

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7826

DATE COMPLAINT FILED: 10/21/2020
 DATE OF NOTIFICATION: 10/27/2020
 LAST RESPONSE RECEIVED: 01/29/2021
 DATE ACTIVATED: 03/18/2021
 EXPIRATION OF SOL: 07/17/2025
 (earliest)
 11/12/2025
 (latest)
 ELECTION CYCLE: 2020

COMPLAINANT:

Alan R. Ostergren

RESPONDENTS:

Iowa Democratic Party and Ken Sagar, in his
 official capacity as Treasurer
 Theresa Greenfield for Iowa and Theresa Kehoe, in
 her official capacity as Treasurer

MUR 7862

DATE COMPLAINT FILED: 12/04/2020
 DATE OF NOTIFICATION: 12/08/2020
 LAST RESPONSE RECEIVED: 01/29/2021
 DATE ACTIVATED: 03/18/2021
 EXPIRATION OF SOL: 08/24/2025
 (earliest)
 10/19/2025
 (latest)
 ELECTION CYCLE: 2020

COMPLAINANT:

Accuracy in Media

RESPONDENTS:

Iowa Democratic Party and Ken Sagar, in his
 official capacity as Treasurer
 Rita Hart for Iowa and Sheila Spickermann, in her
 official capacity as Treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104
 52 U.S.C. § 30116
 52 U.S.C. § 30120
 11 C.F.R. § 100.87

11 C.F.R. § 100.147

11 C.F.R. § 109.23

11 C.F.R. § 109.37

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

These two matters involve allegations that the Iowa Democratic Party and Ken Sagar in his official capacity as treasurer (“IDP”) paid to distribute mailers pursuant to the “volunteer materials exemption” without substantial volunteer involvement. As a result, the Complaints allege that IDP violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by making excessive in-kind contributions to Theresa Greenfield for Iowa and Theresa Kehoe in her official capacity as treasurer (the “Greenfield Committee”) and Rita Hart for Iowa and Sheila Spickermann in her official capacity as treasurer (the “Hart Committee”) (collectively, the “Committees”).¹ The Complaints also allege that IDP failed to include proper disclaimers on the mailers. The Complaints further allege that IDP and Committee’s actions were knowing and willful.²

The principal source of support for both Complaints is an online video, produced by one of the Complainants, Accuracy in Media (“AIM”). According to the Complaints, the video

¹ The Complaints phrase the alleged violations as IDP having exceeded its direct contribution limit “or” exceeded applicable coordinated party expenditure limits for both the Greenfield and Hart Committees. *See* MUR 7826 Compl. at 3; MUR 7862 Compl. at 3. However, payments for coordinated party communications exceeding the coordinated party expenditure limit *are* in-kind contributions subject to state party contribution limits. *See* Factual & Legal Analysis at 2, MUR 6731 (Democratic Executive Committee of Florida). Therefore, despite the Complaints’ phrasing, we interpret the Complaints simply to allege that IDP made contributions in excess of the Act’s limitations.

² *See* MUR 7826 Compl. at 1, 3-5; MUR 7862 Compl. at 1, 3.

1 shows that IDP was staging “artificial volunteer sessions,”³ where an IDP employee states that
2 volunteers would “pretend” to wrap pallets containing stacks of banded mail, and “pretend” to
3 pull up pallet jacks.⁴ According to the Complaints, this video reveals that IDP’s mail program
4 did not have substantial volunteer involvement, which is necessary to exempt the costs of the
5 program from the Act’s definition of contribution and expenditure.

6 IDP acknowledges that the Committees authorized the mailers but asserts that it did not
7 violate the Act because its activities satisfied the volunteer materials exemption. IDP argues
8 there was substantial volunteer involvement because volunteers performed the following tasks:
9 (1) feeding the printed mailers into the addressing machine; (2) banding the mail pieces in stacks
10 for transport; and (3) operating the pallet jack to move the mail pieces from the addressing
11 machine. IDP’s Response contains several photos that appear to depict volunteers performing
12 these types of tasks, as well declarations from various witnesses—including a declaration from
13 the employee depicted in the video. The Committees each respond that the mail program at issue
14 was under the direction and control of IDP and argue that the respective Complaints provide no
15 evidence indicating that the Committees were involved.

16 Notwithstanding IDP’s Response, the video, which shows IDP’s mail program supervisor
17 clearly saying volunteers would “pretend” to perform certain acts, sufficiently indicates at this
18 preliminary enforcement stage that there may not have been substantial volunteer involvement in
19 distributing the mailers. Without substantial volunteer involvement, the elements of the

³ See MUR 7826 Compl. at 2; MUR 7862 Compl. at 1.

⁴ See Accuracy in Media, Accuracy in Media Exposes Possible FEC Violation in Iowa Senate Race, YOUTUBE, <https://www.youtube.com/watch?v=sydNF2Sxpqo> (Oct. 21, 2020) (cited in MUR 7826 Compl. at 2; MUR 7862 Compl. at 1).

volunteer materials exemption are not satisfied and IDP's payment for the mailers, which appear to constitute party coordinated communications, must be treated as in-kind contributions or coordinated party expenditures and subject to applicable limits. Because IDP appears to have exceeded those limits, we recommend that the Commission find reason to believe that IDP made, and the Committees accepted, excessive in-kind contributions in violation of 52 U.S.C. § 30116(a) and (f). We also recommend that the Commission find reason to believe that IDP and the Committees failed to report those contributions as required by 52 U.S.C. § 30104(b). Finally, we recommend that the Commission find reason to believe that IDP failed to include an appropriate disclaimer on the mailers supporting Greenfield and Hart in violation of 52 U.S.C. § 30120.

