

**REPORT TO THE SENATE ETHICS COMMITTEE
ON THE INVESTIGATION OF
STATE SENATOR KENT SORENSON**

October 2, 2013

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I. INTRODUCTION.

The Chief Justice of the Iowa Supreme Court appointed the undersigned to investigate two counts of a complaint (the “Complaint”) brought before the Iowa Senate Ethics Committee (the “Committee”) against State Senator Kent Sorenson. The Complaint arose from the Senator’s involvement with the campaign to elect Representative Michele Bachmann as President of the United States. The Complaint alleged that Senator Sorenson committed three separate instances of wrongdoing that violated the Senate Code of Ethics (the “Code”). As independent special counsel to the Committee, the undersigned’s charge, pursuant to Iowa Code §§ 68B.31(7)(a) and 68B.31A and Rule 18(g)(4) of the Code, is to determine whether there is probable cause to believe that Senator Sorenson committed a violation of the Code based on two of those instances. (The Committee summarily dismissed the third instance.)

Following an investigation, the undersigned has determined that there is not probable cause to believe that Senator Sorenson violated the Code regarding Count I of the Complaint alleging the theft of a list from a campaign coworker’s computer. Regarding Count II of the Complaint, however, the undersigned has determined that there is probable cause to believe that Senator Sorenson violated the Code with regard to his accepting compensation from committees associated with Representative Bachmann in

exchange for his work on the Bachmann campaign. This is the undersigned's report of those findings.¹

II. PROCEDURAL HISTORY.

On January 28, 2013, Peter Waldron, formerly a staff member of the Iowa campaign to elect Representative Michele Bachmann as President of the United States, filed the Complaint against Senator Kent Sorenson. The Complaint alleged that Senator Sorenson violated the Senate Code of Ethics in three respects. First, it alleged that Senator Sorenson violated Rule 16(a) of the Code by committing the crime of theft. The alleged theft was of an electronic database of names from a computer belonging to a campaign staff person who worked at the Bachmann campaign office in Urbandale, Iowa ("Count I"). Second, the Complaint alleged that Senator Sorenson violated Rule 6 of the Code by accepting compensation from the Bachmann For President ("BFP") organization and/or a political action committee associated with Representative Bachmann called MichelePAC. The Complaint further alleged that Senator Sorenson conspired with others to conceal the compensation he was receiving for serving as the Iowa State Chair for Representative Bachmann's campaign ("Count II"). Third, the Complaint alleged that Senator Sorenson

¹ Throughout this report, the independent special counsel is referred to as "we" and "our," even though the special counsel is an individual, Mark E. Weinhardt. Our use of the plural pronoun/adjective denotes the fact that Mr. Weinhardt's firm, Weinhardt & Logan, P.C., has worked on this matter as a team effort, and the conclusions of this report are the conclusions of the attorneys working on this investigation.

violated Rule 11 of the Code by failing to make a timely disclosure of a business in which he was involved (“Count III”).²

On February 8, 2013, Senator Sorenson filed a response to the Complaint denying all of its allegations (the “Initial Response”).³

On February 13, 2013, the Committee met and reviewed the Complaint. The Committee determined under Rule 18(g)(2) of the Code that Count III of the Complaint failed to state a claim and would be dismissed. With regard to the other two counts of the Complaint, the Committee determined that it would seek additional information, from either the Complainant or other sources, before the Committee made a determination about how to proceed.

The Committee met again on April 17, 2013 and again deferred action on Counts I and II until additional information was gathered. On April 25, 2013, the Committee received an additional affidavit from a witness in support of the Complaint.⁴ Shortly thereafter, the Committee received an additional responsive statement and four affidavits from Senator Sorenson (the “Supplemental Response”).⁵

The Committee voted on May 1, 2013, pursuant to Iowa Code § 68B.31(7)(a) and Rule 18(g)(4) of the Code, to request that the Chief Justice of the Iowa Supreme Court

² An Appendix of exhibits is submitted with this report. Wherever an “Exhibit” is referenced, it is an Exhibit to the Appendix. A copy of the Complaint is Exhibit 1.

³ Senator Sorenson’s Initial Response is Exhibit 2.

⁴ The affidavit is Exhibit 3.

⁵ Senator Sorenson’s Supplemental Response and the affidavits submitted with it are Exhibit 4.

appoint an independent special counsel to investigate the allegations contained in Counts I and II of the Complaint. On May 10, 2013, the Chief Justice appointed the undersigned as independent special counsel, and thereafter the undersigned commenced an investigation.

III. SUMMARY OF CONCLUSIONS.

Count I of the Complaint alleges that Senator Sorenson committed the crime of theft by taking a politically valuable electronic database of homeschooler names and contact information from the computer of a fellow campaign worker, Barbara Heki, at BFP's Urbandale office in late 2011. It does appear likely that Christopher ("Chris") Dorr in fact removed a database of names from Ms. Heki's computer without Ms. Heki's knowledge or authorization. BFP sent emails to the names on that list to promote Representative Bachmann's candidacy. We have found no evidence, however, that Senator Sorenson personally removed the list of names from Ms. Heki's computer. Chris Dorr was another BFP campaign worker, a friend of Senator Sorenson, and Senator Sorenson's Senate clerk. Mr. Dorr has given multiple statements claiming responsibility for taking the list from Ms. Heki's computer but contending that he did so under circumstances that he believed were innocent. He gave one of those statements to us.

While there is no evidence that Senator Sorenson directly removed the list from Ms. Heki's computer, there is evidence, mostly in the nature of statements by or attributed to Senator Sorenson, that suggests that Senator Sorenson was involved in a criminal conspiracy with one or more other persons concerning the list. The objects of the conspiracy were to remove the list from Ms. Heki's computer without her knowledge

and to make use of the list to BFP's and Senator Sorenson's own advantage while knowing that the list had been stolen. Senator Sorenson in his written responses to the Complaint disputes the clearest statement that is attributed to him. Assuming Mr. Dorr took the list, a fact we cannot disprove, the evidence is conflicting whether he did so under circumstances he believed were innocent. Evidence regarding the date the list was taken and what Mr. Dorr did with the list is also conflicting.

A review of all of the evidence suggests that Senator Sorenson and Chris Dorr may have been involved in a criminal conspiracy to take the NICHE list from Ms. Heki's computer and use it for the Bachmann campaign's and Senator Sorenson's personal advantage. Evidence suggesting a conclusion, however, does not prove that conclusion. Here it does not meet the level of "clear and convincing" evidence required for a finding of probable cause that Senator Sorenson committed a crime in connection with the Heki list. Thus the undersigned finds that there is not probable cause to proceed on Count I.

Count II of the Complaint alleges that Senator Sorenson violated Rule 6 of the Code by accepting personal compensation from BFP and from a political action committee ("PAC") associated with Representative Bachmann, MichelePAC, in exchange for serving as the Bachmann campaign's Iowa State Chair. The Complaint further alleges that Senator Sorenson conspired with others to conceal that compensation. In connection with this allegation, we find there is probable cause to believe that Senator Sorenson violated the Senate Code of Ethics in two respects.

It is manifestly clear that in early 2011, Senator Sorenson negotiated for and obtained compensation—that ultimately reached \$7,500 per month—from Bachmann

campaign entities in exchange for his support of Representative Bachmann and service as the campaign's Iowa State Chair. Senator Sorenson and others structured the compensation through a circuitous route. MichelePAC, and later BFP, paid money to an entity in Colorado known as C&M Strategies, Inc. ("C&M") that had contracted to provide services to MichelePAC and BFP. C&M in turn paid the money to a corporation wholly owned by Senator Sorenson, Grassroots Strategy, Inc. ("GSI"). Senator Sorenson took the bulk of the money that C&M paid to GSI as income for himself.

During the course of these events, Senator Sorenson made statements to various people acknowledging that he was receiving compensation in exchange for his support for and work for Representative Bachmann. He also made—including in an email attached as an exhibit here—statements showing that he believed that Senate Ethics Rules in fact prohibited him from receiving such compensation.

As further evidence of Senator Sorenson's belief that he was being compensated for work on the Bachmann campaign, we have considered his behavior regarding the Ron Paul for President campaign, to which Senator Sorenson bolted from the Bachmann campaign on December 28, 2011, shortly before the Iowa caucuses. Senator Sorenson discussed with others his possible defection to the Ron Paul campaign before he made that move and, in some cases, invoked money as a reason to make the switch. Shortly before he went to the Ron Paul campaign, Senator Sorenson received a \$25,000 check payable to GSI from a senior official with the Ron Paul campaign. He did not cash it. After the caucuses, however, GSI received a series of wire transfers from an entity in Maryland called ICT, Inc. totaling \$73,000, an amount that would equal \$25,000 plus

\$8,000 per month for six months. We have not been able to connect those transfers directly to the Ron Paul campaign, but the circumstances surrounding them are deeply suspicious.

For his work on the Bachmann campaign, Senator Sorenson received money from two entities: MichelePAC and BFP. We believe it was a plain violation of Senate Ethics Rule 6 for Senator Sorenson to accept compensation from MichelePAC to work on Representative Bachmann's behalf. Senator Sorenson's compensation for his work on the Bachmann campaign originated with MichelePAC in early 2011, before BFP had been formed, and likely did so again in late 2011, when BFP ran out of money. At least as to the earlier time frame, the evidence is clear that Senator Sorenson knew that his compensation was coming from MichelePAC.

While Senator Sorenson's compensation from a PAC such as MichelePAC clearly violated Rule 6, his compensation from BFP presents a question of interpretation of Rule 6. Specifically, there is a question whether compensation from a presidential candidate's committee violates Rule 6. We will describe arguments on both sides of this question, but we believe that the Committee will need to decide the interpretation of its own rule. If accepting compensation from a presidential campaign committee violates Rule 6, however, it is clear that Senator Sorenson violated Rule 6.

Apart from Rule 6, we find that there is probable cause under Count II to believe that Senator Sorenson violated Rule 16(a) of the Code, which makes a serious violation of the criminal law a violation of the Code. In his two written responses to the Complaint that he submitted to the Committee, Senator Sorenson categorically denied being

compensated for his role in the Bachmann campaign. We find probable cause to believe that those statements were false and that Senator Sorenson knew they were false when he made them. Because he was a public employee at the time he made the statements, and because the statements are contained in public records, we find there is probable cause to believe that Senator Sorenson's statements constitute the crime of felonious misconduct in office in violation of Iowa Code § 721.1.

IV. INVESTIGATION ACTIVITY.

In the course of the investigation we have reviewed in detail the material submitted to the Committee by the Complainant, Peter Waldron, and by Senator Sorenson. In addition, we have obtained and reviewed over 5,500 pages of documents from a variety of sources, including Senator Sorenson himself, a bank in Indianola where he maintains his business account, the Urbandale Police Department,⁶ the Office of Congressional Ethics, the Bachmann For President campaign, the litigants in a lawsuit concerning the Heki list, and a number of witnesses. In some cases documents were shared with us voluntarily; in other cases we obtained them through subpoenas.

As part of the investigation, we interviewed the following witnesses: David Cohen, Chris Dorr, Tony Eastman, Wesley Enos, Susan Geddes, Robert Heckman, Barbara Heki, Cherie Johnson, Jolanda Kesari, Mike Marshall, Andrew Parrish, David Polyansky, Peter Waldron, and Eric Woolson.

⁶ The Urbandale Police Department complied with a subpoena issued by the undersigned investigator. In deference to the confidentiality of the department's ongoing investigation, we have not publicly disclosed documents received pursuant to this subpoena.

We sought, but were unable to obtain, interviews of several other witnesses. Of note, Guy Short, the principal of C&M and a central player in this matter, refused interview requests through his counsel on more than one occasion, although he did produce documents to us regarding Senator Sorenson. Representative Bachmann is, candidly, not a critical witness in this matter, but we did seek an interview of her. She initially refused through counsel to participate in an interview but later reconsidered that refusal. We had not received a definitive answer from counsel when this report went to press.

There were also witnesses connected with the Bachmann campaign whom we elected not to interview because they had previously been interviewed by the Office of Congressional Ethics and/or the Urbandale Police Department during their investigations, and we determined that additional interviews of the witnesses were unnecessary.

In the course of the investigation, pursuant to a subpoena, we commenced a deposition of Senator Sorenson. Though the deposition had been scheduled for a time span of five and one-half hours on the day it started, Senator Sorenson left after approximately two hours, citing a conflicting real estate business engagement.⁷ The parties agreed to continue Senator Sorenson's deposition four days later. On the appointed day, Senator Sorenson appeared, but he refused to participate in the deposition any further on the basis that he was asserting his right against self-incrimination under the

⁷ Exhibit 5 (Deposition of Kent Sorenson ("Sorenson Dep.") Vol. I) at 74-75.

Fifth Amendment.⁸ Similarly, Senator Sorenson refused to produce his legislative computer, iPad and iPhone for inspection by a forensic computer expert based upon the Fifth Amendment.⁹

Our investigation also included an extensive review of public and media sources regarding the history of the Michele Bachmann campaign and Senator Sorenson's involvement in it, Senator Sorenson's departure from that campaign to the Ron Paul campaign, and publicly available sources regarding Senator Sorenson's background. We also researched a number of legal questions relevant to the investigation, and the results of much of that research are present in this report.

V. WHAT DOES "PROBABLE CAUSE" MEAN?

As noted at the outset of this report, the undersigned's task is "to determine whether there is probable cause to believe that" Senator Sorenson violated the Code "and whether an evidentiary hearing on the complaint should be held." Iowa Code § 68B.31(7)(a). As an investigation such as this one under Iowa Code Chapter 68B is relatively novel, a preliminary question we needed to answer was: How much evidence is enough to constitute "probable cause"?

The term "probable cause" is commonly used in the criminal law as, for example, the yardstick to determine whether a police officer has enough evidence to make an arrest or whether there is enough evidence to justify a search notwithstanding a person's Fourth

⁸ Exhibit 6 (Sorenson Dep. Vol. II) at 95-102.

⁹ *Id.* at 102-103, 106.

Amendment rights.¹⁰ We believe, however, that the standard of proof required for a finding of “probable cause” in this investigation is higher than that required for a criminal arrest or a criminal search.

