



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 16, 2022

VIA EMAIL: ctodd@kellogghansen.com

K.Chris Todd

Kellogg, Hansen, Todd, Figel & Frederick, PLLC

1615 M St. NW, Ste. 400

Washington, DC 20036

RE: MUR 7562, P-MUR 621
Popily, Inc., *et al.*

Dear Mr. Todd:

On February 1, 2019, the Federal Election Commission notified your clients, Jonathon Morgan and Popily, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (“the Act”). A copy of the complaint was forwarded to your clients at the time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on January 27, 2022, voted to dismiss this matter. 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).

If you have any questions, please contact Amanda Andrade, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Jin Lee".

Jin Lee

Acting Assistant General Counsel

Enclosure

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

1
2
3
4
5
6 RESPONDENT: Popily, Inc. d/b/a Yonder MUR 7562
7 f/k/a New Knowledge
8 Jonathon Morgan
9 Investing in US
10

I. INTRODUCTION

12 These matters involve allegations that New Knowledge, a cybersecurity and research
13 firm, its founder Jonathon Morgan, and Investing in US, a progressive political investment fund
14 (collectively, “Respondents”), conducted a social media campaign during the 2017 special
15 election for U.S. Senate in Alabama in violation of the Federal Election Campaign Act of 1971,
16 as amended (the “Act”). Then-Senator Doug Jones, the ultimate victor in the 2017 special
17 election, submitted a Complaint requesting that the Commission investigate what he termed
18 “disinformation tactics” detailed in three news articles: a December 18, 2018, *Washington Post*
19 article, a December 19, 2018, *New York Times* article, and a January 7, 2019, *New York Times*
20 article.¹ The Complaint does not allege specific violations of the Act but instead requests that
21 the Commission open an investigation into the activities in question in order to determine
22 whether they violate the Act.²

23 The *Washington Post* article provides a brief summary of New Knowledge and Morgan’s
24 involvement in a social media campaign in Alabama.³ The December 19, 2018, *New York Times*

¹ Compl., MUR 7562 (Jan. 29, 2019) (“MUR 7562 Compl.”) at 1.

² See MUR 7562 Compl.

³ Craig Timber, *et al.*, *Researcher Whose Firm Wrote Report on Russian Interference Used Questionable Online Tactics During Ala. Senate Race*, WASH. POST (Dec. 18, 2018) [hereinafter Wash. Post Article], https://www.washingtonpost.com/technology/2018/12/19/researcher-affiliated-with-russian-interference-senate-report-used-questionable-online-tactics-during-alabama-senate-race/?utm_term=.7a54d0a2b5f4.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 article chronicled the social media effort in more detail, identifying Investing in US’s
2 involvement; described the social media tactics used, including creating Facebook pages and
3 appealing to conservative Alabamians; outlined contact with Mac Watson, a conservative write-
4 in candidate; and reported that the project had a \$100,000 budget.⁴ The January 7, 2019, *New*
5 *York Times* article unveiled a related social media campaign linked to Investing in US that
6 similarly focused on persuading “business-oriented Republicans” to form a negative view of
7 Republican candidate Roy Moore by linking him to anti-alcohol campaigns.⁵

8 Respondents argue that the Complaint is procedurally deficient, and New Knowledge
9 disputes certain facts contained in the news articles.⁶ Respondents argue that write-in candidate
10 Mac Watson never qualified as a “candidate” under the Act and that, in any event, any putative
11 violations related to him were *de minimis*.⁷ New Knowledge further contends that none of its
12 social media communications contained express advocacy and that much of its social media
13 activity qualifies for the media exemption.⁸ Investing in US additionally contends that its
14 activities are protected by the First Amendment and claims that it did not “create, place, or pay
15 for any of the alleged advertisements.”⁹

16 The available information does not indicate that New Knowledge made prohibited
17 corporate contributions when it provided assistance to Watson and published his campaign

⁴ Scott Shane & Alan Blinder, *Secret Experiment in Alabama Senate Race Imitated Russian Tactics*, N.Y. TIMES (Dec. 19, 2018) [hereinafter Dec. 19, 2018 N.Y. Times Article], <https://www.nytimes.com/2018/12/19/us/alabama-senate-roy-jones-russia.html>.