II. FACTUAL BACKGROUND

A. IDP's Mailers Supporting Greenfield and Hart

IDP is a state party committee.⁵ It paid Wildfire Contact, a communications firm, a total of \$4,820,196.07 for exempt mail during the 2019-2020 election cycle.⁶ These mailings supported the Democratic nominee for U.S. Senate Theresa Greenfield, and Democratic candidates for the U.S. House of Representatives Rita Hart, J.D. Scholten, and Abby Finkenauer.⁷ A breakdown of the IDP's disbursements for exempt mail supporting Greenfield and Hart is shown in the following charts.

⁵ IDP Statement of Organization (Oct. 13, 2020), <https://docquery.fec.gov/pdf/347/202010139285500347/202010139285500347.pdf>.

⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00035600&recipient_name=Wildfire&two_year_transaction_period=2020 (last visited May 26, 2021) (reflecting disbursements by Iowa Democratic Party to Wildfire from June 17, 2019 through November 12, 2020).

⁷ *Id.* (showing \$3,513,847.10 for "Exempt Mail/Greenfield", \$517,393.35 for "Exempt Mail/Hart", \$250,287.20 for "Exempt Mail/Scholten", and \$538,668.42 for "Exempt Mail/Finkenauer").

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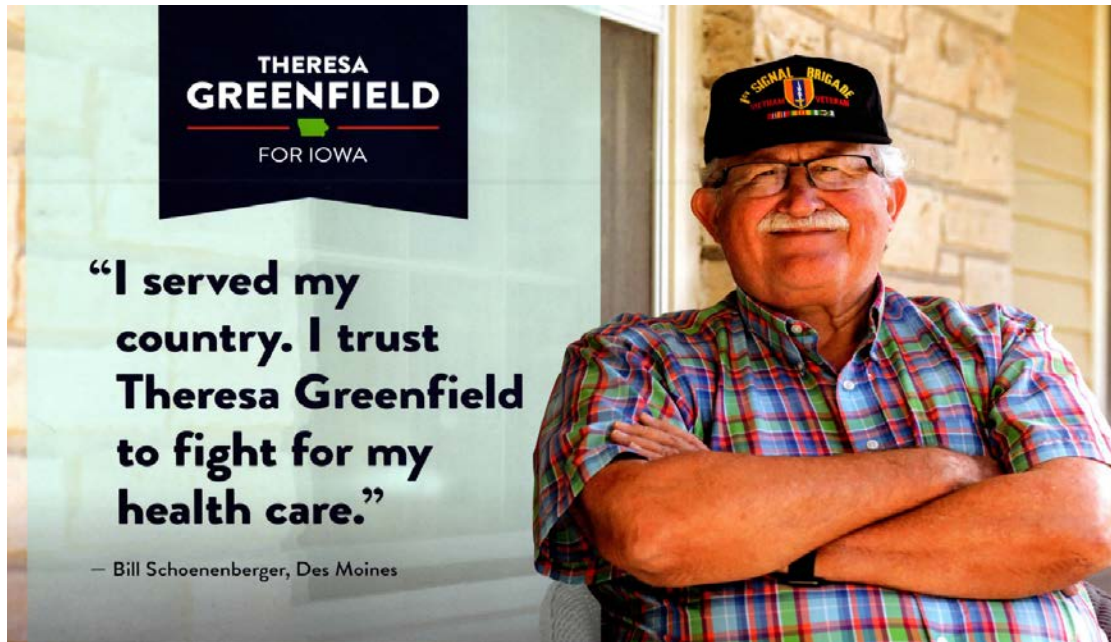
Disbursement Description	Disbursement Date	Disbursement Amount
EXEMPT MAIL/GREENFIELD	7/17/2020 0:00	\$ 206,861.13
EXEMPT MAIL/GREENFIELD	7/21/2020 0:00	\$ 100,358.37
EXEMPT MAIL/GREENFIELD	7/29/2020 0:00	\$ 119,460.50
EXEMPT MAIL/GREENFIELD	8/6/2020 0:00	\$ 119,460.50
EXEMPT MAIL/GREENFIELD	8/12/2020 0:00	\$ 119,460.50
EXEMPT MAIL/GREENFIELD	8/14/2020 0:00	\$ 210,250.48
EXEMPT MAIL/GREENFIELD	8/24/2020 0:00	\$ 168,332.32
EXEMPT MAIL/GREENFIELD	9/1/2020 0:00	\$ 184,007.70
EXEMPT MAIL/GREENFIELD	9/8/2020 0:00	\$ 357,563.70
EXEMPT MAIL/GREENFIELD	9/14/2020 0:00	\$ 350,415.15
EXEMPT MAIL/GREENFIELD	9/16/2020 0:00	\$ 69,231.34
EXEMPT MAIL/GREENFIELD	9/22/2020 0:00	\$ 221,130.84
EXEMPT MAIL/GREENFIELD	9/23/2020 0:00	\$ 172,052.99
EXEMPT MAIL/GREENFIELD	9/24/2020 0:00	\$ 69,231.34
EXEMPT MAIL/GREENFIELD	9/25/2020 0:00	\$ 287,500.00
EXEMPT MAIL/GREENFIELD	9/30/2020 0:00	\$ 183,864.60
EXEMPT MAIL/GREENFIELD	10/5/2020 0:00	\$ 925.84
EXEMPT MAIL/GREENFIELD	10/7/2020 0:00	\$ 171,207.00
EXEMPT MAIL/GREENFIELD	10/15/2020 0:00	\$ 138,567.00
EXEMPT MAIL/GREENFIELD	10/29/2020 0:00	\$ 131,982.90
EXEMPT MAIL/GREENFIELD	11/12/2020 0:00	\$ 131,982.90
TOTAL		\$ 3,513,847.10