If a senator is brought to a hearing before the Senate Ethics Committee, any violation of the Code must be proven at that hearing by “clear and convincing evidence.” Iowa Code § 68B.31(8); Senate Code of Ethics, Rule 19(e). “Clear and convincing evidence” is an intermediate burden of proof less stringent than the criminal standard of proof beyond a reasonable doubt, “but more burdensome than a preponderance of the evidence” required in civil cases. *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013). Clear and convincing evidence “means that there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence.” *Id.* (quoting *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998)).

Under the governing statute, an independent special counsel such as the undersigned is not asked simply to determine whether there is enough evidence to justify commencing a proceeding, such as with an arrest in a criminal case. Rather, the special

¹⁰ See, e.g., *State v. Lewis*, 675 N.W.2d 516, 525 (Iowa 2004) (stating in the context of criminal arrests, “Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it.”) (quoting *State v. Bumpus*, 459 N.W.2d 619, 624 (Iowa 1990)); *State v. Everett*, 214 N.W.2d 214, 217 (Iowa 1974) (stating in the context of a challenge to search warrant, “Probable cause exists where the facts and circumstances presented to the judicial officer are sufficient in themselves to justify the belief of a man of reasonable caution that an offense has been or is being committed.”).

counsel is to determine whether there is sufficient evidence to prove the violation at the subsequent hearing:

If, after investigation, the independent special counsel determines evidence exists which, if proven, would support a finding of a violation of this Chapter, a finding of probable cause shall be made and reported to the Ethics Committee, and a hearing shall be ordered by the Ethics Committee as provided in § 68B.31.

Iowa Code § 68B.31A. Accordingly, we conclude that the undersigned should only find “probable cause” if we believe there is sufficient evidence to prove a violation by Senator Sorenson under the “clear and convincing evidence” standard described above. We have evaluated the evidence accordingly.

VI. COUNT I: THE ALLEGED THEFT FROM A COMPUTER.

A. Summary of the Allegation.

Count I of the Complaint makes its allegation by reference to an attached affidavit. The substantive part of the allegation states as follows:

[A]n Affidavit, dated September 4, 2012, given by Bachmann For President (“BFP”) Iowa Campaign Manager Eric Woolson discloses that Senator Sorenson admitted on or about November 10, 2011 [to] taking a private home school list from Mrs. Barbara Heki’s private laptop computer in her private office. Senator Sorenson had neither the authority nor permission from Mrs. Heki to remove this private list from her personal laptop.¹¹

The Complaint alleges that this is a violation of Senate Ethics Rule 16(a) and quotes that portion of the Rule providing that “a violation of criminal law ... if the allegation constitutes a serious misdemeanor or greater ...” is a violation of the Code of

¹¹ Exhibit 1 at 2.

Ethics.¹² The implication, not explicitly stated, is that the “taking” of the homeschool list was a theft of an item having a monetary value between \$1,000 and \$10,000 and thus constituting at least a serious misdemeanor. *See* Iowa Code § 714.2(2).

The affidavit referenced in the Complaint and attached to it does not in fact state that Senator Sorenson personally took the list from Ms. Heki’s computer but instead attributes statements to him suggesting that he was part of a group that did so.

B. Summary of Senator Sorenson’s Response.

Senator Sorenson’s Initial Response to the Complaint did not directly address the Complaint’s allegation that he participated in taking a list from Ms. Heki’s computer. The response avoided a direct answer to the allegation on the basis of a then-pending civil lawsuit by the Heki family dealing with the same subject matter. In pertinent part, Senator Sorenson’s response stated:

While there is a great deal of information I could provide to the contrary of the claims laid out in this complaint, under advice of counsel, I will save that for my civil case. Needless to say the statements in Mr. Woolson’s affidavit will be impeached aggressively.¹³

Senator Sorenson’s Supplemental Response, however, directly and categorically denied the allegations of the Complaint: “I never took, participated in, or directed the taking of any list from Ms. Heki’s computer or the computer of anyone.”¹⁴

¹² *Id.*

¹³ Exhibit 2 at 2.

¹⁴ Exhibit 4 at 1.

C. Factual Findings.

1. The Players.

Several individuals involved with the Bachmann campaign need to be identified in order to understand the issues surrounding the taking of the list.

a. Network of Iowa Christian Home Educators.

Network of Iowa Christian Home Educators (“NICHE”) is the largest statewide homeschool organization in Iowa.¹⁵ It maintains a database of homeschoolers and people who are interested in homeschooling.¹⁶ NICHE is protective of the privacy of its members and its database of names.¹⁷ It was well known among the Bachmann campaign’s Iowa office that the NICHE database was confidential and “off limits” to the campaign.¹⁸ The BFP campaign sent emails to the database on November 10, 2011.¹⁹

b. Barbara Heki.

Barbara Heki was employed by the Bachmann campaign as the Home School Coalition Director.²⁰ She and her husband were active in the home school community

¹⁵ Exhibit 52 (www.home-school.com/groups/IA.html).

¹⁶ *Id.*; Exhibit 14 (Heki Interview) at 2.

¹⁷ *See, e.g.*, Exhibit 54 (www.homeschool/iowa.org) (“*Our database is private and confidential.*”)

¹⁸ Exhibit 21 (Woolson Interview) at 2; Exhibit 11 (Enos Interview) at 3; Exhibit 14 (Heki Interview) at 2.

¹⁹ Exhibit 1 (Complaint-Woolson Affidavit) at 7; Exhibit 21 (Woolson Interview) at 2-3.

²⁰ Exhibit 14 (Heki Interview) at 2.

and were members of NICHE's Board of Directors.²¹ As a board member, Ms. Heki had a copy of NICHE's database.²² Senator Sorenson and Wes Enos interviewed Ms. Heki for her homeschool outreach position with the Bachmann campaign.²³ Mr. Enos and Ms. Heki recall discussing the fact that Ms. Heki possessed the NICHE list during her interview.²⁴ Mr. Enos and Ms. Heki also recall Ms. Heki explaining during her interview with Mr. Sorenson and Mr. Enos that the NICHE database was confidential such that she could not disclose it to the campaign or use it for campaign purposes.²⁵

Ms. Heki blamed herself for weeks after the Bachmann campaign sent emails to the NICHE homeschool list, thinking perhaps she accidentally sent the list to someone.²⁶ Staffers describe her as visibly upset at the campaign office.²⁷

c. Eric Woolson.

Eric Woolson began working on the Bachmann campaign in mid-September 2011 as a communications consultant.²⁸ He became Campaign Manager in late October and

²¹ *Id.*

²² *Id.*

²³ Exhibit 11 (Enos Interview) at 3; Exhibit 14 (Heki Interview) at 3.

²⁴ *Id.*

²⁵ *Id.* In a 2012 interview by the Urbandale Police Department, Senator Sorenson disclaimed knowledge of the fact that Ms. Heki had access to the NICHE list.

²⁶ Exhibit 20 (Waldron Interview) at 5-6.

²⁷ Exhibit 21 (Woolson Interview) at 4,5; Exhibit 20 (Waldron Interview) at 5-6.

²⁸ Exhibit 1 (Complaint-Woolson Affidavit) at 7; Exhibit 21 (Woolson Interview) at 1.

remained in that position through the caucuses.²⁹ Mr. Woolson previously worked with Ms. Heki on the 2008 Huckabee presidential campaign.³⁰ Mr. Woolson knew from his earlier work with Ms. Heki that she had a copy of the NICHE list but that the list was proprietary such that she could not disclose it to the campaign.³¹

Mr. Woolson submitted an affidavit during the course of the civil litigation regarding the taking of the list. The pertinent parts of Mr. Woolson's September 4, 2012 affidavit are as follows:

2. ... Nov. 10, 2011 - was the first day I heard anything about this situation.
3. I went to Sen. Kent Sorenson's office to tell him because he was the campaign's state chair.
4. Kent smiled at me and said, "Do you want to know how it happened?"
5. I said, "No," and tried to back out of his office.
6. Kent said, "We took it." Kent said they weren't getting anything from Barb (Heki), so when she stepped out of the office they took it.
7. Kent said, "We stood watch."
8. I went back to my office and immediately called Guy Short, the campaign's national political director, and told him we have a serious problem and we need to make this right. I told him that Kent Sorenson had said he and others took the database from Barb's computer.
9. Guy said he'd take care of it.

...

²⁹ Exhibit 1 (Complaint-Woolson Affidavit) at 7.

³⁰ *Id.*

³¹ *Id.*

11. That same evening or the next, Wes Enos, the Iowa Campaign Deputy Manager, told me that I was going to be getting a phone call from Bill McGinley, the campaign's corporate lawyer. I did.³²

Senator Sorenson did not tell Mr. Woolson who else stood watch with him during the taking of the NICHE list. Mr. Woolson reportedly immediately recognized the serious problem at hand and sought to report it up the chain-of-command within the campaign.³³ Mr. Woolson reported feeling conflicted by the confidentiality warning he received from the Bachmann campaign's legal counsel not to disclose what he knew and by his personal desire to tell Ms. Heki what Senator Sorenson had told him.³⁴

d. Christopher Dorr.

Chris Dorr was a paid member of the field staff of the Bachmann campaign. Senator Sorenson hired him and negotiated his salary in that regard.³⁵ Mr. Dorr was Senator Sorenson's legislative clerk during the 2011, 2012 and 2013 legislative sessions.³⁶ He assisted with Senator Sorenson's 2010 campaign and "didn't have anything [else] going on" when Sorenson won the election and needed a legislative clerk.³⁷ Mr. Dorr is a friend of Senator Sorenson.³⁸ Mr. Dorr and Tony Eastman

³² Exhibit 1 (Complaint-Woolson Affidavit) at 7.

³³ Exhibit 21 (Woolson Interview) at 3-4.

³⁴ *Id.* at 4.

³⁵ Exhibit 25 (Email between Sorenson, Short, and Parrish, May 17, 2011); Exhibit 3 (Parrish Affidavit) at 7.

³⁶ Exhibit 9 (Dorr Interview) at 2.

³⁷ *Id.* As Mr. Dorr explained during his interview, he comes from a "politically active family" in northwest Iowa. He was homeschooled and "believes" he graduated

(described below) are also friends.³⁹ Mr. Dorr, Senator Sorenson and Tony Eastman hunt deer together, for example.⁴⁰

e. Wesley Enos.

Wesley (“Wes”) Enos was the Deputy Campaign Manager of the Bachman campaign. Senator Sorenson hired him to work for the campaign.⁴¹ Having first met Senator Sorenson during Sorenson’s campaign for the 2008 Iowa House seat, Mr. Enos considered himself an “informal advisor” to Senator Sorenson. He worked with Ms. Heki on Bob Vander Plaats’ 2010 campaign for Governor of Iowa. Like Mr. Woolson, Mr. Enos knew from his prior work with Ms. Heki that she had a copy of the NICHE list, but that the list was proprietary such that Ms. Heki would not use it for the campaign. Mr. Enos and Senator Sorenson interviewed Ms. Heki for her position with the BFP campaign.⁴² Like Ms. Heki, Mr. Enos recalls discussing Ms. Heki’s possession of the list and the fact that the list was proprietary during her interview.⁴³ Mr. Enos provided an

from high school around 2001. From 2001 to 2010, he worked a variety of part-time and seasonal construction and harvest jobs.

³⁸ *Id.*

³⁹ Eastman Interview by Urbandale Police Department, dated October 25, 2012.

⁴⁰ *Id.*; Exhibit 10 (Eastman Interview) at 2.

⁴¹ Exhibit 3 (Parrish Affidavit) at 7.

⁴² Exhibit 11 (Enos Interview) at 3.

⁴³ *Id.*

affidavit to the Senate Ethics Committee supporting Senator Sorenson's denial of compensation from the Bachmann campaign.⁴⁴

f. Tony Eastman.

Tony Eastman was also a field officer for the Bachmann campaign.⁴⁵ Senator Sorenson hired him to work for the campaign. Mr. Eastman first met Senator Sorenson when the Eastman and Sorenson families attended the same church in 2002 or 2003.⁴⁶ Mr. Eastman volunteered on Sorenson's 2008 campaign for the Iowa House and helped him decide to run for the State Senate in 2010.⁴⁷ Though they are still friends, Mr. Eastman previously considered Senator Sorenson to be his best friend.⁴⁸

g. Bob Heckman.

Bob Heckman was a Senior Advisor to the Bachmann campaign. During October or November of 2011, Mr. Heckman reportedly had a conversation with Senator Sorenson in the hallway of the BFP Urbandale campaign office about the campaign's lack of success in recruiting home school volunteers.⁴⁹ Mr. Heckman said something close to, "I wish we had a really good list," to which Senator Sorenson replied, "Well,

⁴⁴ Exhibit 4 (Supplemental Response-Enos Affidavit) at 8.

⁴⁵ Exhibit 10 (Eastman Interview) at 2.

⁴⁶ Exhibit 10 (Eastman Interview) at 1.

⁴⁷ *Id.*

⁴⁸ *Id.* at 1-2.

⁴⁹ This information comes from a transcript of Mr. Heckman's interview by the Urbandale Police Department in 2012; *see also* Exhibit 13 (Heckman Interview) at 3.

Barb's got a good list. She just won't share it with us."⁵⁰ Senator Sorenson told Mr. Heckman that he knew where Barb's list was located.⁵¹ Senator Sorenson said, "I'm going to come in on a Sunday night and take it off her computer."⁵² Mr. Heckman remembered Senator Sorenson specifying a Sunday night "because she'd be at church."⁵³

h. Aaron Dorr.

Aaron Dorr is the older brother of Chris Dorr.⁵⁴ Aaron Dorr is the Executive Director of the Iowa Gun Owners Association.⁵⁵ The Iowa Republican reported that on October 29, 2011, Aaron Dorr sent an email to a small group including Senator Sorenson and Chris Dorr regarding changes Aaron Dorr made to a memo he planned to submit to the Ron Paul campaign proposing the terms of an agreement for Senator Sorenson and Chris Dorr to jump to the Ron Paul campaign.⁵⁶

The "Aaron Dorr Memo," a copy of which appears in the article, contains a detailed list of Senator Sorenson's compensation demands and the alleged value the Ron

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Exhibit 10 (Eastman Interview) at 3.