⁵ Scott Shane & Alan Blinder, *Democrats Faked Online Push to Outlaw Alcohol in Alabama Race*, N.Y. TIMES (Jan. 7, 2019) [hereinafter Jan. 7, 2019 N.Y. Times Article], <https://www.nytimes.com/2019/01/07/us/politics/alabama-senate-facebook-roy-moore.html>.

⁶ New Knowledge Resp. at 1, 3, 5-7.

⁷ *Id.* at 12-13; Investing in US Resp. at 5 & n.21.

⁸ New Knowledge Resp. at 8-12.

⁹ Investing in US Resp. at 4-6 & n.15.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 materials because Watson likely did not qualify as a candidate under the Act. Therefore, the
2 Commission dismisses the allegation that New Knowledge made prohibited in-kind contributions
3 in violation of 52 U.S.C. § 30118(a). There is likewise insufficient information that Respondents
4 violated the Act in connection with the activities associated with their broader social media
5 campaign. The information before the Commission indicates that the payments at issue were
6 neither coordinated communications nor independent expenditures as defined by the Act. For
7 that reason, the Commission also dismisses the allegations that Respondents Investing in US and
8 Jonathon Morgan violated the Act.

9 **II. FACTUAL BACKGROUND**

10 **A. Respondents**

11 Popily, Inc., which does business under the name Yonder and was formerly known as
12 New Knowledge (“New Knowledge”)¹⁰ is a Delaware corporation that provides cybersecurity
13 and research services.¹¹ It states that it was founded to “study the ever-evolving online data
14 ecosystem and provide online reputation-management and data-security services.”¹² Jonathon
15 Morgan is New Knowledge’s founder and chief executive.¹³ New Knowledge authored a
16 comprehensive report on the Russian Federation’s activities in the 2016 U.S. presidential
17 election provided to and released by the Senate Intelligence Committee in late 2018.¹⁴

¹⁰ It appears that Popily, Inc., changed its trade name after submitting its April 2019 Response, which still refers to the company as “New Knowledge.” Because the events at issue in these matters occurred when the company was doing business as New Knowledge and the Complaint and the company’s Response refer to it as New Knowledge, the Commission refers to Popily, Inc. by its former trade name, “New Knowledge,” for ease of reading.

¹¹ Dec. 19, 2018 N.Y. Times Article; Wash. Post Article; Jan. 7, 2019 N.Y. Times Article.

¹² New Knowledge Resp. at 2.

¹³ *Id.*; Wash. Post Article; Dec. 19, 2018 N.Y. Times Article.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 Investing in US appears to be a for-profit investment management fund that finances
2 progressive political causes.¹⁵ It was founded by Dmitri Mehlhorn with the support of LinkedIn
3 founder and billionaire Reid Hoffman.¹⁶

4 **B. Respondents' Social Media Campaigns During the 2017 Special Election in**
5 **Alabama**

6
7 1. Alabama Conservative Politics

8 According to New Knowledge, a firm called American Engagement Technologies
9 (“AET”) engaged it “to conduct a small research project on the ability of ‘counter messaging’ to
10 reduce political polarization.”¹⁷ New Knowledge decided to conduct this study in the context of
11 a real election and selected the 2017 special election in Alabama as one of the few federal
12 elections occurring in 2017.¹⁸ According to the *New York Times* reporting, New Knowledge had
13 a budget of \$100,000 for the project.¹⁹ Reid Hoffman provided the funding for the project.²⁰
14 Hoffman, alongside Investing in US and Mehlhorn, provided funding to AET.²¹ AET, in turn,
15 provided funding to New Knowledge to organize and operate the project.²² New Knowledge
16 does not deny the \$100,000 figure or provide information with respect to its total budget, instead
17 only accounting for \$10,536 that it acknowledges it spent on Facebook advertising.²³

¹⁵ Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article (“Investing in Us . . . finances political operations in support of progressive causes.”).