Disbursement Description	Disbursement Date	Disbursement Amount
EXEMPT MAIL/HART	8/24/2020 0:00	\$ 24,560.10
EXEMPT MAIL/HART	8/28/2020 0:00	\$ 10,805.40
EXEMPT MAIL/HART	8/31/2020 0:00	\$ 13,876.65
EXEMPT MAIL/HART	9/1/2020 0:00	\$ 16,761.81
EXEMPT MAIL/HART	9/8/2020 0:00	\$ 58,644.15
EXEMPT MAIL/HART	9/14/2020 0:00	\$ 45,937.26
EXEMPT MAIL/HART	9/21/2020 0:00	\$ 137,811.78
EXEMPT MAIL/HART	10/8/2020 0:00	\$ 92,250.00
EXEMPT MAIL/HART	10/13/2020 0:00	\$ 74,741.16
EXEMPT MAIL/HART	10/19/2020 0:00	\$ 42,005.04
TOTAL		\$ 517,393.95

The specific mailers that IDP distributed in support of Greenfield and against Hart's opponent were included in IDP's Response and are shown below.⁸

⁸ See IDP Resp. at Exs. A, B.

1

2
3

Iowa Democratic Party
 5661 Fleur Drive
 Des Moines, IA 50321

TAG20044 PRINTED IN USA

Paid for by the Iowa Democratic Party

NONPROFIT ORG.
 US POSTAGE
 PAID
 MFC

Theresa Greenfield will stand up to Big Pharma and insurance companies.

Drug and insurance companies have too much power in Washington. Theresa's not taking a penny of corporate PAC money from them or anyone else. She'll stand up to Big Pharma and the insurance industry to:

- Lower prescription drug costs
- Expand access to health care
- Protect coverage for people with pre-existing conditions like asthma, diabetes, and cancer

THERESA GREENFIELD
 FOR IOWA

THERESA GREENFIELD. ALWAYS ON OUR SIDE.
 Election Day Is Tuesday, Nov. 3. Vote Early Oct. 5 – Nov. 2.

FOLLOW US ONLINE: [GreenfieldForIowa.com](https://www.GreenfieldForIowa.com) [/GreenfieldForIowa](https://www.facebook.com/GreenfieldForIowa) [@GreenfieldIowa](https://twitter.com/GreenfieldIowa) [@TheresaGreenfield](https://www.instagram.com/TheresaGreenfield)

4
5
6

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Iowa Democratic Party
5561 Fleur Drive
Des Moines, IA 50321

PAID BY THE IOWA DEMOCRATIC PARTY

Mariannette Miller-Meeks' plan would make seniors pay five times more for their health insurance.¹

Check the Facts: 1. [AARP, 5/20/17] 2. [Cedar Rapids Gazette, 10/4/14] 3. [Daily Iowan, 2/27/14]

The Miller-Meeks plan would allow insurance companies to create an "age tax," charging older enrollees five times as much as younger ones.¹

Miller-Meeks also praised a radical Washington plan that would have ended the Medicare guarantee as we know it, threatening healthcare for Iowa seniors.²

Miller-Meeks even supports a plan to eliminate insurance protections for 1.2 million Iowans with pre-existing conditions like asthma, diabetes, and cancer.³

Miller-Meeks is failing the test for public service.

Vote November 3.

The Greenfield mailer includes the Greenfield Committee's campaign logo, which reads "Theresa Greenfield for Iowa." The mailer informs readers that "Election Day is Tuesday, Nov[ember] 3" and tells readers to "Vote Early Oct. 5 – Nov. 2." The Hart mailer does not

1 include any campaign logo but criticizes her opponent, Mariannette Miller-Meeks, on various
 2 healthcare policies and concludes by saying “Miller-Meeks is failing the test for public service.
 3 Vote November 3.” The disclaimers on both mailers state they were “paid for by the Iowa
 4 Democratic Party,” and the return address on the mailers includes the IDP’s street address. The
 5 postage on both mailers is marked “Nonprofit Org. U.S. Postage Paid WFC,” indicating that the
 6 cost for postage was lower than the U.S. Postal Service’s regular price.⁹

7 **B. Video Produced by Accuracy in Media**

8 On September 17, 2020, an undercover reporter with AIM apparently recorded an IDP
 9 event where an employee of IDP, Robert Ward, was supervising volunteers in preparing
 10 campaign mailers.¹⁰ The following is a transcription of the video clip available on YouTube:¹¹

11 UNKNOWN: So what are we doing in there, envelope stuffing or what?
 12

13 ROBERT WARD: Uh, it’s even less than that. Uh, all they require, the FEC requires, is
 14 that volunteers be in some sense involved with the production of the mail. So it would be
 15 putting it on a machine that wraps the stack of mail with a band.
 16

17 UNKNOWN: mm hmm
 18

19 ROBERT WARD: So [unintelligible] you’ll band each piece and they’ll probably have
 20 you kind of pretend to wrap the pallet with a plastic wrap and then they’ll probably have
 21 you pretend to pull up the pallet jack with a, you don’t have to actually do it, but you
 22 know holding it.
 23

24 UNKNOWN: [chuckling] so we’re going to be, this is real work?
 25

26 ROBERT WARD: Oh it’s so real.
 27

28 UNKNOWN: [laughing] I can do it!

⁹ See Special Prices for Nonprofit Mailers, USPS, <https://pe.usps.com/businessmail101?ViewName=NonprofitPrices> (last visited May 26, 2021).

¹⁰ See MUR 7826 Compl. at 2-3; MUR 7862 Compl. at 2.