⁵⁵ *Id.*

⁵⁶ Exhibit 51 (www.iowarepublican.com/2013/the-payoff-details-revealed-on-Sorensons-deal-with-ron-paul) at 10. The article also provides a copy of the final memo that Aaron Dorr emailed to Ron Paul representatives later that same day. *Id.* at 10-13.

Paul campaign would receive in exchange for the demands.⁵⁷ The memo contains a salary demand for Chris Dorr as well.⁵⁸ Though it relates to Senator Sorenson's compensation from the Ron Paul campaign, several portions of the Aaron Dorr Memo are relevant to Count I of the Complaint. Seemingly relevant to the taking of the NICHE list from Ms. Heki's computer, the memo offers as follows:

3. Home-school connections. Of course you've got your own "Homeschoolers for RP" program but we are in possession of the list of the main Iowa home-school group here in Iowa allowing for targeted home-school mail.⁵⁹

The Aaron Dorr memo does not refer to the NICHE list by name. It refers, however, to the "main Iowa home-school group['s]" list. Because NICHE is the largest Iowa homeschool group, we believe a fair reading of the memo could indicate that Senator Sorenson was in possession of the NICHE list on October 29, 2011. Even if Senator Sorenson was not in personal possession of the list, another fair reading of the Aaron Dorr memo could indicate that Senator Sorenson knew the Dorr brothers possessed the list and were using the list to negotiate his compensation package with the Ron Paul campaign.

2. Chris Dorr claims to have acted unintentionally and alone.

Chris Dorr has given multiple statements claiming responsibility for taking the NICHE list from Ms. Heki's computer, but contending that he did so innocently. Mr.

⁵⁷ *Id.*

⁵⁸ *Id.* at 11.

⁵⁹ *Id.* at 12.

Dorr provided a sworn affidavit in support of Senator Sorenson dated April 30, 2013 to the Iowa Senate Ethics Committee.⁶⁰ In the affidavit, Mr. Dorr swore as follows:

At no time was I, nor to my knowledge the rest of the office staff, informed that Mrs. Heki had data on her campaign computer that was proprietary and/or off-limits to the campaign or campaign staff.

At no time was I, nor to my knowledge the rest of the office staff, informed that anybody else in the office, ... was in possession of proprietary data that was off-limits to the campaign staffers.⁶¹

Mr. Dorr gave us a similar statement during his interview.⁶² We note that, other than Senator Sorenson, Mr. Dorr is the only Bachmann campaign worker in the Iowa office we could find that claims not to have known that Ms. Heki possessed a list of names that she could not or would not disclose.

Mr. Dorr's affidavit conspicuously omits the date or approximate time period in which he downloaded the list from Ms. Heki's computer. His affidavit and his statement to us indicate that he downloaded a list from Ms. Heki's computer on only one occasion. When asked whether the October 29, 2011 Aaron Dorr Memo offering the NICHE list to the Ron Paul campaign refreshed his memory, Mr. Dorr replied only that it did not.⁶³

We note that Mr. Dorr did not deny that the list offered in the Aaron Dorr Memo was the NICHE list, however. Mr. Dorr claimed that he did not know anything about his

⁶⁰ Exhibit 4 (Supplemental Response) at 3-7.

⁶¹ *Id.* at 4.

⁶² Exhibit 9 (Dorr Interview) at 4.

⁶³ *Id.* at 8.

brother's negotiation on his or Senator Sorenson's behalf with the Ron Paul campaign.⁶⁴ Mr. Dorr further claimed that although he was copied on the late October 2011 emails from his brother regarding negotiations with the Ron Paul campaign, he did not actually read the emails until The Iowa Republican story came out on August 6, 2013.⁶⁵

3. After the list was taken.

Senator Sorenson and Mr. Dorr claim that Mr. Dorr accidentally downloaded the NICHE list from Ms. Heki's computer. Senator Sorenson told the Urbandale Police Department that he learned the list had been taken "days or even maybe a few weeks" before November 10, 2011. We are hard-pressed to believe that Senator Sorenson or Mr. Dorr would not have immediately explained a true accident. Instead of doing so, Senator Sorenson and Mr. Dorr allowed Ms. Heki to think she must have accidentally disclosed the list until after the caucuses, when others told her the truth.

A telling email from Guy Short to persons associated with Ms. Bachmann's national campaign and Mr. Short's consulting firm (described below) was sent the morning before the BFP email was distributed to the members of the NICHE database. Mr. Short's November 9, 2011 email regarding the subject of "additional IA Christian emails" provides as follows:

⁶⁴ *Id.*

⁶⁵ *Id.* This statement seems particularly incredible given one of Aaron Dorr's statements in the email regarding the proposed changes: "Chris I changed your month too." Exhibit 51 (The Iowa Republican article) at 10.

These are from Kent. We agreed to exchange our IA voter file emails for these. can [sic] we please send me/Kent all of the IA voter file emails. [sic]

Thanks,
Guy

Can we get these emails loaded and then any of these that DIDNT [sic] get the IA Volunteer email should get it. [sic]⁶⁶

There appears to be no attachment to this email.⁶⁷ By specifically referring to Iowa Christian emails the day before the Network of Iowa Christian Home Educators database was emailed by the BFP campaign, the email suggests that Senator Sorenson provided part or all of the NICHE list to the Bachmann campaign in exchange for the Bachmann campaign's entire database of Iowa voter emails.

Reading Guy Short's memo to indicate Senator Sorenson's forwarding of part or all of the NICHE list would be in keeping with the implications of the Aaron Dorr memo. As explained above, Aaron Dorr's memo suggests that Senator Sorenson was in possession of the NICHE list, or knew that the Dorr bothers possessed it by October 29, 2011. Senator Sorenson's admission to the Urbandale Police Department regarding his learning that Chris Dorr downloaded the list "days or even maybe a few weeks" before November 10, 2011 is consistent with such suggestion. Because Senator Sorenson asserted his Fifth Amendment right against self-incrimination and refused to produce his computers, however, we were unable to establish by clear and convincing evidence when the list was taken and what happened to the list thereafter.

⁶⁶ Exhibit 29 (Email from Guy Short dated, November 9, 2011).

⁶⁷ It is possible that the copy of the email we received omitted the attachment.

D. Determination Regarding Probable Cause.

1. Theft.

We have determined that there is not clear and convincing evidence that Senator Sorenson violated the Iowa Criminal Code regarding Count I of the Senate Ethics Complaint by himself committing the crime of theft. That is, we do not believe there is clear and convincing evidence that Senator Sorenson stole the NICHE list from Ms. Heki's computer.

Theft of the NICHE list would be a violation of Iowa Code § 714.1(8) which provides:

A person commits theft when the person ... Knowingly and without authorization accesses or causes to be accessed a computer, computer system, or computer network, or any part thereof, for the purpose of obtaining ... information, or property

Id. The Bachmann campaign paid NICHE \$2,000 for use of the NICHE list.⁶⁸ Theft of property valued between \$1,000 and \$10,000 is a Class D felony. Iowa Code § 714.2(2).

We have uncovered no evidence that Senator Sorenson accessed Ms. Heki's computer and removed the NICHE list.

2. Criminal conspiracy.

While there is no evidence that Senator Sorenson directly removed the NICHE list from Ms. Heki's computer, there is some evidence that he was involved in a criminal conspiracy regarding the list. The Iowa Code refers to a criminal conspiracy as joint criminal conduct. Iowa Code § 703.2. It provides:

⁶⁸ Exhibit 21 (Woolson Interview) at 5. Senator Sorenson also told the Urbandale Police Department that the campaign ended up paying "a few thousand" for the list.

When two or more persons, acting in concert, knowingly participate in a public offense, each is responsible for the acts of the other done in furtherance of the commission of the offense ..., and each person's guilt will be the same of that of the person so acting, unless the act was one which the person could not reasonably expect to be done in furtherance of the commission of the offense.

Id.

We cannot disprove Chris Dorr's admission to taking the list. Assuming he did so, several statements by and attributed to Senator Sorenson suggest that the Senator was involved in a criminal conspiracy with at least Mr. Dorr concerning the NICHE list. One object of the conspiracy was to remove the list from Ms. Heki's computer without her knowledge. Mr. Heckman's statement to the Urbandale Police Department and Mr. Woolson's affidavit, and their parallel statements to us, are indicative in this regard.

Senator Sorenson's reported statement to Mr. Heckman about "taking the list on a Sunday night" is similar in tone and circumstance to the statement he is alleged to have made to Mr. Woolson on November 10, 2011, admitting, "We took it[]" and "We stood watch." Both statements convey Senator Sorenson's knowledge of the propriety of the NICHE list.⁶⁹

The fact that neither Senator Sorenson nor Mr. Dorr told Ms. Heki about what they claim was an innocent and accidental download is also indicative of a criminal conspiracy.

⁶⁹ Disclaiming knowledge of the propriety of NICHE's list seems particularly untruthful given Ms. Heki's and Mr. Enos' account of Ms. Heki's initial job interview. Moreover, Senator Sorenson told the Urbandale Police Department that he and his wife are members of NICHE. Tony Eastman was invited to NICHE conferences with Senator Sorenson. Exhibit 10 (Eastman Interview) at 5.

Another object of the conspiracy was to make use of the NICHE list to the BFP campaign's and to Senator Sorenson's advantage, knowing that the list had been stolen. It is unclear, but seems likely based on Aaron Dorr's memo, that Senator Sorenson was in possession of the list or knew that the Dorr brothers were in possession of it as of October 29, 2011. That is, Aaron Dorr appears to have been using the NICHE list (among other things) to negotiate a compensation package suitable for Senator Sorenson and Chris Dorr to jump from the Bachmann campaign to the Ron Paul campaign. If true, the Aaron Dorr memo and correspondence surrounding it would show that Senator Sorenson used or attempted to use the NICHE list to his own personal advantage.

Guy Short's email of November 9, 2011 seems to indicate that Senator Sorenson provided additional names from some list—very possibly the NICHE list—to Mr. Short the day before the Bachmann campaign sent emails to the NICHE database. The email also seems to indicate that Senator Sorenson did so in exchange for the Bachmann campaign's Iowa voter list. If true, the email would seem to show that Senator Sorenson used or attempted to use the list for the Bachmann campaign's and for his own personal benefit.

Senator Sorenson told the Urbandale Police Department in 2012 that he had “no direct knowledge of how [the list] was obtained.” Senator Sorenson said he found out from Tony Eastman that Chris Dorr had taken the list “days or even maybe a few weeks” before November 10, 2011. Senator Sorenson said he asked Chris Dorr about taking the

list but Mr. Dorr “wouldn’t answer” him.⁷⁰ Nonetheless, Senator Sorenson hired Mr. Dorr as his legislative intern again in January of 2013.⁷¹

Senator Sorenson, Chris Dorr and Tony Eastman had conversations in person and electronically after the list was taken from Ms. Heki’s computer. The full extent of those conversations is not yet clear. Tony Eastman told us and the Urbandale Police Department that he expected Mr. Dorr to say that “Wes [Enos], [Tony Eastman], and Kent [Sorenson] were outside, ... standing by our offices waiting for Barb [Heki] to come in, while Chris [Dorr] was removing the list.”⁷² He expected this because of a telephone conversation with Mr. Dorr after January of 2012 where Mr. Dorr told Mr. Eastman, “this *is* what happened.”⁷³ Mr. Dorr “basically said, you know ‘I’m not taking the whole rap for this’ basically.”⁷⁴

Senator Sorenson spoke with Tony Eastman about the taking of the list as well. Soon after Ms. Heki filed the civil lawsuit, Senator Sorenson sent a text message to Tony Eastman saying, “I am not going to name you and Chris but you know I was not the one that went into Barb’s office and took the list.”⁷⁵ This text was sent at 5:06 a.m. on July

⁷⁰ This information comes from a transcript of an interview Senator Sorenson gave to the Urbandale Police Department.

⁷¹ Exhibit 9 (Dorr Interview) at 2.

⁷² This quotation comes from the confidential records of the Urbandale Police Department.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

31, 2012. Later that same morning, Senator Sorenson sent another text to Mr. Eastman saying, "I knew that but in the suit she is claiming I am the one to blame for everything[.]."⁷⁶

These text messages and the statements of Mr. Eastman to the Urbandale Police Department, coupled with what we believe are Senator Sorenson's and Mr. Dorr's credibility problems, suggest that Senator Sorenson was involved in a criminal conspiracy to take the list from the computer and make use of it to the Bachmann campaign's and his own personal advantage, knowing that it had been stolen. Suggestions, even strong ones, however, do not rise to the level of clear and convincing evidence required for a probable cause finding.

Specifically, while we believe it is fair to assume the authenticity of the Aaron Dorr Memo, we have not located a witness willing to confirm its authenticity. The source of documents for The Iowa Republican's story, Dennis Fusaro, refused to produce documents and reserved his right to assert the protections of the Fifth Amendment in the event he was served with a subpoena for testimony. And while it seems more than plausible that the list discussed in that memo is the NICHE list, we have no proof of that.

Similarly, while we believe a fair inference could be drawn from Guy Short's email that Senator Sorenson traded part or all of the NICHE list for the Bachmann campaign's Iowa voter list, neither witness is willing to explain Mr. Short's email to us. We have no independent way of determining that the list discussed is the NICHE list. It

⁷⁶ *Id.*

is possible that a forensic examination of Senator Sorenson's computer could shed light on this situation, but he has refused that procedure.

In sum, while we are deeply suspicious that Senator Sorenson violated the law and the Code here, those suspicions do not rise to the level of "no serious or substantial doubt about the correctness of a particular conclusion" required for a probable cause finding on Count I of the Complaint. We thus do not find probable cause to believe Senator Sorenson committed the crime of criminal conspiracy in violation of Senate Ethics Rule 16(a).

VII. COUNT II: EMPLOYMENT BY BACHMANN FOR PRESIDENT/MICHELEPAC.

A. Summary of the Allegation.

Count II alleges that Senator Sorenson "violated Senate Rule 6 by conspiring with BFP and MichelePAC to conceal personal compensation for serving as the Committee's IA State Chairman. Compensation is estimated to be \$7,500 per month."⁷⁷ The Complaint goes on to allege that Guy Short, on behalf of C&M Strategies, agreed to pay \$7,500 per month to Senator Sorenson and that BFP and MichelePAC together paid C&M large sums of money from which C&M could afford to pay Senator Sorenson. The Complaint further alleged "that it was common knowledge in the office" that Senator Sorenson was being paid to serve as BFP's State Chair and that Mr. Short was the source of that money.⁷⁸

⁷⁷ Exhibit 1 at 3.