¹⁶ *See, e.g.*, Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times.

¹⁷ New Knowledge Resp. at 3.

¹⁸ *Id.*

¹⁹ *See, e.g.*, Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article.

²⁰ Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article.

²¹ *See* Jan. 7, 2019 N.Y. Times Article.

²² *See* New Knowledge Resp. at 3; *see also* Dec. 19, 2018 N.Y. Times Article (“The money passed through [AET].”).

²³ New Knowledge Resp. at 2-4, 11, 14.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 New Knowledge created a Facebook page called Alabama Conservative Politics
2 (“ACP”).²⁴ According to the news articles, New Knowledge used ACP to pose as conservative
3 Alabama residents in an attempt to appeal to other conservative voters, divide Republicans,
4 support write-in candidates, undermine Republican candidate Roy Moore, and help Democratic
5 candidate Doug Jones.²⁵

6 According to the *New York Times*, a write-in candidate, Mac Watson, initiated contact
7 with ACP, which periodically engaged with him and ultimately offered Watson an endorsement
8 and advice on appealing to “disenchanted Republican voters.”²⁶ Likewise, the *New York Times*
9 reported that ACP agreed to “boost” Watson’s campaign and served as an advisor and “go-to
10 media contact,” arranging interviews for Watson with the *Montgomery Advertiser* and the
11 *Washington Post*. New Knowledge, in its response, disputes that it arranged media interviews
12 for Watson.²⁷ Watson reportedly said that, around the time ACP began assisting his write-in
13 campaign, he noticed that his number of Twitter followers “suddenly ballooned” from
14 approximately 100 to approximately 10,000.²⁸ In its response, New Knowledge denies that it
15 was responsible for the increase in Watson’s Twitter followers.²⁹

16 New Knowledge concedes spending \$10,536 on Facebook advertising, which it
17 characterizes as promoting “re-posted” news articles, including \$1,078 to promote posts about

²⁴ New Knowledge Resp. at 2-4; *see* Dec. 19, 2018 N.Y. Times Article; Wash. Post Article.

²⁵ *See* Dec. 19, 2018 N.Y. Times Article; Jan. 7, 2019 N.Y. Times Article.

²⁶ Dec. 19, 2018 N.Y. Times Article (reporting also that ACP declined Watson’s request for a meeting).

²⁷ New Knowledge Resp. at 7.

²⁸ Dec. 19, 2018 N.Y. Times Article.

²⁹ New Knowledge Resp. at 6-7.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 Watson.³⁰ Of the \$1,078, New Knowledge specifies that it spent \$395 to promote a “post with a
2 link to an interview with Mac Watson by the Alabama Political Reporter,” \$11 to promote
3 ACP’s Facebook post announcing its endorsement of Watson, and the remainder promoting
4 Watson’s Facebook posts and events.³¹ Morgan stated in one news article that he spent “less
5 than \$10” to purchase a “small amount” of retweets to measure the effects of social media
6 amplification; the article states that Morgan “did not recall the name of the Twitter account for
7 which he bought the retweets but said it was not a campaign or other explicitly political
8 account.”³² In its response, New Knowledge denies using Twitter in any way in connection with
9 its work in Alabama.³³

10 2. Dry Alabama

11 According to the *New York Times*, there were related Facebook and Twitter accounts
12 entitled “Dry Alabama” and “Southern Caller” that likewise sought to undermine Moore’s
13 campaign by tying him to a proposed statewide alcohol ban to divide Republican voters and
14 alienate moderate, business-oriented Republicans.³⁴ The article reports that this campaign had a
15 \$100,000 budget provided through Investing in US as well.³⁵ This campaign received funding
16 only two weeks before the 2017 special election, so its organizers were able to devote about 80
17 percent of that budget — approximately \$80,000 — to Facebook advertisements.³⁶ According to

³⁰ *Id.* at 2-4, 14. New Knowledge includes within the \$10,536 figure approximately \$370 it spent on Instagram advertisements because Facebook owns Instagram and uses the same advertising platform. *See id.* at 3 n.4.