¹¹ See Accuracy in Media, Accuracy in Media Exposes Possible FEC Violation in Iowa Senate Race, YOUTUBE, <https://www.youtube.com/watch?v=sydNF2Sxpqo> (Oct. 21, 2020) (cited in MUR 7826 Compl. at 2; MUR 7862 Compl. at 1).

BREAK IN VIDEO

UNKNOWN: So it's

ROBERT WARD: [unintelligible] don't always have, I don't think they have that set up, I think they're past that step

UNKNOWN: I gotcha. So it's an FEC thing

ROBERT WARD: Yes, it is. You get a discounted mail rate if you're a federal candidate and volunteers are involved [unintelligible] mail

UNKNOWN: Ah, ok

ROBERT WARD: So you're helping the campaigns pay less for their mail

UNKNOWN: Oh, good

ROBERT WARD: That is the practical thing we are doing

UNKNOWN: Right

BREAK IN VIDEO

ROBERT WARD: [giving a sticker] One of those for starters

UNKNOWN: A ha A ha

ROBERT WARD: [unintelligible] everyone does is I take photos of everyone doing it for, we have to document that all volunteers are doing this

UNKNOWN: Oh fair enough¹²

C. The Complaints and Responses

The Complaints allege that AIM's video demonstrates that IDP had "knowingly staged artificial volunteer sessions" in order to give the appearance of substantial volunteer involvement

¹² MUR 7826 Compl. at 2; MUR 7862 Compl. at 1.

1 in its volunteer mail program.¹³ Based upon the video, the Complaints claim that: (1) the IDP's
 2 mail was already assembled, (2) that volunteers wore stickers simply to give the appearance of
 3 working for different campaigns, and (3) that IDP's mailing event was of short duration.¹⁴

4 Without substantial volunteer involvement, the Complaints argue that IDP's mailings
 5 supporting Greenfield and Hart do not meet the requirements set forth in 11 C.F.R. §§ 100.87(d)
 6 and 100.147, which require volunteers, not commercial or for profit operations, to distribute a
 7 state or local party's materials in order for the activity to be exempted from the Act's definitions
 8 of contribution and expenditure.¹⁵ As a result, the Complaints claim IDP exceeded its direct
 9 contribution limit or exceeded applicable coordinated party expenditure limits for both the
 10 Greenfield and Hart Committees.¹⁶ The Complaints also allege that the IDP failed to include
 11 proper disclaimers on the mailers.¹⁷

12 IDP acknowledges that the Greenfield and Hart campaigns authorized the mailers, but it
 13 argues that the Complaint failed to allege facts supporting the allegations that volunteers were
 14 not substantially involved in the party's mailings.¹⁸ IDP identifies specific tasks it claims
 15 volunteers performed as part of the mail program: "[1] feeding the printed mailers into the
 16 addressing machine; [2] banding the mail pieces in stacks for transport; and [3] operating the
 17 pallet jack to move the mail pieces from the addressing machine."¹⁹ IDP's Response also
 18 includes pictures of volunteers onsite purportedly performing these tasks and several

¹³ MUR 7826 Compl. at 2; MUR 7862 Compl. at 1.

¹⁴ MUR 7826 Compl. at 2-3; MUR 7862 Compl. at 2.

¹⁵ MUR 7826 Compl. at 2-4; MUR 7862 Compl. at 1-3.

¹⁶ MUR 7826 Compl. at 3-4; MUR 7862 Compl. at 3.

¹⁷ MUR 7826 Compl. at 2, 4; MUR 7862 Compl. at 1, 3.

¹⁸ IDP Resp. at 1, 4.

¹⁹ *Id.* at 2.

1 declarations, signed by IDP's mail program supervisor, individual IDP volunteers, and an
2 employee of the printing company IDP contracted for its volunteer mail who was also onsite.

3 While conceding that the video cited by the Complaints features an employee of IDP,
4 Ward, who was responsible for supervising volunteers, IDP contends that the video is only one
5 minute long, featuring a selective snapshot of the events in question. IDP states that the video
6 "skips ahead thirteen seconds omitting Mr. Ward's description of additional volunteer tasks" and
7 provides no evidence that the tasks were not performed.²⁰

8 IDP relies on MUR 5841 (Arizona Democratic Party) to argue that volunteers were
9 substantially involved in its mailing program.²¹ IDP contends that because the Commission
10 found no reason to believe in that matter — where, according to the declaration of the state
11 party's field director volunteers (1) fed each pre-printed mail into an addressing machine;
12 (2) sorted and bundled it into rubber bands; and (3) placed them into bags by zip code²² — the
13 Commission should do the same in this matter given the "substantially analogous facts."²³

14 The Committees' Responses assert that the Complaints contain no facts showing that the
15 Committees were involved in IDP's mailing event.²⁴ They also criticize the undercover method
16 by which the recording was done as well as the "partisan" group responsible for the recording.²⁵

20 *Id.* at 2.

21 *Id.* at 3.

22 Factual & Legal Analysis at 6-7, MUR 5841 (Arizona Democratic Party).

23 IDP Resp. at 2.

24 Greenfield Resp. at 2; Hart Resp. at 2.

25 *See* Greenfield Resp. at 1; Hart Resp. at 1.