⁷⁸ *Id.*

By way of reference, Rule 6 provides in its entirety as follows:

6. EMPLOYMENT. A senator shall not accept employment, either directly or indirectly, from a political action committee or from an organization exempt from taxation under section 501(c)(4), 501(c)(6), or 527 of the Internal Revenue Code that engages in activities related to the nomination, election, or defeat of a candidate for public office. A senator may accept employment from a political party, but shall disclose the employment relationship in writing to the secretary of the senate within ten days after the beginning of each legislative session. If a senator accepts employment from a political party during a legislative session, the senator shall disclose the employment relationship within ten days after acceptance of the employment.

For the purpose of this rule, a political action committee means a committee, but not a candidate's committee, which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than seven hundred fifty dollars in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office or to expressly advocate the passage or defeat of a ballot issue or influencing legislative action, or an association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization which makes contributions in the aggregate of more than seven hundred fifty dollars in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office or ballot issue or influencing legislative action.

Senate Code of Ethics, Rule 6.

B. Summary of Senator Sorenson's Response.

The entirety of Senator Sorenson's substantive response to Count II in his Initial Response to the Complaint is as follows:

Once again these allegations are not based on facts. I did not receive compensation from MichelePAC, Bachmann For President or C&M Strategies. The Waldron Complaint fails to show compelling evidence otherwise.

Even had I been employed by C&M Strategies (which I was not) it would not have constituted a violation. First C&M Strategies is not a C-4, C-6 or a 527 and hence not a prohibited entity pursuant to Rule 6. Second Rule 6

expressly permits a senator's direct or indirect employment by a campaign committee.⁷⁹

Senator Sorenson's Supplemental Response to the Complaint stated, "I was never paid directly or indirectly by Michelle PAC or the Bachmann Campaign."⁸⁰ It also stated, "I took no list and received no pay from any Bachmann entities, either directly or indirectly."⁸¹ The remainder of Senator Sorenson's discussion of the matter in his Supplemental Response consisted of various indictments of the affidavit submitted by the Complainant which is Exhibit 3 to this report.

C. Factual Findings.

1. The Players.

In addition to Senator Sorenson, several entities and an individual need to be identified in order to understand the flow of funds at issue in this matter.

a. MichelePAC.

MichelePAC is a political action committee organized on or about July 28, 2010.⁸² It takes its name from the acronym "Many Independent Conservatives Helping Elect Leaders Everywhere." Organized under federal law as a "Leadership PAC," MichelePAC was not organized to advocate for the election of a particular candidate.⁸³

⁷⁹ Exhibit 2 at 3.

⁸⁰ Exhibit 4 at 1.

⁸¹ *Id.* at 2.

⁸² Exhibit 31 (MichelePAC's Statement of Organization).

⁸³ *Id.*

During the time that Representative Bachmann was exploring a presidential run in early 2011, however, MichelePAC at least partially financed that effort.

b. Bachmann For President.

On June 13, 2011, the committee to support her presidential run, Bachmann For President, filed its Statement of Organization with the Federal Election Commission (“FEC”).⁸⁴ Once organized, BFP became the vessel through which money was to be raised and spent for Representative Bachmann’s presidential quest. Michele Bachmann officially announced her candidacy for President of the United States on June 27, 2011.

c. Guy Short/C&M Strategies, Inc.

Guy Short is a political consultant and fundraiser based in Colorado. He does work for political campaigns through C&M Strategies, Inc., a Colorado entity of which he is the principal.⁸⁵ Acting through C&M, Mr. Short was paid to organize and oversee the activities of MichelePAC.⁸⁶ Mr. Short was intimately involved in organizing Representative Bachmann’s exploratory effort regarding her presidential run in early 2011.⁸⁷ Mr. Short then went to work on the Bachmann campaign throughout 2011.⁸⁸

⁸⁴ Exhibit 33 (BFP’s Statement of Organization).

⁸⁵ Exhibit 30 (C&M Strategies, Inc. organization documents).

⁸⁶ *See, e.g.* Exhibit 40 (showing disbursements from MichelePAC to C&M Strategies).

⁸⁷ Exhibit 7 (Deposition of Andrew Parrish (“Parrish Dep.”)) at 13-15, 24-25; Exhibit 13 (Heckman Interview) at 2.

⁸⁸ *See, e.g.*, Exhibit 40 (showing disbursements from MichelePAC and BFP to C&M Strategies).

d. Grassroots Strategy, Inc.

Grassroots Strategy, Inc. is a business entity that Senator Sorenson incorporated on December 29, 2010.⁸⁹ Senator Sorenson owns 100% of GSI.⁹⁰ Senator Sorenson testified at his deposition that GSI was used for various income-generating activities.⁹¹ As will be seen, however, GSI was used almost entirely for the purpose of receiving political consulting income in 2011 and 2012.

2. Senator Sorenson joins the effort to elect Representative Bachmann as President of the United States.

In early 2011, Representative Michele Bachmann was actively exploring running for President of the United States. Andrew Parrish, her Congressional Chief of Staff, and Guy Short were spearheading and organizing this effort with some assistance from Ed Brookover, who had managed Ms. Bachmann's congressional campaign.⁹² Pursuant to this effort, in January 2011, Ms. Bachmann spoke at an Iowans for Tax Relief event.⁹³ Senator Sorenson attended that event. Senator Sorenson and Mr. Parrish met each other at that event and started discussing the possibility of Senator Sorenson supporting Representative Bachmann.⁹⁴ Senator Sorenson was being courted by multiple

⁸⁹ Exhibit 32 (Corporate documents of Grassroots Strategy, Inc.).

⁹⁰ Exhibit 5 (Sorenson Dep. Vol. I) at 39.

⁹¹ *Id.* at 40, 42-43, 45.

⁹² Exhibit 7 (Parrish Dep.) at 12-14; Exhibit 13 (Heckman Interview) at 1-2.

⁹³ Based on internet research, we believe the event was on January 21, 2011 in Des Moines.

⁹⁴ Exhibit 7 (Parrish Dep.) at 18.

presidential campaigns at that point. This concerned Bachmann representatives, who were willing to spend money in order to “snap up” important political operatives in Iowa.⁹⁵ In response to an email in which Mr. Parrish worried that Senator Sorenson “really is ready to go to [Tim] Pawlenty,” Mr. Short wrote on March 10, 2011, “[W]e need to make some moves forward and spend some money on these people or we will lose them. People are getting bought off.”⁹⁶ Later, Mr. Short responded further, “I think we should hire kent and a NH person. If MB runs it will be well worth it. If she doesn’t we are out 30-50K for a few months. Big deal.”⁹⁷

Mr. Parrish succeeded at about this time in having “personally recruited Senator Sorenson to support Michele Bachmann for president and to work on her campaign in Iowa.”⁹⁸ On March 11, 2011, Senator Sorenson went public as the first elected official in Iowa to endorse Representative Bachmann for President.⁹⁹ Senator Sorenson commenced actively working on Representative Bachmann’s behalf. Email communications between Senator Sorenson, Mr. Parrish, and Mr. Short show that Senator Sorenson was providing strategic advice about the Iowa political landscape,

⁹⁵ *Id.* at 46.

⁹⁶ Exhibit 22 (Emails between Short and Parrish, March 10, 2011) at 1.

⁹⁷ *Id.* at 2.

⁹⁸ Exhibit 7 (Parrish Dep.) at 18-19 (quoting Exhibit 3 at 1).

⁹⁹ Exhibit 44 (Derek Wallbank, “Iowa state Sen. Sorenson is first elected official to endorse Bachmann for president,” March 11, 2011, <http://www.minnpost.com/dc-dispatches/2011/03/iowa-state-sen-sorenson-first-elected-official-endorse-bachmann-president>).

recommending staff members to the campaign, recruiting other Iowa legislators to the Bachmann cause, and making communications on the campaign's behalf.¹⁰⁰

In Mr. Parrish's conversations with Senator Sorenson, it was clear to him that Senator Sorenson would require payment in exchange for his work on the Bachmann campaign. Mr. Parrish does not recall who first brought up the topic of payment; it was part of a "naturally evolving conversation" about Senator Sorenson's services.¹⁰¹

From early in the process, Senator Sorenson was cognizant that he could not be paid directly by the presidential campaign for his campaign work. Senator Sorenson was "very cautious of the Iowa Senate Ethics Rules and said he could not be paid directly from the campaign."¹⁰² Senator Sorenson and Mr. Parrish had multiple conversations about this.¹⁰³ Mr. Parrish's and Senator Sorenson's conversations turned, therefore, to "trying to figure out the legal way to pay [Senator Sorenson] through the FEC reporting and through the Iowa Senate Ethics Committee."¹⁰⁴ The method that Mr. Parrish found to pay Senator Sorenson was for Mr. Short's company, C&M Strategies, to hire Senator Sorenson as a subcontractor. Senator Sorenson could, as a subcontractor "consult the campaign," for C&M Strategies, and C&M Strategies would get the money to pay

¹⁰⁰ Exhibit 23 (Various emails between Sorenson and Parrish).

¹⁰¹ Exhibit 7 (Parrish Dep.) at 21.

¹⁰² *Id.* at 21.

¹⁰³ *Id.* at 20-21, 31-32.

¹⁰⁴ *Id.* at 22.

Senator Sorenson from the campaign.¹⁰⁵ Mr. Parrish consulted with an attorney representing the campaign to determine if the proposed arrangement with Senator Sorenson was legal, and he satisfied himself that it would be.¹⁰⁶ Mr. Parrish then gave the job of formalizing the arrangement with Senator Sorenson to Mr. Short.¹⁰⁷

Mr. Parrish and Senator Sorenson did not reach an agreement on the amount of compensation Senator Sorenson would be paid, but Mr. Parrish made a recommendation to Guy Short of \$7,000 per month plus a cellphone. Mr. Parrish sent an email to Senator Sorenson on April 19, 2011 in which he informed Senator Sorenson of this recommendation.¹⁰⁸ Mr. Parrish later learned that the amount settled upon for Senator Sorenson's compensation was \$7,500 per month, as Senator "Sorenson openly spoke about the 7,500 that Guy Short was paying him."¹⁰⁹ (As will be seen, financial documents confirm the \$7,500 per month figure after initial payments in smaller amounts.) Through the spring, Senator Sorenson's role in the Bachmann campaign grew. An internal email from Mr. Parrish to Representative Bachmann and others on May 5, 2011 listed Senator Sorenson as the "State Campaign Manager" for the Bachmann campaign in Iowa.¹¹⁰

¹⁰⁵ *Id.* at 22-23.

¹⁰⁶ *Id.* at 23-24.

¹⁰⁷ *Id.* at 24.

¹⁰⁸ *Id.* at 24-25; Exhibit 3 (Parrish Affidavit) at 6.

¹⁰⁹ Exhibit 7 (Parrish Dep.) at 28.

¹¹⁰ Exhibit 3 (Parrish Affidavit) at 7.

3. **Bachmann For President is organized and contracts with C&M Strategies.**

As noted above, BFP was officially organized on June 13, 2011. On that day, Ms. Bachmann, participating in a CNN debate, announced that she had “filed today [her] paperwork” to run for President.¹¹¹ On June 27, 2011, Ms. Bachmann officially announced her candidacy in a speech in her home town of Waterloo, Iowa.¹¹²

As the Bachmann campaign was becoming formally organized, it retained national political consultants Ed Rollins and David Polyansky in June to work on organizing the campaign. One of Mr. Polyansky’s jobs was to formalize contracts with campaign staff. One of the staff members Mr. Polyansky did this with was Guy Short. The two men negotiated somewhat contentiously over Mr. Short’s monthly compensation, as Mr. Short was attempting to take advantage of his preexisting relationship with Representative Bachmann and Mr. Polyansky was attempting to negotiate reasonable market terms with him. The pair ultimately settled on Mr. Short receiving \$15,000 per month.¹¹³ The relationship was formalized with a written contract

¹¹¹ Exhibit 45 (CNN blog post at <http://politicalticker.blogs.cnn.com/2011/06/13/rep-michele-bachmann-makes-presidential-run-official/>); *see also* <http://transcripts.cnn.com/TRANSCRIPTS/1106/13/se.02.html>.

¹¹² Exhibit 46 (Speech transcript at <http://www.presidency.ucsb.edu/ws/?pid=90621#axzz2gE4xjP1W>).

¹¹³ Exhibit 19 (Polyansky Interview) at 2; *see also* Exhibit 27 (Email between Polyansky and Short, June 21, 2011).

between BFP and Mr. Short's entity, C&M Strategies. Mr. Polyansky signed the contract on behalf of BFP.¹¹⁴

What is notable about that agreement is that the monthly compensation figure contained in the agreement is not \$15,000. It is \$22,500.¹¹⁵ In working to formalize the relationship with Mr. Short, Mr. Polyansky learned, either from Mr. Short or from Senator Sorenson (he does not recall which), that Senator Sorenson had a "preexisting contract with Guy." Under the preexisting contract, the Bachmann campaign needed to pay Mr. Short's firm additional money to supply compensation that was being paid to Senator Sorenson for working on the Bachmann campaign.¹¹⁶ This is reflected in an email communication between Mr. Short and Mr. Polyansky in which Mr. Short tells Mr. Polyansky, "Bill needs to get you a contract for C&M Strategies for \$22,500 per month to cover me and my employee."¹¹⁷ Upon learning this, Mr. Polyansky consulted with legal counsel for BFP (the same firm that Mr. Parrish had consulted earlier). That counsel approved the arrangement, and Mr. Polyansky had the larger monthly sum inserted into the BFP/C&M Strategies contract.¹¹⁸

¹¹⁴ Exhibit 35 (BFP/C&M Strategies agreement).

¹¹⁵ *Id.* at 2.

¹¹⁶ Exhibit 19 (Polyansky Interview) at 2.

¹¹⁷ Exhibit 28 (Emails among Short, Polyansky, and Sorenson, July 5, 2011). (We assume the "Bill" refers to William McGinley, an attorney representing BFP at the time.)