³¹ *See id.* at 4, 14.

³² *See Wash. Post Article.*

³³ New Knowledge Resp. at 6-7.

³⁴ *See Jan. 7, 2019 N.Y. Times Article.*

³⁵ *Id.*

³⁶ *Id.*

MUR 7562
 Popily, Inc., *et al.*
 Factual and Legal Analysis

1 the article, the Dry Alabama project was an effort to “defeat Mr. Moore,” whose organizers
 2 thought “associating Mr. Moore with calls for a statewide alcohol ban would hurt him with
 3 moderate, business-oriented Republicans and assist the Democrat, Doug Jones.”³⁷ It quotes Matt
 4 Osborne, a progressive activist who helped organize and manage the effort, as stating that the
 5 tactics would “help Mr. Jones’s chances [by] zero[ing] in on tensions within the Republican
 6 Party over whether drinking should be permitted in Alabama.”³⁸ The article cites several
 7 examples of Dry Alabama’s promoted communications, which read “Pray for Roy Moore,” “Re-
 8 enact Prohibition and make Alabama dry again!” and “Democrats continue to put party before
 9 country.”³⁹ Osborne also told the *Times* that Dry Alabama and Southern Caller generated 4.6
 10 million views of Facebook posts, 97,000 engagements, and 430,000 video views.⁴⁰

11 III. LEGAL ANALYSIS

12 A. The Commission Dismisses the Allegation That New Knowledge Made 13 Prohibited In-Kind Corporate Contributions to Mac Watson

14
 15 New Knowledge is a Delaware corporation.⁴¹ The Act and Commission regulations
 16 prohibit a corporation from making a contribution to a federal candidate.⁴² The Act defines a
 17 contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See id.*

⁴⁰ *Id.*

⁴¹ New Knowledge Resp. at 2. The Delaware Department of State Division of Corporations lists Popily, Inc. as a corporation registered with the state. *See Entity Search*, DEL. DIVISION OF CORPORATIONS, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last visited Nov. 15, 2019) (search for “Popily” under “Entity Search” or “5709906” under “File Number”).

⁴² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 made by any person for the purpose of influencing any election for Federal office.”⁴³ Under the
2 Act, “the financing by any person of the dissemination, distribution, or republication, in whole or
3 in part, of any broadcast or any written, graphic, or other form of campaign materials prepared
4 by the candidate, his campaign committees, or their authorized agents shall be considered to be
5 an expenditure.”⁴⁴ The republication of campaign materials is also “considered a contribution
6 for the purposes of contribution limitations and reporting responsibilities of the person making
7 the expenditure,”⁴⁵ because the person financing the republication “has provided something of
8 value to the candidate [or] authorized committee.”⁴⁶ The candidate who prepared the campaign
9 material does not receive or accept an in-kind contribution, and is not required to report an
10 expenditure, unless the dissemination, distribution, or republication of campaign materials is a
11 coordinated communication.⁴⁷

12 Here, New Knowledge financed the dissemination of materials produced by Watson’s
13 campaign when it paid to promote Facebook posts from Watson’s campaign page. Specifically,
14 New Knowledge admits that it spent \$672 on “ads shar[ing] Mr. Watson’s Facebook posts and
15 events.”⁴⁸

16 Respondents contend that Watson did not qualify as a “candidate” under the Act and
17 therefore that any activity related to him would not be regulated under the Act.⁴⁹ The Act

⁴³ 52 U.S.C. § 30101(8)(A)(i). “[A]nything of value includes all in-kind contributions” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge.” 11 C.F.R. § 100.52(d)(1); see 52 U.S.C. § 30101(8).

