FEDERAL ELECTION COMMISSION
Washington, DC

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
VoteVets and Rick Hegdahl in his official capacity as treasurer	)	MUR 7700
	)	
Win the Era PAC (formerly Pete for America) and Ed Jordanich in his official capacity as treasurer	)	
	)	
Michael Halle	)	

STATEMENT OF REASONS OF CHAIRMAN ALLEN J. DICKERSON, COMMISSIONER SEAN J. COOKSEY, COMMISSIONER JAMES E. "TREY" TRAINOR, III, AND COMMISSIONER ELLEN L. WEINTRAUB

The complaint in this matter alleged coordination between a candidate and a super PAC via a tweet. The theory of the complaint is that the tweet by a senior official for the candidate's committee constituted a request or suggestion that brought later advertising by the super PAC under the Commission's coordination regulations. The candidate and the super PAC both deny coordinating. The PAC points out that it was already supporting the candidate and that its advertising both before and after the tweet sounded similar themes. But the fatal flaw in the complaint's theory is simple: The Commission stated at the time it issued its coordination regulation, and confirmed in subsequent enforcement decisions, that the request or suggestion standard is meant to cover requests to select audiences, not statements to the general public. And there are few more public ways for a campaign to communicate than by campaign officials putting out statements on Twitter.

Specifically, the complaint alleged that Pete for America (the "Committee," now called Win the Era PAC), the principal campaign committee of 2020 presidential candidate Pete Buttigieg, through its agent Michael Halle, requested or suggested that VoteVets create and air pro-Buttigieg television advertisements in Nevada. The allegations center around a tweet from Halle that stated: "Pete's military experience and closing message from Iowa work everywhere especially in Nevada where it's critical they see this on the air through the caucus."[1] According to the Complaint, VoteVets, a multicandidate, hybrid political committee, responded to the tweet by spending $639,000 to produce and air television advertisements, which it reported as independent expenditures.

[1] Compl. ¶ 10 (Feb. 18, 2020).

The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.[2] A multicandidate committee, such as VoteVets, may contribute from its federal account to a candidate and his or her authorized committee up to $5,000 per election.[3]

Under Commission regulations, a communication is coordinated with a candidate, an authorized committee, a political party committee, or their agent if it: (1) is paid for, in whole or in part, by a person other than the candidate or committee (the "payment prong"); (2) satisfies at least one of the content standards set out at 11 C.F.R. § 109.21(c) (the "content prong"); and (3) satisfies at least one of the conduct standards set out at 11 C.F.R. § 109.21(d) (the "conduct prong").[4] All three prongs are required for a communication to be considered a coordinated communication under these regulations.[5] Payments made for coordinated communications are in-kind contributions to the candidate or committee with which the communication was coordinated.[6] In this matter, the analysis as to whether coordination occurred turned on the conduct prong, specifically whether Halle's tweet constituted a "request or suggestion," for the purposes of the coordination regulations, to VoteVets that it create and disseminate the advertisements at issue.

In 2003, when the Commission issued its Explanation and Justification on Coordinated and Independent Expenditures, the Commission explained that a request or suggestion is the "most direct form of coordination" whereby "the candidate or political party committee communicates desires to another person who effectuates them," and that the determination of whether a third party acted in response to a request or suggestion must be "based on specific facts, rather than presumed."[7] The Commission further elaborated that the standard "is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally."[8] For example, "a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the [request or suggestion] conduct standard," but an email to a discrete group of recipients would meet the standard.[9]

Consistent with this guidance, the Commission dismissed a matter where an authorized committee published a "Notice" page on its public website that contained a list of specific messages about the candidate and her opponents, specified who needed to know them (*e.g.*, "[v]oters in Philadelphia"), and offered a general sense of timing (*e.g.*, "[a]t this point of the

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2 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

3 52 U.S.C. § 30116(a)(2). Committee treasurers are required to disclose the identification of each political committee that makes a contribution to the reporting committee during the reporting period, along with the date and amount of any such contribution. *Id.* § 30104(b)(3)(B); 11 C.F.R. § 104.3(a). If a committee makes a contribution, it shall disclose the name and address of the recipient. 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

4 11 C.F.R. § 109.21(a).

5 *Id.* § 109.21(a).

6 *Id.* § 109.21(b)(1).

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

8 *Id.* at 432.

9 *Id.*

campaign").[10] Similarly, the Commission has found no reason to believe that a violation of the Act occurred when an authorized committee posted a message and related documents on its public website with information on the candidate and allegations about her opponent, which the complaint had argued were "requests and suggestions" for an outside group that allegedly distributed a television advertisement based on the posted message.[11] We did not see a pertinent distinction between those fact patterns and the one at issue here. Moreover, the tweet itself is ambiguous. For instance, it could have been a generalized call for other independent Buttigieg supporters to get off the sidelines and full-throatedly support the candidate ahead of the Nevada caucuses. It could also be interpreted as a statement forecasting the Committee's intentions for its own advertising in Nevada, rather than a request for someone else's spending.

When the tweet at issue in this matter was published, VoteVets had already reported approximately $610,000 in independent expenditures supporting Buttigieg.[12] One ad, which ran prior to the Iowa caucuses, highlights Buttigieg's military service and states that he will "turn the page on our divisive politics to a new era, where everyone belongs."[13] A second ad, which aired the day that Halle issued his tweet, features New Hampshire-based veterans who state that the country is "more divided than I've ever seen it," praise Buttigieg's military experience, and state that he "reminds us of what we can be as a country, if we just work together."[14]

In the run-up to the Nevada caucuses (after Halle's tweet), VoteVets made pro-Buttigieg independent expenditures of approximately $639,000 for television ads directed at Nevada.[15] VoteVets's Response identifies its Nevada ad as "Sunrise."[16] The ad features a Nevada veteran,

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[10] Factual and Legal Analysis at 1-2, 4-5, MUR 7124 (Katie McGinty for Senate, *et al.*).