¹¹⁸ Exhibit 19 (Polyansky Interview) at 2-3. We express no opinion about whatever legal advice BFP obtained on this issue. We note, however, that the law firm in question was not representing or providing advice to Senator Sorenson regarding the issue of whether the proposed arrangement violated Rule 6.

4. Senator Sorenson's role with the Bachmann campaign.

As had been previewed in internal emails referenced above, Senator Sorenson was publicly announced as the Bachmann campaign's Iowa State Chair on June 28, 2011, the day after Representative Bachmann formally announced her candidacy.¹¹⁹ Although Senator Sorenson was the State Chair of the Bachmann campaign, he was not its business manager. Instead, his role has been described as political and "ceremonial."¹²⁰ He traveled with Representative Bachmann when she was in Iowa, and he introduced her at campaign events.¹²¹ Senator Sorenson also did grassroots organization and sought endorsements for Representative Bachmann.¹²²

Regardless of the nature of Senator Sorenson's work, there is no question that he devoted his substantial, if not nearly exclusive, energies to the Bachmann campaign once the legislative session was over in 2011. According to Mr. Polyansky, the Bachmann campaign's expectation was that in exchange for the compensation he was receiving through C&M Strategies, Senator Sorenson should be devoting his complete energies to the Bachmann campaign.¹²³ Mr. Parrish, who moved to Iowa in June to work on the campaign full time, observed and understood that the Bachmann campaign was Senator

¹¹⁹ Exhibit 47 (BFP press release of June 28, 2011).

¹²⁰ Exhibit 20 (Waldron Interview) at 3; *see also* Exhibit 21 (Woolson Interview) at 2.

¹²¹ Exhibit 20 (Waldron Interview) at 3; Exhibit 13 (Heckman Interview) at 3; Exhibit 11 (Enos Interview) at 2.

¹²² Exhibit 19 (Polyansky Interview) at 3.

¹²³ *Id.*

Sorenson's "full time job."¹²⁴ Others observed Senator Sorenson in the campaign office consistently if he was not traveling with the candidate.¹²⁵ Senator Sorenson himself testified in his deposition that he devoted approximately 50 hours per week to the Bachmann campaign.¹²⁶

With one exception, witnesses were unaware of Senator Sorenson having any other job or source of income other than his position as a senator and his work on the Bachmann campaign.¹²⁷ The exception is Mr. Enos, who contended that Senator Sorenson earned income from selling items on e-Bay.¹²⁸ Senator Sorenson did claim to earn some income from sales of antiques in his deposition.¹²⁹ As will be seen, however, this was a very small component of the Sorenson family's income during 2011.

5. The circuitous flow of funds.

The flow of funds to Senator Sorenson for his work on the Bachmann campaign can be illustrated as follows:

¹²⁴ Exhibit 7 (Parrish Dep.) at 30.

¹²⁵ Exhibit 13 (Heckman Interview) at 3; Exhibit 20 (Waldron Interview) at 3.

¹²⁶ Exhibit 5 (Sorenson Dep. Vol. I) at 66-67.

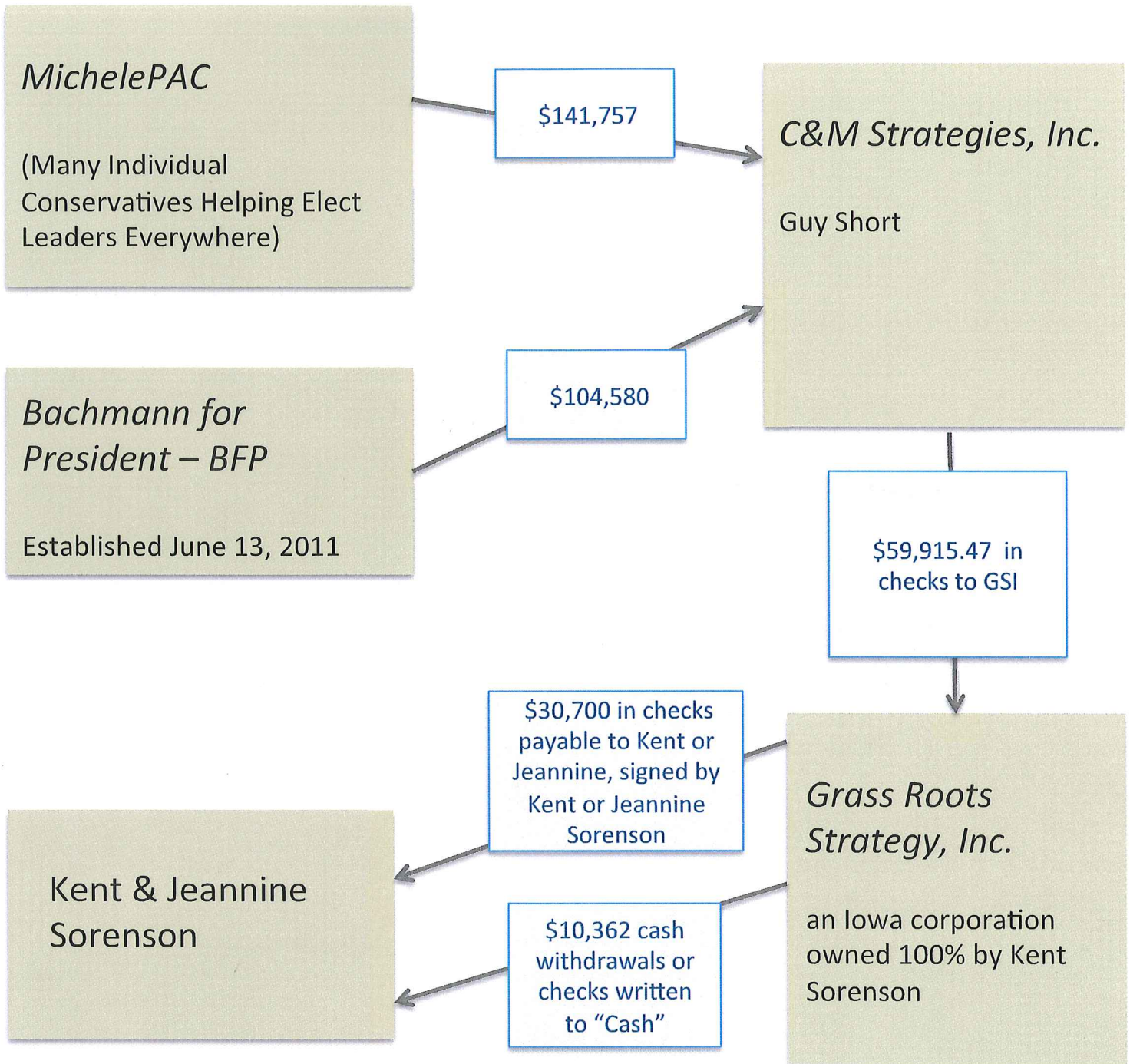
¹²⁷ Exhibit 20 (Waldron Interview) at 3; Exhibit 13 (Heckman Interview) at 3; Exhibit 7 (Parrish Dep.) at 30.

¹²⁸ Exhibit 11 (Enos Interview) at 7.

¹²⁹ Exhibit 5 (Sorenson Dep. Vol. I) at 25, 45, 61.

Figure 1: The Flow of Funds to Senator Sorenson

2011 Flow of Cash Disbursements



Over the course of 2011, MichelePAC made frequent payments to C&M Strategies. Once BFP was formed in June 2011, BFP also made payments to C&M Strategies pursuant to the agreement that is the Appendix as Exhibit 35. The payments made by MichelePAC and BFP to C&M Strategies were required to be disclosed to the Federal Election Commission. From BFP's and MichelePAC's FEC filings, we have compiled the following chart of those payments:¹³⁰

Figure 2: Bachmann for President and MichelePAC

2011 Payments to C&M Strategies		
Payment Date	Payor	
	Bachmann for President	MichelePAC
1/28/2011		\$5,285.00
2/2/2011		\$2,975.00
2/3/2011		\$3,185.00
2/3/2011		\$3,750.00
2/3/2011		\$7,800.00
2/17/2011		\$14,085.00
2/17/2011		\$4,500.00
2/22/2011		\$7,800.00
4/7/2011		\$1,627.00
4/11/2011		\$9,000.00
4/11/2011		\$3,000.00
4/19/2011		\$1,500.00
5/6/2011		\$9,175.00
5/18/2011		\$4,325.00
5/25/2011		\$9,000.00
5/31/2011		\$1,500.00
6/20/2011		\$5,750.00
7/11/2011		\$2,500.00
7/29/2011	\$33,750.00	
8/3/2011		\$5,000.00
9/1/2011		\$5,000.00
9/12/2011	\$25,830.00	
10/11/2011	\$22,500.00	

¹³⁰ A more detailed spreadsheet, with references to the FEC records on which the spreadsheet is based, is Exhibit 40.

Payment Date	Payor	
	Bachmann for President	MichelePAC
10/12/2011		\$5,000.00
11/1/2011		\$5,000.00
11/9/2011	\$22,500.00	
11/30/2011		\$5,000.00
12/6/2011		\$20,000.00
Total by Payee	\$104,580.00	\$141,757.00
Total Payments	\$246,337.00	

Over the course of 2011, C&M Strategies paid a total of \$59,915.47 to Mr. Sorenson's company, Grassroots Strategy, Inc. That was by far the dominant source of income for GSI. The only other income to GSI came in the form of checks to that company from Senator Sorenson and his wife totaling \$1,440. We assume that some or all of these deposits came from the antique sales that Senator Sorenson referred to in his deposition. We have prepared a spreadsheet showing the deposits into GSI during 2011.¹³¹

Figure 3: 2011 Deposits into Grassroots Strategy, Inc.

Deposit Date	Payor	
	C&M Strategies	Kent & Jeannine Sorenson
5/16/2011	\$4,675.00	
5/31/2011	\$3,600.00	
6/14/2011	\$4,060.47	
6/29/2011		\$300.00
7/18/2011	\$3,500.00	
8/8/2011	\$10,750.00	
8/25/2011		\$125.00
9/2/2011		\$400.00
9/20/2011		\$615.00
9/23/2011	\$10,830.00	
10/28/2011	\$7,500.00	
11/18/2011	\$7,500.00	

¹³¹ A more detailed spreadsheet, and images of the checks and deposit tickets evidencing these deposits, are collected as Exhibit 36.

	Payor	
Deposit Date	C&M Strategies	Kent & Jeannine Sorenson
12/19/2011	\$7,500.00	
Total Deposits	\$59,915.47	\$1,440.00

The first four payments from C&M to GSI originated with MichelePAC. As can be seen from Figure 2 above, BFP's first payment to C&M was on July 29, 2011, after the first four payments to GSI shown in Figure 3 above.

Despite the fact that more than 97% of GSI's income came from C&M Strategies, Senator Sorenson did not recall that in his deposition. The banking records for GSI that he produced did not show the source of GSI's deposits. When questioned about the source of GSI's deposits in this deposition, Senator Sorenson repeatedly said that he did not know where the money came from.¹³²

The bulk of GSI's income from C&M Strategies translated into personal income for Senator Sorenson and his family. The bank statements for GSI in 2011 show a variety of debit card transactions and checks that Senator Sorenson described as business expenses associated with his work on the Bachmann campaign and on other income generating activities.¹³³ Most of GSI's income, however, was personal compensation to the Sorensens. A spreadsheet showing select withdrawals from GSI illustrates this:¹³⁴

¹³² See Exhibit 5 (Sorenson Dep. Vol. I) at 51-64.

¹³³ *Id.* at 52.

¹³⁴ A more detailed spreadsheet, and documents supporting the spreadsheet, are collected as Exhibit 37.

Figure 4: 2011 Select Withdrawals from Grassroots Strategy, Inc.

Withdrawal Date	Payees					
	Kent Sorenson	Jeannine Sorenson	Visa CC	CCCU - Community Choice Credit Union	IRS/U.S. Treasury	Cash
5/20/2011	\$1,500.00					
5/23/2011	\$1,300.00					
6/1/2011				\$3,046.16		
6/16/2011	\$2,400.00					
6/23/2011					\$734.00	
6/28/2011						\$100.00
7/19/2011	\$2,000.00					
7/29/2011		\$500.00				
8/9/2011				\$1,213.70		
8/11/2011	\$1,300.00					
8/12/2011	\$2,500.00					
8/17/2011						
8/18/2011	\$2,500.00					
9/1/2011			\$373.51			
9/27/2011						\$102.00
10/3/2011	\$3,500.00					
10/11/2011						\$2,000.00
11/1/2011	\$2,000.00					
11/4/2011			\$286.99			
11/7/2011						\$4,000.00
11/16/2011	\$500.00					
11/21/2011						\$500.00
11/21/2011						\$500.00
11/22/2011						\$2,560.00
11/28/2011						\$500.00
11/29/2011	\$3,000.00					
11/30/2011			\$46.06			
12/19/2011	\$5,000.00					
12/19/2011		\$500.00				
12/15/2011						\$100.00
12/22/2011	\$2,200.00					
Total Withdrawals	\$29,700.00	\$1,000.00	\$706.56	\$4,259.86	\$734.00	\$10,362.00

As can be seen, Senator Sorenson and his wife received \$30,700 of income from GSI in the form of checks from that company. They took \$10,362 of cash from the GSI account. Senator Sorenson was not able to come up with any business expense explanation for the vast majority of those cash withdrawals.¹³⁵ GSI made a payment of some sort of tax obligation to the U.S. Treasury in the amount of \$734 that Senator Sorenson could not explain as a GSI business expense.¹³⁶

Finally, GSI paid credit card bills for a Visa card and Community Choice Credit Union in a total amount of \$4,966.42. Senator Sorenson explained both types of payments as business expenses associated with GSI,¹³⁷ although that explanation is at best questionable given that he was using GSI's debit card to pay such expenses and given that the largest payment, \$3,046.16 to Community Choice Credit Union on June 1, 2011, was so early in his work on the Bachmann campaign.¹³⁸

¹³⁵ Exhibit 5 (Sorenson Dep. Vol. I) at 63-64, 65, 70.

¹³⁶ *Id.* at 56.

¹³⁷ *Id.* at 60-62.