⁴⁴ 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

⁴⁵ 11 C.F.R. § 109.23.

⁴⁶ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003).

⁴⁷ 11 C.F.R. § 109.23(a).

⁴⁸ *See* New Knowledge Resp. at 2-4, 14.

⁴⁹ New Knowledge Resp. at 12-13; Investing in US Resp. at 5 & n.21.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 defines a “candidate” as an individual seeking election to federal office who has received
2 contributions or made expenditures in excess of \$5,000 or authorized another person to receive
3 contributions or make expenditures who has received contributions or made expenditures in
4 excess of \$5,000.⁵⁰ There is not enough information in the record to conclude that Watson
5 crossed this \$5,000 threshold to become a candidate. Watson never filed a Statement of
6 Candidacy or any disclosure reports with the Commission, and he garnered only “a few hundred
7 votes.”⁵¹ Moreover, New Knowledge disputes at least some of the news article’s claims about
8 its services to Watson’s campaign.⁵² Considering all of this information, there is insufficient
9 information to establish Watson became a candidate under the Act. Accordingly, the
10 Commission dismisses the allegation that New Knowledge made prohibited in-kind contributions
11 to Watson’s campaign in violation of 52 U.S.C. § 30118(a).

12 **B. The Commission Dismisses the Allegations Regarding New Knowledge’s**
13 **Other Spending**

14 The broader allegations against New Knowledge appear to be that it spent \$100,000
15 “experiment[ing] with many of the tactics now understood to have influenced the 2016 election”
16 and “orchestrated an elaborate ‘false flag’ operation” against Moore.⁵³ New Knowledge largely
17 denies these allegations.⁵⁴ Even if true, however, the information in the record does not appear
18 to indicate that these actions, when considered in their contexts, constitute violations of the Act.

⁵⁰ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

⁵¹ Dec. 19, 2018 N.Y. Times Article.

⁵² New Knowledge Resp. at 7 (asserting that neither ACP nor New Knowledge aided Watson in getting media interviews or caused his Twitter followers to increase).

⁵³ Dec. 19, 2018 N.Y. Times Article.

⁵⁴ New Knowledge Resp. Morgan told the New York Times that others had worked on the effort and written the internal report on which the story was based. Dec. 19, 2018 N.Y. Times Article.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 Other than the allegations concerning Mac Watson above, it appears that New
2 Knowledge could have been liable for violating the Act in one of three ways. First, given its
3 alleged intent to influence a federal election, New Knowledge could have been liable for failing
4 to register and report as a political committee.⁵⁵ The Act and Commission regulations define a
5 “political committee” as “any committee, club, association, or other group of persons which
6 receives contributions aggregating in excess of \$1,000 during a calendar year or which makes
7 expenditures aggregating in excess of \$1,000 during a calendar year.”⁵⁶ In *Buckley v. Valeo*,⁵⁷
8 the Supreme Court held that defining political committee status “only in terms of [the] amount of
9 annual ‘contributions’ and ‘expenditures’” might be overbroad, reaching “groups engaged purely
10 in issue discussion.”⁵⁸ To cure that infirmity, the Court concluded that the term “political
11 committee” “need only encompass organizations that are under the control of a candidate or the
12 *major purpose of which is the nomination or election of a candidate.*”⁵⁹ Accordingly, under the
13 statute as thus construed, an organization that is not controlled by a candidate must register as a
14 political committee only if it (1) it crosses the \$1,000 threshold and (2) it has as its “major
15 purpose” the nomination or election of federal candidates.

16 First, the current record does not support an inference that New Knowledge was a
17 political committee because, even if the statutory threshold is met, its major purpose appears to
18 be cybersecurity research rather than influencing federal elections. The available information
19 indicates that even if New Knowledge acted with a purpose to influence the 2017 special election

⁵⁵ 52 U.S.C. §§ 30102, 30103, and 30104(a).

⁵⁶ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁵⁷ 424 U.S. 1 (1976) (*per curiam*).