1 **III. LEGAL ANALYSIS**

3 **A. The Commission Should Find Reason to Believe that IDP Made, and** 4 **Greenfield and Hart Committees Accepted, Excessive In-Kind Contributions**

6 1. IDP's Mailers Do Not Appear to Qualify for the Volunteer Materials 7 Exemption

9 The Act provides that the cost of certain campaign materials paid for by a state or local
 10 party committee and used in connection with volunteer activities on behalf of the party's
 11 nominee are neither contributions nor expenditures.²⁶ This is known as the "volunteer materials"
 12 exemption, and payments qualifying for this exemption are not subject to the Act's limits on a
 13 state party committee's contributions or expenditures.²⁷ This exemption applies to state party
 14 committee payments for campaign materials such as pins, bumper stickers, handbills, brochures,
 15 posters, party tabloids or newsletters and yard signs.²⁸

16 To qualify for the volunteer materials exemption, a state or local party committee must
 17 satisfy all seven requirements set forth in the Commission regulations.²⁹ Among other
 18 requirements, the materials must be "distributed by volunteers and not by commercial or for-
 19 profit operations."³⁰ The Commission "has considered the totality of volunteer involvement in
 20 evaluating whether a mailer was 'distributed' by volunteers or was commercial 'direct mail,'"

²⁶ 52 U.S.C. § 30101(8)(B)(ix), (9)(B)(viii) exempt from the definition of contribution and expenditure: "the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided, That—* (1) such payments are not for the cost of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;" *see also* 11 C.F.R. §§ 100.87, 100.147.

²⁷ 52 U.S.C. § 30101(8)(B)(ix), (9)(B)(viii); 11 C.F.R. §§ 100.87, 100.147.

²⁸ 11 C.F.R. § 100.87.

²⁹ *Id.* §§ 100.87(a)-(g), 100.147(a)-(g).

³⁰ *Id.* §§ 100.87(d); 100.147(d).

but emphasized that “substantial volunteer involvement” is required for the volunteer materials exemption to apply.³¹

The Commission has considered many enforcement matters involving volunteer activities in connection with state and local party mailings. In certain matters, the Commission has determined that, despite a commercial vendor having printed the mail, volunteer involvement was sufficient because they unpacked the printed mail, affixed return addresses on the mail, sorted the mail by postal route/zip code, bagged, tied, or plastic wrapped the mail, and transported the mail to the post office themselves or loaded the mail onto trucks for delivery.³² In other matters, Commission determined involvement was insufficient because the commercial vendor labeled, sorted, and delivered the mail to the post office.³³ In MUR 5998 (Utah Republican Party), the Commission described the application of the volunteer materials exemption as “complicated” and supported issuance of more detailed guidance.³⁴

³¹ Statement of Reasons, Comm’rs. Lenhard, Mason, von Spakovsky, & Weintraub at 4, n.3, MUR 5837 (Missouri Democratic Committee).

³² *See, e.g.*, Statement of Reasons, Comm’rs. Elliott, Aikens, Josefiak, & Thomas at 3, MUR 2377 (Oregon Republican State Central Committee); Gen. Counsel’s Rpt. at 12-13 & Cert. ¶2 (Aug. 2, 1993), MUR 3248 (New York Democratic Party (approving GCR’s recommendations); Statement of Reasons, Comm’rs. Thomas, Elliot, McDonald, Mason, Sandstrom, & Wold at 5, MUR 4471 (Montana State Democratic Committee); Gen. Counsel’s Rpt. No. 3 at 7-9 & Cert. ¶2 (June 13, 2003), MUR 4851 (Michigan Republican State Committee); Statement of Reasons Comm’rs. Lenhard, Mason, von Spakovsky & Weintraub at 3-4, MUR 5837 (Missouri Democratic State Committee); Factual & Legal Analysis at 3-4, MUR 6899 (Republican Federal Committee of Pennsylvania).

³³ *See, e.g.*, Gen Counsel’s Rpt. at 9-11 & Cert. ¶2 (May 17, 1990), MUR 2288 (Utah Republican Party)(approving OGC’s recommendation); Gen. Counsel’s Rpt. at 13 & Cert.¶1 (Sept. 26, 1990), MUR 2559 (Oregon Republican Party) (finding probable cause); Factual & Legal Analysis at 8-9, MUR 5598 (Utah Republican Party (Federal Account, *et al.*); *see also* First Gen. Counsel’s Report at 9, MUR 7330 (Mia Love, *et al.*) (recommending finding insufficient volunteer involvement because there was “no information” as to what work was performed)

³⁴ *See* Statement of Reasons Comm’rs. Petersen, Hunter, & Weintraub at 4, MUR 5598 (Utah Republican Party (Federal Account, *et al.*)). Multiple policy statements seeking to clarify application of the volunteer materials exemption have since been proposed, but none have garnered the necessary four votes. *See, e.g.*, Proposed Interim Enforcement Policy on “Volunteer Mail” Exemption, Agenda Document No. 10-16 (Mar. 10, 2010) (Draft A); Proposed Interim Enforcement Policy on “Volunteer Mail” Exemption (Mar. 30, 2010) (Draft B); Proposed Interim Enforcement Policy on “Volunteer Materials” Exemption (Mar. 30, 2010) (Draft C); Proposed Interpretation of “Volunteer Mail” Exemption (Apr. 8, , 2010) (Draft D); Proposed Interim Enforcement Policy on “Volunteer Mail

Although the Commission has sought to clarify the legal standard for the volunteer materials exemption, lack of clarity is not an issue in this matter because “pretend” work by volunteers would never qualify for the exemption.³⁵ In the video, Ward can clearly be heard saying “you [undercover reporter] don’t have to actually do it.”³⁶ Finally, the apparently sarcastic characterization of IDP’s volunteer activity as “so real” in the video supports a conclusion that volunteers were doing little more than going through the motions to give the appearance of substantial volunteer involvement.³⁷

And while IDP’s Response relies on sworn declarations to argue that there was, in fact, substantial volunteer involvement, the declarations it provides do not persuasively resolve questions regarding the adequacy of volunteer involvement. For example, the declarations of three IDP volunteers³⁸ state that they helped feed printed mailers into the addressing machine, band the mail pieces in stacks for transport; and operate the pallet jack to move the mail.³⁹ But a declaration from an employee of the commercial printing company said that “[b]ecause modern

Exemption,” Agenda Document No. 17-31-A (July 6, 2017); Proposed Interim Enforcement Policy on “Volunteer Mail Exemption,” Agenda Document No. 18-03-A (Jan. 24, 2018).