[11] Factual and Legal Analysis at 2-3, MUR 6821 (Shaheen for Senate, *et al.*).

[12] VoteVets also reported an additional $809,404 in pro-Buttigieg independent expenditures on February 5, 2020, apparently several hours after the tweet. VoteVets, 24-Hour Report of Independent Expenditures at 1 (Jan. 25, 2020), https://docquery.fec.gov/pdf/440/202001259167367440/202001259167367440.pdf; VoteVets, 24-Hour Report of Independent Expenditures at 1 (Feb. 5, 2020), https://docquery.fec.gov/pdf/791/202002059186470791/202002059186470791.pdf. VoteVets's monthly reporting indicated that all of these disbursements related to the New Hampshire primary. VoteVets, 2020 February Monthly Report at 69 (Feb. 19, 2020), https://docquery.fec.gov/pdf/081/202002199186542081/202002199186542081.pdf; VoteVets, 2020 March Monthly Report at 128, 140 (Mar. 20, 2020), https://docquery.fec.gov/pdf/654/202003209204669654/202003209204669654.pdf.

[13] VoteVets Resp. at 5 n.12 (Mar. 30, 2020) (citing VoteVets, *"Together"* 2020, YOUTUBE (Apr. 6, 2020), https://www.youtube.com/watch?v=YBm9o0dlohg).

[14] *Id.* at 5 n.12 (citing VoteVets, *Divided America 2020*, YOUTUBE (Apr. 6, 2020), https://www.youtube.com/watch?v=poYRx77IaOs).

[15] VoteVets, Amended 24-Hour Report of Independent Expenditures at 1 (Feb. 20, 2020), https://docquery.fec.gov/pdf/323/202002209186573323/202002209186573323.pdf (disclosing a February 12, 2020, payment or obligation to Kate Nelson Media, LLC, of $600,000 for a "TV Advertising Buy" and a February 13, 2020, payment or obligation to 76 Words of $39,652.90 for "TV Advertising Production").

[16] VoteVets Resp. at 2 n.3 (citing VoteVets, *Sunrise 2020 Anamorphic*, YOUTUBE (Apr. 6, 2020)), https://www.youtube.com/watch?v=x4Rjf47Ssig.

who praises Buttigieg's military experience and states that Buttigieg will "turn the page on all this division and hate. One team, one America. Pete's the one who can do it."[17]

VoteVets specifically and repeatedly denied that its advertising was in any way influenced by the tweet. The Complaint contended that the tweet was directed to VoteVets because it was "the only super PAC or other outside group making significant independent expenditures supporting Buttigieg at the time, and therefore the only group that could reasonably be expected to follow through on the request or suggestion."[18] But the fact that VoteVets' Nevada advertising was consistent with its previous advertising supports rather than contradicts its assertion of independence. As the VoteVets response details:

> The Advertisement is substantially similar to the previous two television advertisements disseminated by VoteVets – featuring a local veteran and/or discussing Buttigieg's military service and unifying vision for the country.
>
> . . . [A]t the time of the Advertisement, Nevada was the next state to vote in the Democratic Party's nominating process. VoteVets simply ***did not need to be told*** by a campaign official's public tweet or by anyone else, to know that the organization should start running ads in Nevada after New Hampshire voted in its primary election. Mr. Halle's tweet was not material to VoteVets' messaging, targeting, or spending in any way.[19]

The complaint also cited to a *Politico* article, from the same day that Halle published his tweet, that quoted Committee spokesperson Chris Meagher as stating, "Pete is the only candidate who isn't a millionaire or billionaire. And if the largest progressive veterans group wants to help spread the word about his service, we welcome it."[20] The article also quoted VoteVets Chairman Jon Soltz as stating that VoteVets "cannot and do[es] not coordinate our ads with the campaign in any way."[21] The record does not contain any indications of direct communications between VoteVets and Halle. And, even assuming *arguendo* that the *Politico* quote may hit closer to the mark, there is insufficient additional information to determine how the quote related to the tweet, if at all. There is no basis to conclude that Meagher was confirming that the tweet was intended for VoteVets (as opposed to, for instance, merely expressing gratitude for independent support).

Ultimately, the factual record in this matter closely resembled the factual records in other matters where allegations of coordination centered around publicly available internet materials. Consistent with those matters, we voted to find no reason to believe that Respondents violated

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17 *Id.*; *see also* Compl. ¶ 12.

18 Compl. ¶¶ 9, 27.

19 VoteVets Response, at 6 (emphasis original).

20 Elena Schneider, *Buttigieg Camp Invites More Super PAC Help*, POLITICO, Feb. 5, 2020, https://www.politico.com/news/2020/02/05/buttigieg-super-pac-111217 (cited at Compl. ¶ 11 n.12).

21 *Id.*

the Act and Commission regulations in connection with VoteVets' advertisements supporting Buttigieg.

April 29, 2022
Date

Allen J. Dickerson
Chairman

April 29, 2022
Date

Sean J. Cooksey
Commissioner

April 29, 2022
Date

James E. "Trey" Trainor, III
Commissioner

April 29, 2022
Date

Ellen L. Weintraub
Commissioner