⁵⁸ *Id.* at 79.

⁵⁹ *Id.* (emphasis added).

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 for U.S. Senate in Alabama, that purpose was not its major purpose. The Commission has
2 explained that, in order to determine an entity’s “major purpose,” it undertakes a fact-intensive
3 case-by-case analysis looking at a group’s “overall conduct,” including public statements about
4 its mission, organization documents, the proportion of spending related to “federal campaign
5 activity,” and whether it engaged in any activities that were not campaign related.⁶⁰

6 The Response from New Knowledge describes its founding purpose “to study the ever-
7 evolving online data ecosystem and provide online reputation-management and data-security
8 services.”⁶¹ Significantly, the United States Senate contracted with New Knowledge to study
9 and prepare a white paper on Russian interference in the 2016 election,⁶² and the company’s
10 current website highlights a similar type of work.⁶³ The articles cited by the Complaint
11 characterize New Knowledge as “a small cyber security firm”⁶⁴ and “research firm.”⁶⁵ Although
12 there is no information in the record about what proportion of New Knowledge’s spending was
13 related to the Alabama project, New Knowledge’s characterization of it as a “small research
14 project”⁶⁶ appears to be accurate and there is no basis to assume that the project accounted for a
15 particularly large share of New Knowledge’s activity — the reported budget was \$100,000 and

⁶⁰ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5605 (Feb. 7, 2007).

⁶¹ New Knowledge Resp. at 2.

⁶² See Press Release of Intelligence Committee, “New Reports Shed Light on Internet Research Agency’s Social Media Tactics,” Dec. 17, 2018, <https://www.intelligence.senate.gov/press/new-reports-shed-light-internet-research-agency%E2%80%99s-social-media-tactics>.

⁶³ Yonder (formerly New Knowledge), About Us, <https://www.yonder-ai.com/about-us> (last visited November 16, 2021) (“Yonder is an A.I. software company that discovers the hidden groups who control and amplify online narratives, so companies can navigate an unpredictable, ever-evolving internet with confidence”).

⁶⁴ Dec. 19, 2018 N.Y. Times Article.

⁶⁵ Wash. Post Article.

⁶⁶ New Knowledge Resp. at 3.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 New Knowledge’s successor company appears to have no less than five executive officers.⁶⁷
2 Thus, there is no indication in the Complaint or the Responses, or in the information otherwise
3 available to the Commission, that New Knowledge’s major purpose at this or any other time was
4 to nominate or elect federal candidates.

5 Second, even if New Knowledge were not a political committee, it still could be liable
6 for failing to report independent expenditures. An organization that is not a political committee
7 and makes independent expenditures in an aggregate amount or value in excess of \$250 during a
8 calendar year must file a statement with the Commission.⁶⁸ An “independent expenditure” is an
9 expenditure “for a communication expressly advocating the election or defeat of a clearly
10 identified candidate” that is not coordinated with the candidate or the candidate’s committee.⁶⁹
11 The term “expressly advocating” means any communication that: (1) uses phrases or words such
12 as “vote for,” “elect,” “defeat,” etc., “which in context can have no other reasonable meaning
13 than to urge the election or defeat of one or more clearly identified candidate(s)”; or (2) “[w]hen
14 taken as a whole and with limited reference to external events, such as the proximity to the
15 election, could only be interpreted by a reasonable person as containing advocacy of the election
16 or defeat of one or more clearly identified candidate(s).”⁷⁰

17 The information before the Commission does not indicate that New Knowledge engaged
18 in any express advocacy or its functional equivalent beyond its endorsement of Watson, who as
19 noted above, does not appear to have met the Act’s definition of a “candidate.” The *New York*

⁶⁷ Yonder (formerly New Knowledge), About Us, <https://www.yonder-ai.com/about-us>.

⁶⁸ 52 U.S.C. § 30104(c)(1); *see also* 11 C.F.R. §§ 109.10, 114.10(b) (independent expenditure reporting requirements for corporations and labor organizations).