¹³⁸ The documents we have reviewed also suggest that Senator Sorenson may have underreported the income he received from GSI on his federal income tax return. GSI's Form 1120S tax return for 2011 is Exhibit 43. It reports gross revenues of GSI of \$45,000. The documents available to us, by contrast, show GSI's gross revenues to be \$61,355.47. The return shows net income of \$25,462, a figure that was in turn reported on Senator Sorenson's Form 1040 return for 2011. (We have inspected that return but we do not include it in the Appendix.) Although there may be legitimate explanations for this discrepancy, Figure 4 suggests that Senator Sorenson earned significantly more than \$25,462 from GSI during 2011. In addition, the GSI tax return fails to report any of the payments to the Sorensons to enable the IRS to collect Social Security and Medicare taxes for S corporation distributions paid in lieu of wages.

In sum, there is no doubt that the bulk of the money that originated from MichelePAC and BFP became personal income to Senator Sorenson.

6. Senator Sorenson's understanding of his compensation and its implications under Rule 6 of the Senate Code of Ethics.

There is also no doubt that Senator Sorenson believed he was being paid for his work on the Bachmann campaign during 2011. It was "common knowledge" around the BFP office during 2011 that Senator Sorenson was being paid \$7,500 a month to work on the campaign.¹³⁹ Senator Sorenson's compensation was well known around the campaign because, as one witness put it, "Kent is not shy."¹⁴⁰

As an example, a national campaign consultant, Robert Heckman, joined Senator Sorenson and Wesley Enos in May 2011 to scout locations in Waterloo for Representative Bachmann's official campaign announcement. During that day, Mr. Heckman complimented Senator Sorenson for his work on the campaign, and Senator Sorenson responded, "I'm not doing this for free. I'm getting paid." Similarly, Senator Sorenson told Susan Geddes, an Iowa political consultant who managed Senator Sorenson's 2008 and 2010 legislative races, that he "doesn't do these things [for the Bachmann campaign] out of the goodness of my heart."¹⁴¹ Though he was one of the few

¹³⁹ Exhibit 20 (Waldron Interview) at 3 ("[E]veryone knew [Senator Sorenson] was being paid by the campaign."); Exhibit 13 (Heckman Interview) at 2.

¹⁴⁰ Exhibit 13 (Heckman Interview) at 2.

¹⁴¹ Exhibit 12 (Geddes Interview) at 2.

witnesses to disclaim knowledge of Senator Sorenson's compensation, Mr. Enos also recalls Senator Sorenson making statements to the effect that "I don't do this for free."¹⁴²

Not only did Senator Sorenson understand himself to be compensated for his work on the Bachmann campaign, he understood that such compensation violated Rule 6 of the Code. In fact, *Senator Sorenson simply said so in an email exchange.* On July 5, 2011, Senator Sorenson sent the following email to Mr. Polyasnkny:

Gentleman [sic]

I need to get the billing situation worked out. I am reaching the point where I will begin to be charged interest on my credit card.

Please advise how you would like me to proceed.

Thanks.

Kent

Mr. Polyansky responded:

I am happy to make payment.

Senator Sorenson then replied:

I am unable to bill the campaign due to State Senate rules which is why I have been billing Guy's "s corp" with my "s corp"¹⁴³

In addition to the discussions mentioned above with Mr. Parrish, Senator Sorenson made comments to others that further revealed his understanding about Rule 6. In the episode where Senator Sorenson told Robert Heckman that he was "not doing this for free," he also told Mr. Heckman that if he were paid directly by BFP it would place

¹⁴² Exhibit 11 (Enos Interview) at 7.

¹⁴³ Exhibit 28 (Emails among Short, Polyansky, and Sorenson, July 5, 2011).

him in an “awkward” position because of an “ethics concern.”¹⁴⁴ During the time that Senator Sorenson was negotiating his arrangement with the Bachmann campaign, he had conversations with Ms. Geddes in which she told him that under Senate rules he could not be paid for his work on the campaign. Senator Sorenson responded that “there are ways around that,” and that “I have to feed my family.”¹⁴⁵

Peter Waldron heard Senator Sorenson say to others on a number of occasions that he could not be paid by the Bachmann campaign because he was a sitting Iowa Senator. On one occasion Senator Sorenson said this directly to Mr. Waldron in a one-on-one conversation.¹⁴⁶ In addition, a press release issued by the Bachmann campaign on October 27, 2011, announcing the leadership team for the Bachmann campaign in Iowa described Senator Sorenson as one of “10 full-time professionals” working on the race and identified him as the State Chairman. The press release stated, “Sorenson is serving in a full-time role but state Senate rules preclude lawmakers from being paid by the campaign.”¹⁴⁷ Senator Sorenson’s invocation of his rights under the Fifth Amendment prevented us from questioning him about this press release, but we assume it is highly unlikely that the statement in the press release was made without Senator Sorenson’s knowledge and approval.

¹⁴⁴ Exhibit 13 (Heckman Interview) at 2.

¹⁴⁵ Exhibit 12 (Geddes Interview) at 2.

¹⁴⁶ Exhibit 20 (Waldron Interview) at 4-5.

¹⁴⁷ Exhibit 48 (Press release of October 27, 2011).

Finally, Senator Sorenson's awareness that Rule 6 prohibited him from being paid by a presidential campaign is demonstrated by his participation in the roundabout method of the payment of funds to him: Had he believed that being paid by MichelePAC and Bachmann For President was legitimate, he could have taken the money directly.

In his deposition, Senator Sorenson advanced the argument that while he was compensated by C&M Strategies, his work for the Bachmann campaign was as a volunteer, as though the money he was paid from C&M Strategies was for something other than his work on the Bachmann campaign. In this context he testified, "I don't believe I was paid to help Michele Bachmann. But I did -- I spent a lot of time helping Michele Bachmann."¹⁴⁸

This claim is simply not credible. Mr. Parrish, who negotiated Senator Sorenson's arrangement and then worked with him, is not aware of Senator Sorenson doing anything for C&M Strategies that was not connected with helping Representative Bachmann be elected president.¹⁴⁹ Mr. Polyansky similarly understood that Senator Sorenson's full time energies were to be devoted to working for Representative Bachmann.¹⁵⁰ Although we note that Mr. Short has refused to speak with us, we have uncovered no evidence that Senator Sorenson's compensation from C&M Strategies was for any purpose other than working for and supporting Representative Bachmann.

¹⁴⁸ Exhibit 5 (Sorenson Dep. Vol. I) at 66-67.

¹⁴⁹ Exhibit 7 (Parrish Dep.) at 30.

¹⁵⁰ Exhibit 19 (Polyansky Interview) at 3.

7. Senator Sorenson's negotiations with the Ron Paul campaign.

Senator Sorenson's compensation from the Bachmann campaign also came up in the context of his later defection from that campaign to the Ron Paul campaign. Senator Sorenson had several conversations with Ms. Geddes about the possibility of his joining the Ron Paul campaign, the last of which was on November 1, 2011 at an event in Marshalltown. Even though Senator Sorenson and Ms. Geddes had earlier discussed his compensation from the Bachmann campaign, he told her that the fact that the Ron Paul campaign was offering him a substantial amount of money was a motivation to leave.¹⁵¹ Similarly, in December 2011, Senator Sorenson had conversations with Eric Woolson, who had been hired to manage the Bachmann campaign in Iowa in October. Senator Sorenson told Mr. Woolson that his family was short of money, his wife was pushing him to move to the Ron Paul campaign in order to obtain more money, and that the Ron Paul campaign was offering \$30,000 up front and \$8,000 per month for as long as Mr. Paul remained in the race.¹⁵²

A memorandum and several email messages produced on The Iowa Republican website suggest that in October and November 2011, Chris Dorr's brother Aaron, the Executive Director of the Iowa Gun Owners organization, was negotiating on Senator Sorenson's behalf to join the Ron Paul effort and demanding, among other things, a

¹⁵¹ Exhibit 12 (Geddes Interview) at 2.

¹⁵² Exhibit 21 (Woolson Interview) at 7.

match of his “current salary of \$8,000 a month.”¹⁵³ We have not been able to verify the authenticity of those documents. Chris Dorr did not deny their authenticity in his interview with us, however.¹⁵⁴ Senator Sorenson invoked his Fifth Amendment rights before he could be questioned about these events.

8. Senator Sorenson jumps to the Ron Paul campaign.

On December 28, 2011, Senator Sorenson, after appearing at a Michele Bachmann event earlier in the day, left the Bachmann campaign and appeared at a public event for Ron Paul to announce his support for Representative Paul. Senator Sorenson’s lawyer has publicly stated that before Senator Sorenson’s switch, Dimitri Kesari, the Ron Paul campaign’s Deputy National Campaign Manager, gave Senator Sorenson’s wife a check that has never been cashed.¹⁵⁵ Senator Sorenson produced a copy of that check to us pursuant to subpoena.¹⁵⁶ The check, like the Bachmann campaign checks from C&M Strategies, is payable to “Grass Roots Strategies.” It is in the amount of \$25,000 and is dated December 26, 2011. The check is drawn on Designer Goldsmiths Inc, which is a jewelry store in Leesburg, Virginia operated by Jolanda Kesari, Mr. Kesari’s wife.¹⁵⁷ After identifying herself as operating the store, Ms. Kesari refused to answer any

¹⁵³ Exhibit 51 (www.iowarepublican.com/2013/the-payoff-details-revealed-on-Sorensons-deal-with-ron-paul) at 10.

¹⁵⁴ Exhibit 9 (Dorr Interview) at 8.

¹⁵⁵ Exhibit 50 (Jennifer Jacobs, “Sorenson faces new ethics complaint,” August 29, 2013 <http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2013308290108>).

¹⁵⁶ Exhibit 42 (Designer Goldsmiths check).

¹⁵⁷ Exhibit 16 (Jolanda Kesari Interview).

questions about the check.¹⁵⁸ Mr. Kesari, through counsel, invoked his Fifth Amendment right to remain silent when we sought to interview him.

Three days after the date on that check, and the day after he defected to the Ron Paul campaign, Senator Sorenson was interviewed on national television by Megyn Kelly of the Fox News Network. Among other questions and answers, Ms. Kelly and Senator Sorenson had these exchanges:

Kelly: Was money offered to you by anybody from the Ron Paul camp to jump ship?

Sorenson: Absolutely not.

Kelly: But you know, as you know accept is different than offered. And I just want to make clear you are also saying they never offered it, no one, not Ron Paul, not anybody affiliated with his campaign or supporting his campaign offered you any money to support Ron Paul?

Sorenson: I was, I was, I was never offered a nickel from the Ron Paul campaign.

Kelly: Or anybody associated with it?

Sorenson: Never, never offered a nickel.¹⁵⁹

With the Kesari check in hand, Senator Sorenson's statements on national television were simply false. Those false statements, and his attempt to use GSI as a vehicle to hide compensation from the Ron Paul campaign, are plainly relevant to the

¹⁵⁸ *Id.*

¹⁵⁹ Exhibit 49 (Partial transcript of Fox interview of Sorenson by Megyn Kelly, December 29, 2011). The interview is available at <http://www.youtube.com/watch?v=ERZw2zcb7q0>.

question of whether he did the same thing with regard to compensation from the Bachmann campaign.

9. Payments to Senator Sorenson after the Iowa caucuses.

Following the Iowa caucuses, Senator Sorenson’s company, Grassroots Strategy, Inc., received a series of wire transfers from a company called ICT, Inc. Those transfers, totaling \$73,000, amounted to virtually all of the revenue of GSI during 2012. Here is a spreadsheet showing the sources of income of GSI during that year:¹⁶⁰

Figure 5: 2012 Deposits into Grassroots Strategy, Inc.

Deposit Date	Payor			
	ProKleen Total Building Maintenance	ICT, Inc.	Cash	Midwest Freedom Enterprises, Inc.
1/23/2012	\$800.00			
2/9/2012		\$33,000.00		
4/3/2012			\$160.00	
4/9/2012		\$16,000.00		
5/4/2012		\$8,000.00		
6/12/2012		\$8,000.00		
7/2/2012			\$200.00	
7/20/2012			\$600.00	
7/24/2012			\$300.00	
7/27/2012		\$8,000.00		
9/4/2012			\$1,100.00	
9/17/2012			\$100.00	
9/28/2012			\$65.00	
10/10/2012			\$10.00	
10/13/2012			\$200.00	
10/26/2012			\$100.00	
11/2/2012			\$630.00	\$300.00

¹⁶⁰ A more detailed spreadsheet, and the documents supporting this spreadsheet, are collected as Exhibit 38.

Deposit Date	Payor			
	ProKleen Total Building Maintenance	ICT, Inc.	Cash	Midwest Freedom Enterprises, Inc.
11/13/2012			\$250.00	
11/20/2012			\$60.00	
Total Deposits	\$800.00	\$73,000.00	\$3,775.00	\$300.00

Notably, the deposits could be construed to reflect payments of \$8,000 per month from February through July of 2012, with the first payment, \$33,000, being an \$8,000 monthly payment and \$25,000 to reflect the uncashed check Senator Sorenson received just before he joined the Ron Paul campaign.

We have determined that ICT, Inc. is a business entity associated with a documentary film maker named Noel “Sonny” Izon.¹⁶¹ The business address from which the payments originated, however is of an attorney, William Howard, in Hyattsville, Maryland. We understand that Mr. Howard is somehow associated with ICT and Mr. Izon.¹⁶²

In his deposition, Senator Sorenson denied that the payments from ICT were in any way connected with the Ron Paul campaign. He was, however, impressively vague about who the source of the payments was and what services he rendered in exchange for that amount of money.¹⁶³ He could not identify what he did for ICT beyond “[g]eneral consulting both on political and business issues” and seeking “locations for video shoots

¹⁶¹ Exhibit 8 (Cohen Interview); Exhibit 53 (Linkedin profile for Noel Izon).

¹⁶² Exhibit 8 (Cohen Interview).

¹⁶³ See generally Exhibit 5 (Sorenson Dep. Vol. I) at 79-83, 87-89.

in Iowa.”¹⁶⁴ He said ICT had “a lot of clients,” but he could identify none.¹⁶⁵ He could not remember the correct name of the “Sonny” associated with ICT.¹⁶⁶

We have not, to date, been able to establish a connection between the payments from ICT to GSI and the Ron Paul campaign. The circumstances of those payments that we have described, however, creates a strong suspicion that those payments are associated with the Ron Paul campaign. That suspicion is augmented by the fact that Senator Sorenson initially gave such vague answers about the payments and then later asserted his Fifth Amendment right against self-incrimination rather than answer further questions about them.¹⁶⁷ As a legal matter, we are entitled to infer that Senator Sorenson’s answers to questions to which he has asserted his Fifth Amendment right would have been adverse to him. In this instance, we do.¹⁶⁸

¹⁶⁴ *Id.* at 79, 80.