³⁵ See Statement of Reasons, Comm’rs. Lenhard, Mason, von Spakovsky, & Weintraub at 4, MUR 5837 (Missouri Democratic Committee) (requiring “substantial volunteer involvement”); see also H.R. REP. NO. 96-422, at 9 (1979), *reprinted in* LEGISLATIVE HISTORY OF THE FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1979 at 193 (1983) (describing that the purpose of the volunteer materials exemption is to “encourage volunteers *to work* for and with local and State political party organizations”) (emphasis added).

³⁶ The video distinguishes this matter from prior volunteer materials matters relied on by IDP, in which the complainants, in the absence of firsthand knowledge, pointed to the wording of the parties’ disclaimers as evidence supporting their allegations. See Complaint, MUR 5841 (Arizona Democratic Party); Complaint, MUR 5837 (Missouri Democratic State Committee); Complaint, MUR 5825 (Pennsylvania Democratic State Committee); Complaint, MUR 5824 (Pennsylvania Democratic State Committee).

³⁷ In two recent enforcement matters, the Commission relied on inculpatory contemporaneous video evidence to support a reason to believe finding. See Factual & Legal Analysis, MURs 7165 and 7196 (Great America PAC) (finding reason to believe on the basis of a surreptitiously recorded video showing an attempted foreign national solicitation)

³⁸ There appear to have been thirteen total volunteers on September 17, 2020. See IDP Resp., Ex. B.

³⁹ IDP Resp., Declarations of Troy Price, Amy Russell, and Cynthia Pollard.

mailing equipment is high speed and complicated and because Volunteers are untrained they perform these tasks on only a small sampling of the actual mail pieces.”⁴⁰

Ward states in the video that he takes photos of the IDP volunteers “to document that all volunteers are [working].”⁴¹ But there are indications that the photos attached to IDP’s Response purporting to show volunteers engaged in work may have been staged. For example, one photo appears to show different volunteers touching the same jack with the same mail in the same location.⁴² And only one volunteer asserts that she was never instructed to act like she was performing a task in order to pose for a picture.⁴³

In short, neither the declarations nor the photos supplied by IDP sufficiently refute the video evidence. Accordingly, at this stage, the available information indicates that IDP’s mail program may not have met the requirements to be exempt as “volunteer materials” under the Commission’s regulation.⁴⁴

⁴⁰ IDP Resp., Declaration of Steve Jones.

⁴¹ *Supra* p. 9.

⁴² *See* IDP Resp., Ex. A.

⁴³ IDP Resp., Declaration of Cynthia Pollard.

⁴⁴ At the preliminary stage of administrative enforcement, the available information does not need to conclusively establish that IDP’s mail program lacked substantial volunteer involvement. *See* Statement of Policy Regarding Commission Act in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) (“Commission ‘reason to believe’ findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, ‘reason to believe’ findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.”).

2. The Available Information Indicates IDP's Disbursements for Mailers Supporting Greenfield and Hart Constituted Excessive Coordinated Party Expenditures and Thus, In-kind Contributions

Although a state party committee, such as IDP, is limited to making a \$5,000 contribution to any candidate under 52 U.S.C. § 30116(a)(2),⁴⁵ it may make coordinated party expenditures in connection with the general election campaign of candidates for federal office in that state and affiliated with that party.⁴⁶ The amounts of such coordinated party expenditures are limited by 52 U.S.C. § 30116(d)(3). For the 2020 general election, the coordinated party expenditure limit for U.S. Senate elections in Iowa was \$251,800 and \$51,900 for each U.S. House election.⁴⁷ Any coordinated party expenditure exceeding these limitations constitutes an in-kind contribution and is therefore subject to the contribution limitations of 52 U.S.C. § 30116(a).⁴⁸

Commission regulations set forth a three-prong test for when a political party's communication is "coordinated" with a candidate, a candidate's authorized committee, or agent thereof, and treated as a coordinated party expenditure or in-kind contribution to the candidate: (1) the communication is paid for by a political party committee or its agent; (2) the communication satisfies at least one of the "content standards" at 11 C.F.R. § 109.37(a)(2)(i)-(iii); and (3) the communication satisfies at least one of the "conduct standards" at 11 C.F.R. §

⁴⁵ 11 C.F.R. § 110.2(b).

⁴⁶ 52 U.S.C. § 30116(d); 11 C.F.R. § 109.32(b).

⁴⁷ 52 U.S.C. § 30116(d); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 85 Fed. Reg. 9772, 9773 (Feb. 20, 2020), https://www.fec.gov/resources/cms-content/documents/fedreg_notice_2020-01.pdf.

⁴⁸ See Factual & Legal Analysis at 2, MUR 6731 (Democratic Executive Committee of Florida) (citing 11 C.F.R. § 100.52(d)(1)).

109.21(d)(1)-(6).⁴⁹ All three prongs must be satisfied for a communication to be considered coordinated under the regulation.

Here, all three prongs of the Commission's party coordinated communication regulation appear to be satisfied. IDP paid for the mailers at issue, satisfying the payment prong. The mailers also appear to satisfy the regulation's content prong.⁵⁰ First, given the amounts IDP paid Wildfire Contact, the mailings appear to meet the definition of "mass mailing" and are therefore "public communication[s]," as defined in 11 C.F.R. § 100.26.⁵¹ Second, the Greenfield and Hart direct mail appears to be "campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing"⁵² and the Greenfield direct mail expressly advocates her election.⁵³ Finally, the mailers refer to clearly identified Senate and House candidates and appear to have been publicly distributed within Greenfield and Hart's respective jurisdictions within 90 days of the election.⁵⁴

⁴⁹ 11 C.F.R. § 109.37(a)(3). The six types of conduct that satisfy the conduct prong are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. *Id.* § 109.21(d)(1)-(6).

