contribution in the form of a coordinated  
8 communication.<sup>17</sup> According to the Complaint, Busch’s tweet and the linked IDP web page  
9 constituted a request or suggestion for a communication that included “specific content,” such as  
10 the “content and language on IDP’s website and that both Senator Ernst and Iowa voters are  
11 depicted in the ad ‘in [her/their] own words.’”<sup>18</sup>

12 SMP specifically denies producing any advertisements with the content described in the  
13 Complaint.<sup>19</sup> IDP identifies several advertisements published by itself, SMP, and the Greenfield  
14 Committee with similar content (*i.e.*, Ernst or Iowa voters speaking in their own words) that were  
15 disseminated before Busch’s tweet and link to the IDP web page and PDF document on  
16 September 17, 2020.<sup>20</sup> The Respondents further argue that the allegations fail to satisfy the  
17 conduct prong of the Commission’s three-part coordinated communication test because Busch’s  
18 tweet and IDP web page cannot constitute a “request or suggestion” because they were posts on

---

<sup>15</sup> Compl. at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 3-4.

<sup>18</sup> *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).

<sup>19</sup> SMP Resp. at 1-3 (Dec. 1, 2020).

<sup>20</sup> IDP Resp. at 2 & n.6.

1 public websites geared to the general public and not a select audience.<sup>21</sup> Finally, the  
 2 Respondents assert that the Complaint does not allege any conduct by the Greenfield Committee  
 3 in connection with the alleged coordination.<sup>22</sup>

### 4 **III. LEGAL ANALYSIS**

5 The Act prohibits any person from making, and any candidate or committee from  
 6 knowingly accepting, an excessive contribution.<sup>23</sup> Independent expenditure-only political  
 7 committees, such as SMP, are prohibited from making contributions to candidates and their  
 8 authorized committees.<sup>24</sup> 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.<sup>25</sup> If a committee makes a  
 11 contribution, it shall disclose the name and address of the recipient.<sup>26</sup>

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

---

<sup>21</sup> 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.].

<sup>22</sup> SMP Resp. at 6; Greenfield Comm. Resp. at 2-3.

<sup>23</sup> 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

<sup>24</sup> 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).

<sup>25</sup> 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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”).<sup>29</sup> All three prongs are required for a  
9 communication to be considered a coordinated communication under Commission regulations.<sup>30</sup>

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.<sup>31</sup> SMP

---

<sup>27</sup> 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).

<sup>28</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>29</sup> *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).

<sup>30</sup> *Id.* § 109.21(a).

<sup>31</sup> *Id.* § 109.21(a)(1).

1 reported spending an aggregate \$34,035,542 in opposition to Ernst during the 2020 election  
2 cycle.<sup>32</sup> The Complaint alleges that SMP spent \$900,000 on the advertisement.<sup>33</sup> 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. The Commission is not aware of any  
7 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 the Commission is  
11 not aware of any of SMP's reported independent expenditures on other dates or in other amounts  
12 that correspond to the advertisement alleged in the Complaint.<sup>34</sup> SMP denies producing,  
13 disseminating, or distributing the alleged advertisement.<sup>35</sup> Furthermore, IDP's Response  
14 identifies several advertisements, one from each Respondent, similar to that described in the  
15 Complaint that pre-date Busch's tweet, raising the possibility that the Complaint misidentified  
16 one of those advertisements for an SMP advertisement that post-dated Busch's tweet, yet it is  
17 still unclear how the Complaint came up with the \$900,000 figure or why the Complaint

---

<sup>32</sup> See *supra* note 5.

<sup>33</sup> Compl. at 4 & n.6.

<sup>34</sup> See *supra* notes 13-14 and accompanying text.

<sup>35</sup> SMP Resp. at 3-4.

1 identified September 26, 2020 as the specific date of the media buy.<sup>36</sup> Nonetheless, beyond the  
2 unsupported allegations in the Complaint, the available information does not satisfy the payment  
3 prong.<sup>37</sup>

#### 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.<sup>38</sup> “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.”<sup>39</sup>

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.”<sup>40</sup> However, as described above, the record lacks specific information about the  
16 content of the alleged advertisement other than the Complaint’s assertions because the Complaint

---

<sup>36</sup> 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=5fHJ9z\\_kV0](https://www.youtube.com/watch?v=5fHJ9z_kV0); Iowa Democrats (@iowademocrats), TWITTER (Aug. 26, 2020, 11:25AM), <https://twitter.com/iowademocrats/status/1298642609020305410>.

<sup>37</sup> *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].”).

<sup>38</sup> 11 C.F.R. § 109.21(c)(1)-(5).

<sup>39</sup> *Id.* § 100.26.

<sup>40</sup> Compl. at 4.

1 does not identify and the Commission is not aware of any such advertisement. Here again,  
2 beyond the unsupported allegations in the Complaint, the available information does not satisfy  
3 the content prong.<sup>41</sup>

4 \* \* \*

5 In conclusion, the available information is insufficient to support a reasonable inference  
6 that the coordinated communication test is satisfied. Accordingly, the Commission dismisses the  
7 allegations that SMP violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b) by making  
8 an excessive in-kind contribution, and that IDP, Greenfield, and the Greenfield Committee  
9 violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-  
10 kind contribution.

---

<sup>41</sup> Because there is insufficient information to satisfy either the payment prong or the content prong, the Commission need not analyze whether any of the conduct standards is met.