⁶⁹ 11 C.F.R. § 100.16(a) (definition of independent expenditure); *see also* 52 U.S.C. § 30101(17) (same).

⁷⁰ 11 C.F.R. § 100.22(a)-(b).

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 *Times* article concerning New Knowledge does not contain any examples of language that ACP
2 posted. In addition, the ACP Facebook Page no longer appears to exist, and the Commission
3 was unable to find any archived versions of it. As for the allegation that New Knowledge made
4 it appear that numerous Russian Twitter accounts supported Moore,⁷¹ that action would not
5 contain express advocacy as defined in the Act, and the available record does not reflect that it
6 did. For these reasons, there does not appear to be a basis upon which the Commission could
7 find reason to believe that New Knowledge made unreported independent expenditures.

8 Third, even if New Knowledge were not a political committee and did not make any
9 independent expenditures, it could be liable for any coordinated communications or
10 expenditures. Prohibited in-kind corporate contributions include, *inter alia*, coordinated
11 communications, subject to a three-part test codified at 11 C.F.R. § 109.21, and coordinated
12 expenditures, defined at 11 C.F.R. § 109.20(a). Under the Commission's coordinated
13 communications regulation, the communication at issue must: (1) be paid for by a third party;
14 (2) satisfy a "content" standard; and (3) satisfy a "conduct" standard.⁷² All three prongs are
15 required in order for the communication to be considered a coordinated communication and
16 treated as an in-kind contribution under the regulations.⁷³

⁷¹ See *supra* note 28 and accompanying text.

⁷² 11 C.F.R. § 109.21. The content standards include: (1) a communication that is an electioneering communication; (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; (4) a public communication that, in relevant part, refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated 90 days or fewer before a primary, general, or special election, and is directed to voters in the jurisdiction of the clearly identified candidate; and (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c).

The conduct standards include: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; and (5) former employee or independent contractor. *Id.* § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. See *id.* § 109.21(d)(6).

⁷³ *Id.* § 109.21(a).

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

1 There is no information before the Commission indicating that New Knowledge engaged
2 in coordinated communications or expenditures. There is no information suggesting that the
3 effort was coordinated with Moore’s Democratic opponent, Doug Jones. Jones filed the instant
4 Complaint against New Knowledge, and the *New York Times* article in the Complaint notes that
5 “[t]here is no evidence that Mr. Jones sanctioned or was even aware of the social media
6 project.”⁷⁴

7 Accordingly, the Commission dismisses the allegation that New Knowledge violated the
8 Act by making disbursements for the broader social media campaign concerning the 2017 special
9 election for U.S. Senate in Alabama.

10 **C. The Commission Dismisses the Allegations Regarding Jonathon Morgan and**
11 **Investing in US**

12 Despite the allegations that Investing in US may have spent \$200,000 for projects
13 intended to influence a federal election, there is not enough information in the record to indicate
14 that Investing in US violated the Act. The news articles provide little explanation about
15 Investing in US or its relationship with the projects it allegedly funded. Moreover, even if the
16 Complaint’s news article about the “Dry Alabama” initiative could be read to implicate Investing
17 in US, there is no information suggesting it violated the Act.⁷⁵ Likewise, the allegation
18 regarding Jonathon Morgan — that he spent “less than \$10” on unspecified retweets⁷⁶ — does
19 not appear on its face to suggest that Morgan violated the Act. For these reasons, the

⁷⁴ Dec. 19, 2018 N.Y. Times Article.

⁷⁵ Much like the allegations against New Knowledge, the information before the Commission does not make a prima facie case for any violation of the Act. *See* Jan. 7, 2019 N.Y. Times Article.

⁷⁶ Wash. Post Article.

MUR 7562
Popily, Inc., *et al.*
Factual and Legal Analysis

- 1 Commission dismisses the allegations that Jonathon Morgan and Investing in US violated the
- 2 Act.