⁵⁰ *See id.* § 109.37(a)(2)(i) ("A public communication . . . that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b)"); *id.* § 109.37(a)(2)(ii) ("A public communication . . . that expressly advocates the election or defeat of a clearly identified candidate for Federal office.").

⁵¹ *Id.* § 109.37(a)(i)-(ii). 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. . . [but] shall not include communications over the Internet, except for communications placed for a fee on another person's Web site." *Id.* § 100.26. (emphasis added). A "mass mailing" is defined as "a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period." *Id.* § 100.27.

⁵² *Id.* § 109.37(a)(2)(i). IDP acknowledges that the Committees authorized the respective direct mail pieces. IDP Resp. at 4. Moreover, the Greenfield mailer tells readers to "follow *us* online" followed by Theresa Greenfield's web address, Facebook profile, Twitter handle, and Instagram account. *See supra* p. 6.

⁵³ *See* 11 C.F.R. § 109.37(a)(2)(ii). The Greenfield mailer expressly advocates Theresa Greenfield's election under 11 C.F.R. § 100.22(a) ("Theresa Greenfield for Iowa").

⁵⁴ *See id.* 109.37(a)(2)(iii)(A).

As to the conduct prong, IDP's acknowledgment that the Committees authorized the mailers indicates that one or more of the following conduct standards were satisfied: (1) the mailers were created, produced, or distributed at the request or suggestion of Greenfield, Hart, or the Committees;⁵⁵ (2) Greenfield, Hart, or the Committees were materially involved in decisions regarding, among other things, the content, audience, means, mode, timing, frequency, size or prominence of the mailings;⁵⁶ (3) the mailers were created, produced, or distributed after one or more substantial discussions about the mailings with Greenfield, Hart, or the Committees;⁵⁷ and (4) the mailers were disseminated, distributed, or republished campaign material provided to IDP by the Committees.⁵⁸

Because the mailings appear to meet the Commission's definition of party coordinated communications, IDP's payments for the mailings must, unless exempted, be treated as (1) in-kind contributions to the committees with which they were coordinated or (2) coordinated party expenditures pursuant to coordinated party expenditure authority.⁵⁹ Given that IDP spent more than \$4 million on "exempt mail" for Greenfield and Hart during the 2020 election,⁶⁰ and because the mailers at issue do not appear to qualify for the volunteer materials exemption, it appears that some portion of the total amount IDP spent on direct mail may have exceeded its \$5,000 direct contribution limits and its coordinated party expenditure limits of \$251,800 for Greenfield and \$51,900 for Hart. Accordingly, we recommend that the Commission find reason

⁵⁵ *See id.* §§ 109.21(d)(1), 109.37(a)(3).

⁵⁶ *Id.* §§ 109.21(d)(2), 109.37(a)(3).

⁵⁷ *Id.* §§ 109.21(d)(3), 109.37(a)(3).

⁵⁸ *Id.* §§ 109.21(d)(6), 109.37(a)(3).

⁵⁹ *Id.* § 109.37(b).

⁶⁰ *See supra* p. 5.

to believe that IDP violated 52 U.S.C. § 30116(a) by making excessive contributions to the Committees and that the Committees violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions from IDP.⁶¹

B. The Commission Should Find Reason to Believe that IDP and the Committees Failed to Properly Report IDP's Spending on the Mailers

The Act treats expenditures made “in cooperation, consultation, or concert, with or at the request or suggestion of, a candidate, his [or her] authorized political committees, or their agents” as in-kind contributions to that candidate.⁶² Political committees must report contributions made and received.⁶³ Coordinated party expenditures and in-kind contributions made by political party committees to candidates must be reported by political party committees along with the date, amount, and the recipient candidate committee's name and address.⁶⁴ The recipient candidate committees must report each in-kind contribution received from the party committee and the year-to-date aggregate total.⁶⁵

⁶¹ See Factual & Legal Analysis at 7, MUR 4754 (Heather Wilson for Congress) (finding reason to believe candidate committee knowingly accepted excessive in-kind contributions when state party committee paid for non-exempt mailers in possible coordination with the candidate). Like the Committees in this matter, the candidate committee's response in MUR 4754 claimed it had no involvement in the state committee's mail program. See Heather Wilson for Congress Response, MUR 4754 (Heather Wilson for Congress).

Although the Complaints allege that respondents acted knowingly and willfully, the video appears to have been edited and does not capture the entire discussion between the undercover reporter and the IDP employee, as the respondents contend. Accordingly, we do not recommend that the Commission make a knowing and willful finding at this time. Should we obtain information that indicates that respondents acted knowingly and willfully during the course of the investigation, we will make the appropriate recommendation.

⁶² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 100.52(d)(1) (term “anything of value” in the Act's definition of contribution includes all in-kind contributions).

⁶³ See 52 U.S.C. § 30104(b).

⁶⁴ See *id.* at § 30104(b)(4)(H), (b)(6)(B)(i); 11 C.F.R. § 104.3(b)(1), (3).

⁶⁵ 52 U.S.C. § 30104(b)(2)(C), (b)(3)(B).