¹⁶⁵ *Id.* at 79, 82-83.

¹⁶⁶ *Id.* at 81.

¹⁶⁷ Exhibit 6 (Sorenson Dep. Vol. II) at 102.

¹⁶⁸ It has long been the law, in Iowa and throughout the nation, that a judge, jury, or other fact-finder may draw a negative inference from a witness’s invocation of the Fifth Amendment privilege against self-incrimination in a non-criminal case. *Baxter v. Palmigiano*, 425 U.S. 308, 317, 96 S.Ct. 1551, 1557 (1976). That is, when a witness declines to answer, asserting his Fifth Amendment rights, the fact-finder may infer “that the answer would be adverse to the party.” *Eldridge v. Herman*, 291 N.W.2d 319, 322-23 (Iowa 1980). A negative inference is permitted in all non-criminal matters, from an ordinary civil suit, *Conkling v. Conkling*, 185 N.W.2d 777, 784 (Iowa 1971), to an administrative enforcement action, *Craig Foster Ford, Inc. v. Iowa Dep’t of Transp.*, 562 N.W.2d 618, 623-24 (Iowa 1997), to a deportation proceeding, *Gutierrez v. Holder*, 662 F.3d 1083 (9th Cir. 2011). (Of course, a negative inference from assertion of the Fifth Amendment right is forbidden in a criminal prosecution. *State v. Morrison*, 368 N.W.2d 173, 175 (Iowa 1985)).

It is the case, as in 2011, that the vast majority of GSI's 2012 revenue became personal income for the Sorenson family. A spreadsheet showing withdrawals from GSI illustrates this:¹⁶⁹

Figure 6: 2012 Select Withdrawals from Grassroots Strategy, Inc.

Withdrawal Date	Payees					
	Kent Sorenson	Jeannine Sorenson	Visa CC	Cash	Warren Water District	Forest Septic Tank Service
1/27/2012		\$550.00				
2/13/2012	\$4,700.00					
2/14/2012			\$168.48			
2/15/2012	\$5,000.00					
2/21/2012	\$10,000.00					
2/23/2012	\$5,000.00					
3/6/2012	\$7,500.00					
4/4/2012			\$72.95			
4/4/2012					\$100.00	
4/10/2012	\$15,000.00					
4/16/2012				\$150.00		
5/9/2012			\$100.00			
5/22/2012					\$165.00	
5/29/2012			\$94.42			
6/8/2012	\$2,000.00					
6/15/2012	\$6,000.00					
6/18/2012					\$330.00	
7/12/2012			\$1,072.56			
8/2/2012					\$200.00	
8/9/2012			\$1,000.00			
9/4/2012	\$2,000.00					
9/13/2012						\$225.00
11/7/2012			\$930.00			
Totals	\$57,200.00	\$550.00	\$3,438.41	\$150.00	\$795.00	\$225.00

¹⁶⁹ A more detailed spreadsheet, and the documents on which this spreadsheet is based are collected as Exhibit 39.

D. Determination Regarding Probable Cause.

1. Rule 6 of the Senate Code of Ethics.

Although the facts of Senator Sorenson's compensation from MichelePAC and BFP are, in the main, quite clear, the legal implications of those facts under Rule 6 are less obvious. To be direct, Rule 6 could be written more clearly in a couple of respects. Whether Senator Sorenson's conduct violated Rule 6 requires some interpretation of the Rule. We conclude, however, that at least for those funds originating with MichelePAC in the first half of 2011, probable cause exists to find that Senator Sorenson knowingly violated Rule 6. With regard to funds originating with BFP, and with regard to funds originating from MichelePAC in late 2011, however, we believe that the Committee needs to make an interpretation of its own Rule.

a. The meaning of "employment" in Rule 6.

The relationship that Rule 6 prohibits, read literally, is "employment." In pertinent part, the Rule provides:

A senator shall not accept *employment*, either directly or indirectly, from a political action committee or from an organization exempt from taxation under section 501(c)(4), 501(c)(6), or 527 of the Internal Revenue Code that engages in activities related to the nomination, election, or defeat of a candidate for public office.

Senate Code of Ethics, Rule 6 (emphasis supplied). In his deposition, Senator Sorenson appeared to attach some significance to that word, claiming that he was not "employed by a candidate."¹⁷⁰

¹⁷⁰ Exhibit 5 (Sorenson Dep. Vol. I) at 36.

“Employment” has varying definitions under the law. Senator Sorenson appeared to be setting up the argument that “employment” is distinguished from an independent contractor relationship. In some circumstances, employment is so defined. *See, e.g.*, Iowa Code § 421.17B(1)(b) (in the context of administrative wage assignment cooperative agreements, “[e]mployment’ only includes parties in an employer-employee relationship and does not include one acting as a self-employer, contractor, distributor, agent, or in any representative capacity.”). By contrast, for the purposes of administering Iowa’s Sex Offender Registry statute, “employment” is defined very broadly and covers a person “who is self-employed, employed by another, and includes a person working under contract, or acting or serving as a volunteer, regardless of whether the self-employment, employment by another, or volunteerism is performed for compensation.” Iowa Code § 692A.101(10) and (11).

Here, it is notable that Rule 6 modifies the term “employment” with the words “directly or indirectly.” It is also relevant to consider the purpose for which Rule 6 was adopted, as confirmed by the long-time Secretary of the Iowa Senate. That is, the Rule is intended to prevent the appearance of state senators, in effect, selling their offices in order to promote the candidacy of other politicians.¹⁷¹ Given that purpose, and the words “directly or indirectly,” we think that permitting senators to evade the restrictions of Rule 6 by creating independent contractor relationships in place of narrowly-defined “employment” relationships would effectively destroy the meaning of Rule 6.

¹⁷¹ Exhibit 17 (Marshall Interview) at 1-2.

Senator Sorenson was expected by the Bachmann campaign to devote the equivalent of a full-time job to supporting its candidate. By all appearances, including Senator Sorenson's own account of the hours he spent on the campaign, that is what he did. We can easily conclude that his relationship with the Bachmann campaign constituted "employment" under Rule 6.

b. The type of political entity from which the funds originated.

Senator Sorenson's compensation for supporting Representative Bachmann originated from two different places. At certain times, the funds originated with MichelePAC, a political action committee that was not formed to support any particular candidate. At other times the funds originated with BFP, a committee established for the purposes of supporting an identifiable candidate. It is at least arguable that those two sources should be treated differently under Rule 6.

Rule 6 prohibits direct or indirect employment with a "political action committee." The definition of political action committee under Rule 6 is lengthy, but it contains an exception for a "candidate's committee":

For the purpose of this rule, a political action committee means a committee, *but not a candidate's committee*, which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than seven hundred fifty dollars in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office or to expressly advocate the passage or defeat of a ballot issue or influencing legislative action, or an association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization which makes contributions in the aggregate of more than seven hundred fifty dollars in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office or ballot issue or influencing legislative action.

Senate Code of Ethics, Rule 6 (emphasis supplied). Because MichelePAC and BFP could potentially be treated differently under Rule 6, we will address them separately.

(i) MichelePAC.

Early in 2011, Senator Sorenson's compensation plainly came from MichelePAC. Figures 2 and 3 above show that GSI received four checks totaling \$15,8335.47 drawn on C&M Strategies, Inc. when C&M had received no funds from BFP. We further conclude that there is probable cause to believe Senator Sorenson knew in early 2011 that his compensation was coming from MichelePAC. In an email dated May 24, 2011, Mr. Parrish told Senator Sorenson to send MichelePAC an invoice for "expenses and your salary."¹⁷² Moreover, other Bachmann staffers with whom Senator Sorenson was working closely on the Bachmann campaign—Andy Parrish, Wes Enos, and Drew Klein—were all being paid by MichelePAC directly.¹⁷³ In fact, Senator Sorenson wrote to Mr. Klein to offer him a position with the "Bachmann team here in Iowa." When he did so, he told Mr. Klein that MichelePAC would be paying his compensation.¹⁷⁴ Finally, as Figure 3 above shows, Senator Sorenson's first three payments from the Bachmann campaign were before June 13, 2011, when BFP simply did not exist. Given that the

¹⁷² Exhibit 26 (Emails among Parrish, Sorenson, and others, May 24, 2011).

¹⁷³ Exhibit 41 is a spreadsheet showing payments by MichelePAC to Messrs. Parrish, Enos, and Klein and makes reference to the FEC disclosure documents supporting those payments. *See also* Exhibit 11 (Enos Interview) at 1,6.

¹⁷⁴ Exhibit 24 (Sorenson email to Klein, May 9, 2011).

formation of BFP was a public and nationally-reported event,¹⁷⁵ it is reasonable to assume Senator Sorenson knew that BFP did not exist and that the funds were coming from the PAC.

Payments from MichelePAC to Senator Sorenson violate Rule 6. There is no reasonable construction of Rule 6 that would allow MichelePAC to be a “candidate’s committee.” The Statement of Organization for MichelePAC registered the entity as a “Political Action Committee” (“PAC”), not a “Candidate Committee.”¹⁷⁶ In particular, MichelePAC was registered as a “Leadership PAC,” which is a type of PAC directly or indirectly established, financed, maintained or controlled by a federal candidate or officeholder and which is neither an authorized committee nor affiliated with the candidate’s authorized committee.¹⁷⁷ Authorized committees are often called candidate committees.¹⁷⁸ Thus, by definition, a Leadership PAC, such as MichelePAC, is neither a candidate committee nor affiliated with the candidate committee of the sponsor candidate or officeholder. Thus, we find probable cause to believe that Senator Sorenson violated Rule 6 with regard to the payments that originated from MichelePAC in early 2011.

¹⁷⁵ Exhibit 45 (CNN blog post at <http://politicalticker.blogs.cnn.com/2011/06/13/rep-michele-bachmann-makes-presidential-run-official/>).

¹⁷⁶ Exhibit 31 (MichelePAC Statement of Organization).

¹⁷⁷ Federal Election Commission, *Congressional Candidates and Committees*, at 168 (2011), available at: <http://www.fec.gov/pdf/candgui.pdf>; *accord* 2 U.S.C. § 434(i)(8)(B).

¹⁷⁸ FEC, *Congressional Candidates and Committees*, at 165; *accord* 2 U.S.C. § 431(6).

It is also may be the case that Senator Sorenson, through C&M Strategies and GSI, received payments from MichelePAC in late 2011 when BFP was running out of money. Figure 2 above shows that after November 9, 2011, BFP's payments to C&M ceased, while MichelePAC's payments at the end of 2011 increased. It would appear, therefore, that at least the last \$7,500 payment that Senator Sorenson received in December 2011 originated with MichelePAC. Because Mr. Short refused to speak with us, however, and because we did not reach this topic with Senator Sorenson before he invoked his Fifth Amendment rights, we cannot say with confidence that Senator Sorenson knew whether in late 2011 his compensation was originating from MichelePAC. If he believed his compensation still originated with BFP, then whether that compensation violated Rule 6 turns on whether payments that actually originated with BFP violated Rule 6.

(ii) Bachmann For President.

Commencing in July 2011, after BFP's formation, Senator Sorenson knowingly, through C&M Strategies and GSI, received a series of payments that originated with BFP. Whether those payments violated Rule 6 depends on whether BFP constitutes a "candidate's committee" for the purposes of the exception to Rule 6 quoted above. This presents a difficult question of interpretation.

As noted above, the purpose of the Rule is to prevent the appearance of senators using their offices for personal profit to advance the political ends of others. If a senator, consistent with Rule 6, could accept compensation from *any* candidate's committee in *any* election, the purpose of the Rule would again largely be destroyed.

Historically, the general understanding in the Iowa Senate of Rule 6 has been that the exception for a “candidate’s committee” is limited to the senator’s *own* candidate’s committee. In other words, senators can draw compensation for working for their own committees, but they cannot be compensated for working for the committees of any other candidate. Mike Marshall, who has served as the Secretary of the Senate for fifteen years, articulated this interpretation of the Rule publicly in the Des Moines Register this summer,¹⁷⁹ and he has confirmed that interpretation with us, saying that this has been the “informal understanding” among senators throughout his tenure.¹⁸⁰

By contrast, the literal terms of Rule 6 are not consistent with this interpretation. The exception refers to “*a* candidate’s committee,” not, for example, “*the* candidate’s committee” or “*a senator’s own* candidate’s committee.” One natural dictionary definition of the word “a” is “any.” Webster’s Third New International Dictionary (unabridged) at 1 (2002). And to the extent that a “candidate committee” is a term of art at federal law, it is plain that BFP was such a “candidate committee.”¹⁸¹ One could argue that had the senate intended the “candidate’s committee” exception to apply only to a

¹⁷⁹ Jennifer Jacobs, “Differing Interpretations: The Sorenson Ethics Case,” Des Moines Sunday Register, July 21, 2013 at 10A.

¹⁸⁰ Exhibit 17 (Marshall Interview) at 1.

¹⁸¹ FEC, Congressional Candidates and Committees at 165; *see also* Exhibit 33 (BFP FEC Form One).

senator's *own* candidate's committee, it could have written the rule quite clearly to say so.¹⁸²

Because this is a close question with good arguments that could be made on both sides, we believe that it is for the Committee to determine how Rule 6 should be interpreted. The Committee making its own determination would have the positive effect of giving clear guidance to senators in the future about the meaning of the Rule. By contrast, an opinion from the undersigned may not speak with the same authority.

To be clear, however, this interpretation issue regarding Rule 6 is the only thing that potentially stands in the way of a probable cause finding regarding the payments from BFP that ultimately reached Senator Sorenson. If the Committee interprets Rule 6 as prohibiting payments from a "candidate's committee" other than the senator's own committee, we then find probable cause to believe that Senator Sorenson violated Rule 6 in taking payments from BFP.