1 IDP did not report making any contributions to Theresa Greenfield or Rita Hart for the
 2 2019-2020 election cycle.⁶⁶ However, IDP did disclose millions of dollars in disbursements to
 3 Wildfire Contact for “exempt mail” supporting Greenfield, Hart, and other Democratic
 4 candidates during the 2019-2020 election cycle, including hundreds of thousands of dollars spent
 5 on direct mail supporting Greenfield and Hart in the same month as the alleged conduct here.⁶⁷
 6 Because IDP’s mailers supporting Greenfield and Hart appear to constitute party coordinated
 7 communications, and because IDP appears to have exceeded its coordinated party expenditure
 8 limit, IDP should have reported the excessive amounts as in-kind contributions.⁶⁸ Because IDP
 9 failed to do so, we recommend that the Commission find reason to believe that IDP violated
 10 52 U.S.C. § 30104(b)(4) and (b)(6).

11 The Committees should also have reported the amounts IDP spent on the party
 12 coordinated communications in excess of its contribution and coordinated party expenditure
 13 limits as contributions received from IDP.⁶⁹ Because the Committees did not so report, we
 14 recommend that the Commission find reason to believe that the Committees violated 52 U.S.C.
 15 § 30104(b)(2) and (b)(3).

⁶⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, (last visited May 26, 2021) (reflecting IDP disbursements organized by “recipient committee ID” for 2019-2020 election cycle).

⁶⁷ *See supra* p. 5.

⁶⁸ *See* 11 C.F.R §§ 109.30, 109.32(b), 109.37(b). The amount of in-kind contribution made to each candidate is equal to the amount expended on the mailers in excess of IDP’s \$5,000 contribution limit plus applicable coordinated expenditure limit.

⁶⁹ *See id.* § 109.23(b)(5); 52 U.S.C. § 30104(b); *see also* Factual & Legal Analysis at 7, MUR 4754 (Heather Wilson for Congress).

1 **C. The Commission Should Find Reason to Believe that IDP Failed to Include**
2 **Appropriate Disclaimers in Its Mailings**

3
4 The Act requires political committees to include a disclaimer whenever they make public
5 communications.⁷⁰ A public communication by a state party committee that is authorized by a
6 candidate and qualifies as exempt activity under 11 C.F.R. §110.11(e) must include a disclaimer
7 that complies with 11 C.F.R. §110.11(a), (b), (c)(1) and (c)(2), but the disclaimer does not need
8 to state whether the communication is authorized by a candidate, or any authorized committee or
9 agent of a candidate.⁷¹ A public communication that does not qualify as exempt activity must
10 state whether the communication is authorized by a candidate, or any authorized committee or
11 agent of a candidate.⁷²

12 The mailers at issue include a disclaimer that states they were “paid for by the Iowa
13 Democratic Party” and the mailers include the IDP’s address. The disclaimers do not indicate
14 whether the mailers were authorized by a candidate, authorized committee, or agent of any
15 candidate. Because IDP’s mail program does not appear to satisfy the volunteer materials
16 exemption, IDP was required to include disclaimers stating that Greenfield and Hart had
17 authorized the mailers. Because they failed to do so, we recommend that the Commission find
18 reason to believe IDP violated 52 U.S.C. § 30120(a)(2).

19 **IV. INVESTIGATION**

20
21 We plan to seek information regarding the nature of IDP’s mail program and the level of
22 actual volunteer involvement to determine whether IDP’s reported disbursements for direct mail
23 satisfied the Commission’s criteria for exempt volunteer materials. We also plan to seek

⁷⁰ *See* 52 U.S.C. § 30120.

⁷¹ 11 C.F.R. §110.11(e).

⁷² *Id.*

1 additional information regarding the Complaints' allegations that IDP intentionally staged sham
2 volunteer efforts for the mailings, and if so, whether any Respondent acted knowing and
3 willfully. While we will initially attempt to obtain this information voluntarily, we request that
4 the Commission authorize the use of compulsory process, including the issuance of appropriate
5 interrogatories, document subpoenas, and deposition subpoenas for that purpose.

6 **V. RECOMMENDATIONS**

- 7 1. Find reason to believe that the Iowa Democratic Party and Ken Sagar in his official
8 capacity as treasurer violated 52 U.S.C. § 30116(a)(2)(A) by making excessive in-
9 kind contributions;
10
- 11 2. Find reason to believe that the Iowa Democratic Party and Ken Sagar in his official
12 capacity as treasurer violated 52 U.S.C. § 30104(b)(4)(H) and (b)(6) by failing to
13 report all contributions made;
14
- 15 3. Find reason to believe that Theresa Greenfield for Iowa and Theresa Kehoe, in her
16 official capacity as treasurer violated 52 U.S.C. § 30116(f) by knowingly accepting
17 excessive in-kind contributions;
18
- 19 4. Find reason to believe that Rita Hart for Iowa, and Sheila Spickermann, in her official
20 capacity as treasurer violated 52 U.S.C. § 30116(f) by knowingly accepting excessive
21 in-kind contributions;
22
- 23 5. Find reason to believe that Theresa Greenfield for Iowa and Theresa Kehoe, in her
24 official capacity as treasurer violated 52 U.S.C. § 30104(b)(2)(C), and (b)(3)(B) by
25 failing to report all contributions received;
26
- 27 6. Find reason to believe that Rita Hart for Iowa, and Sheila Spickermann, in her official
28 capacity as treasurer violated 52 U.S.C. § 30104(b)(2)(C), and (b)(3)(B) by failing to
29 report all contributions received;
30
- 31 7. Find reason to believe that the Iowa Democratic Party and Ken Sagar in his official
32 capacity as treasurer violated 52 U.S.C. § 30120(a)(2) by failing to include
33 appropriate disclaimers on its mailers;
34
- 35 8. Approve the Factual and Legal Analyses; and
36
- 37 9. Approve the appropriate letters.
38
39
40

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