¹⁸² This situation is further confused by the fact that Rule 6 prohibits accepting employment either directly or indirectly from a political action committee "*or* from an organization exempt from taxation under Section ... 527 of the Internal Revenue Code... ." Senate Code of Ethics, Rule 6 (emphasis supplied). BFP is subject to Section 527. Exhibit 34 (BFP incorporation documents) at 2. *See also* <http://www.irs.gov/Charities-&-Non-Profits/Political-Organizations/Filing-Requirements-1> ("[C]ampaign committees for candidates for federal, state or local office ... are all political organizations subject to ... I.R.C. § 527.") Thus, the inclusion of a 527 organization as a prohibited entity in Rule 6 would seem to swallow entirely the "candidate's committee" exception -- even for a senator's own candidate's committee. It is hard to imagine the drafters of the Rule intended it to be read as such.

2. Senator Sorenson's false denials of compensation.

Regardless of the Committee's interpretation of Rule 6, Senator Sorenson's responses to the Complaint constitute an independent ethical violation. Under Senate Code of Ethics Rule 16(a), a criminal offense under Iowa law that is a serious misdemeanor or greater is a violation of the Code.¹⁸³ In connection with the MichelePAC and BFP compensation issue alleged in Count II of the Complaint, we find probable cause to believe that Senator Sorenson in his responses to the Committee made false statements that constitute the criminal offense of felonious misconduct in office in violation of Iowa Code § 721.1.

Iowa Code § 721.1 prohibits several types of false representations by public employees. It provides, in its entirety:

Any public officer or employee, who knowingly does any of the following, commits a class "D" felony:

1. Makes or gives any false entry, false return, false certificate, or false receipt, where such entries, returns, certificates, or receipts are authorized by law.
2. Falsifies any public record, or issues any document falsely purporting to be a public document.
3. Falsifies a writing, or knowingly delivers a falsified writing, with the knowledge that the writing is falsified and that the writing will become a public record of a government body.
4. For purposes of this section, "government body" and "public record" mean the same as defined in section 22.1.

¹⁸³ "[A] repetitive and flagrant violation of the law," regardless of the law's level of severity, also constitutes a violation of the Senate Code of Ethics. Senate Code of Ethics, Rule 16(a).

Iowa Code § 721.1.

We find probable cause to believe that Senator Sorenson “[made] any false entry..., where such entries ... are authorized by law,” as prohibited by subsection 1. Alternatively, there is probable cause to believe that Senator Sorenson “[f]alsifie[d] any public record....” as prohibited by subsection 2.

a. Felonious misconduct: false entry.

The false entry violation has three elements: (1) that the defendant be a “public officer or employee”; (2) that he make a “false entry”; and (3) that such entries be “authorized by law.” Iowa Code § 721.1(1)

(i) Public employee.

Senator Sorenson is a “public employee” within the meaning of the felonious misconduct statute. While Chapter 721 does not define the term “public officer or employee,” the Iowa Supreme Court has held that state legislators are “public employees” for purposes of the bribery statute. *State v. Books*, 225 N.W.2d 322, 324-25 (1975) (holding that bribery statute violated Equal Protection by exempting state employees, including state legislators). Moreover, Iowa Code Chapter 68B, which governs “Government Ethics and Lobbying,” defines “public employee” to include, among other things, a “paid employee of the state of Iowa.” *Id.* § 68B.2(25). State senators are, of course, paid employees of the state of Iowa. *See, e.g.*, Iowa Code § 2.10 (setting forth the salaries of legislators, including senators); *id.* § 97B.1A(8) (defining state legislators as public employees for purposes of retirement benefit plan); Iowa

Admin. Code 495-12.1(97B) (same). And, as a factual matter, Senator Sorenson considers himself a state employee.¹⁸⁴

(ii) False entry.

Senator Sorenson's two official responses to the Senate Ethics Committee contain at least three false statements: (1) that he "did not receive compensation from MichelePAC, Bachmann for President or C&M Strategies,"¹⁸⁵ (2) that he was not paid "directly or indirectly by Michelle PAC [sic] or the Bachmann Campaign,"¹⁸⁶ and (3) that he "received no pay from any Bachmann entities, either directly or indirectly."¹⁸⁷ In fact, the evidence incontrovertibly shows that MichelePAC and BFP both paid portions of Senator Sorenson's compensation by making payments to C&M, which C&M passed through directly to GSI, an entity wholly owned by Senator Sorenson. The money from those payments was disbursed to Senator Sorenson personally, to third parties for Sorenson's benefit, or to pay for Senator Sorenson's expenses incurred while working to elect Representative Bachmann.

Thus, Senator Sorenson's statement in his Initial Response on February 8, 2013 that he "did not receive compensation from . . . C&M Strategies" is false. His compensation was paid by C&M into GSI, a company he owned and controlled, and used for his benefit. Similarly, his statements in his Supplemental Response that he "was

¹⁸⁴ Exhibit 5 (Sorenson Dep. Vol. I) at 29.

¹⁸⁵ Exhibit 2 (Initial Response) at 3.

¹⁸⁶ Exhibit 4 (Supplemental Response) at 1.

¹⁸⁷ *Id.* at 2.

never paid directly or indirectly by Michelle PAC or the Bachmann Campaign” and that he “received no pay from any Bachmann entities, either directly or indirectly” are plainly false.

Senator Sorenson’s false statements cannot be explained as errors. The evidence reveals that he understood that the Bachmann entities were paying him through a separate entity in order to disguise the fact that he was receiving payments from MichelePAC and BFP—an arrangement that he knew violated Rule 6. The evidence also suggests that Senator Sorenson subsequently employed a similar circuitous payment route for consulting payments in 2012 that may well be connected with the Ron Paul campaign.

In addition, Senator Sorenson’s attempts to mislead the Committee about his compensation indicate that he made his false statements knowingly and intentionally, in order to hide the payments he received for his work on the Bachmann campaign. Senator Sorenson attached to his Supplemental Response, as exhibits, two affidavits that were obviously intended to show that he received no compensation from the Bachmann entities.

The first is the affidavit of Cherie L. Johnson, an attorney.¹⁸⁸ In her affidavit, Ms. Johnson attested that Senator Sorenson had provided her with the monthly bank statements and deposit records of a single bank account for most (but not all) of the year from December 8, 2010, to December 7, 2011. Ms. Johnson stated that the records Senator Sorenson gave her did not reflect any deposits from C&M, nor any deposits from

¹⁸⁸ Exhibit 4 (Supplemental Response) at 9.

a single source that totaled \$7,500 in any month. As noted above, investigation has since revealed that the C&M deposits were made to a different bank account—the account of his consulting entity, GSI. Ms. Johnson has informed us that when Senator Sorenson provided her with his personal checking account records, neither he nor his counsel provided her with any records for the GSI accounts. Nor did they tell her where deposits into his personal checking account from GSI originated, what GSI was, or what business it did.¹⁸⁹

The second affidavit, by Mr. Enos, the comptroller of BFP in Iowa, attests that Mr. Enos did not “transmit a request for a check for Senator Kent Sorenson.”¹⁹⁰ Notably, Mr. Enos’s affidavit does not state that BFP never paid Senator Sorenson. Again, the evidence reveals that BFP did, in fact, make payments to C&M that were intended for Senator Sorenson.

While both those affidavits are literally true, the conclusion is inescapable that Senator Sorenson attached them to his Supplemental Response in an effort to mislead the Committee into believing that he was not paid by the Bachmann campaign for his work. The submission of these misleading affidavits indicates Senator Sorenson’s intent to deceive. In that context, his false statements in the Initial and Supplemental Responses cannot be accidental.

¹⁸⁹ Exhibit 15 (Johnson Interview) at 1-2.

¹⁹⁰ Exhibit 4 (Supplemental Response) at 8.

(iii) Authorized by law.

Senator Sorenson's Responses were "authorized by law" as that term is used in the felonious misconduct statute. The Iowa Code authorized the Senate Ethics Committee to adopt procedures for resolving ethics complaints, and those procedures require an official response by the Senator named in the complaint. Specifically, the statute authorizes the Ethics Committee to adopt "rules for the receipt and processing of findings of probable cause relating to ethical violations of members of the general assembly... ." Iowa Code § 68B.31(4)(a)(4).

The Senate Code of Ethics, adopted pursuant to Iowa Code §§ 68B.31(4)(a)(1) and (10), does exactly that. It provides that, upon receiving an ethics complaint, the chairperson of the ethics committee shall deliver a copy of the complaint to the respondent, "requesting a written response to be filed within ten days." Senate Code of Ethics, Rule 18(b). That response may admit or deny the allegations, or raise various objections to the process.

In this case, the process functioned precisely as set forth in the Code. The Secretary of the Senate forwarded a copy of the Complaint to Senator Sorenson pursuant to Senate Code of Ethics 18(b), and he responded twice—the Initial Response and the Supplemental Response. Thus, Senator Sorenson's Initial and Supplemental Responses were "authorized by law."¹⁹¹

¹⁹¹ While no court has interpreted the phrase "authorized by law" in the felonious misconduct statute, the Supreme Court has ruled on a very similar provision in the fraudulent practices statute, Iowa Code § 714.8(3), which punishes executing a "false certificate" if the "certificate is required by law." In *State v. Horton*, 509 N.W.2d 452,

In sum, the evidence shows that Senator Sorenson was a “public employee,” and that he made false entries, which entries were authorized by law. Thus, there is probable cause to believe that Senator Sorenson violated section 721.1(1), prohibiting felonious misconduct in office.

a. Felonious misconduct: falsifying a public record.

The felonious misconduct statute also prohibits a public employee from “falsif[ying] any public record,” Iowa Code § 721.1(2), or “falsif[ying] a writing, . . . with the knowledge that the writing is falsified and that the writing will become a public record of a government body,” *id.* §721.1(3). There is probable cause to believe that Senator Sorenson violated these provisions and falsified a public record. The elements of falsifying a public record are, first, that one falsify a writing, and, second, that the writing constitute a public record. Both elements are met in this case.

(i) Falsifying.

“Falsify” can refer either to creating a writing that contains a false statement, or to tampering with or altering an existing document. *State v. Walker*, 574 N.W.2d 280, 289-90 (1998) (explicitly rejecting the argument “that the meaning of the word ‘falsify’ does not include making an untrue statement, but is limited to actions such as changing, altering, mutilating or tampering with a writing or record,” and finding that submitting a

453-54 (Iowa 1993), the Court held that an application for a commercial fishing license was “required by law” because it was pursuant to a license process set up by a state agency, the DNR, even though someone is only “required” to apply for a commercial fishing license if they *want* to fish. Similarly, Senator Sorenson’s participation in the process here constructed under Chapter 68B and the Code was “authorized by law” even though, in theory, he could have ignored that process.

false statement of service constituted falsification); *accord State v. Acevedo*, 705 N.W.2d 1, 6 (2005) (affirming conviction for falsifying document where defendant gave false name in application for vehicle title); *State v. Romeo*, 542 N.W.2d 543, 548 (1996) (affirming conviction for falsifying document where defendant created false sales receipts).

As described above, Senator Sorenson created and submitted a writing containing a false statement when he submitted his Initial Response, and again when he submitted his Supplemental Response. The element of falsification is therefore met.

(ii) Public record.

The felonious misconduct statute defines “public record” to “mean the same as defined in section 22.1.” Iowa Code § 721.1(4). Section 22.1, a portion of Iowa’s Open Records law, defines “public record” as follows:

“[P]ublic records” includes all records, documents, tape, or other information, stored or preserved in any medium, *of or belonging to this state* or any county, city, township, school corporation, political subdivision ... or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

Id. § 22.1(3)(a) (emphasis added).

The Supreme Court takes an expansive view of that definition, holding that “a document of the government is a document that was produced or originated from the government. Documents *belonging to* the government would include those documents that originate from other sources but are held by public officers in their official capacity.” *City of Dubuque v. Dubuque Racing Assoc.*, 420 N.W.2d 450, 453 (1988). Thus, whether a document is a public record “does not turn on the physical location of the document[] in

question, rather, the appropriate inquiry is whether the document[] [is] held by [government] officials in their official capacity.” *Id.*

In this case, Senator Sorenson’s Initial and Supplemental Responses were created by a public employee in his official capacity as a state senator, responding to a complaint before the Senate Ethics Committee. They were submitted to the Senate Ethics Committee, acting in its official capacity to hear and resolve ethics complaints. There is no question that the Responses constitute public records under § 22.1.

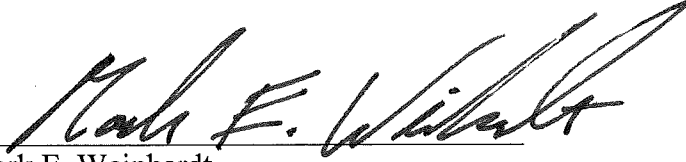
Because the evidence shows that Senator Sorenson falsified a public record, there is probable cause to believe that he violated §§ 721.1(2) and (3), prohibiting felonious misconduct in office.

VIII. CONCLUSIONS.

Based on the foregoing, I find pursuant to pursuant to Iowa Code §§ 68B.31(7)(a) and 68B.31A and Rule 18(g)(4) of the Senate Code of Ethics, as follows:

- First, as to Count I of the Complaint, there is not probable cause to find that Senator Sorenson violated Rule 16(a) of the Code.
- Second, regarding Count II of the Complaint, there is probable cause to find that Senator Sorenson violated Rule 6 of the Code by accepting compensation from MichelePAC in exchange for his service as the Michele Bachmann campaign’s State Chair and his work on the campaign.
- Third, regarding Count II of the Complaint, there is probable cause to believe that Senator Sorenson violated Rule 6 in accepting compensation from Bachmann For President in exchange for his service as the Bachmann campaign’s State Chair and his work on the campaign **if** the Senate Ethics Committee determines that Rule 6 prohibits a senator from accepting compensation from a presidential campaign committee.
- Fourth, regarding Count II of the Complaint, there is probable cause to believe that Senator Sorenson violated Rule 16(a) of the Code in that he committed the offense of felonious misconduct in office in violation of

Iowa Code § 721.1 when he knowingly made false statements to the Senate Ethics Committee in his Initial Response and his Supplemental Response to the Complaint.



Mark E. Weinhardt
Independent Counsel to the Senate Ethics Committee

October 2, 2013

Date