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March 16, 2020

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**VIA EMAIL**

Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examination & Legal Administration  
1050 First Street, NE  
Washington, DC 20463  
cela@fec.gov

**Re: Matter Under Review 7700**

Dear Mr. Jordan:

We write as counsel to Pete for America, Inc., and Ed Jordanich, in his official capacity as treasurer (the “*Committee*”), and Michael Halle (collectively, “*Respondents*”), in response to the Complaint filed by the Campaign Legal Center on February 18, 2020, alleging a violation of the Federal Election Campaign Act of 1971, as amended (the “*Act*”), and Federal Election Commission (“*FEC*” or “*Commission*”) regulations.

The Complaint falsely alleges that the Respondents accepted prohibited contributions from VoteVets, a hybrid PAC registered with the FEC, in the form of coordinated communications. The Complaint’s only factual basis for this allegation is its claim that a strategist for Pete for America, Inc., tweeted a “request or suggestion” to VoteVets to purchase ads highlighting specific campaign themes. But, contrary to the Complainant’s assertions, the Commission has consistently held that the alleged activity does not constitute “coordination” for purposes of the Act. Accordingly, we respectfully request that this matter be closed.

**FACTUAL BACKGROUND**

Michael Halle was a consultant for Pete for America, Inc., the principal committee of Pete Buttigieg’s now-suspended presidential campaign. On February 5, 2020, he tweeted, “Pete’s military experience and closing message from Iowa work everywhere especially in Nevada where it’s critical that they see this on the air through the caucus.”<sup>1</sup> Halle did not mention any individual

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<sup>1</sup> Michael Halle (@mhalle), TWITTER (Feb. 5, 2020), <https://twitter.com/mhalle/status/1225150172893630464?s=20>.

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or organization in the tweet. His account was established in January of 2009 and, as of March 9, 2020, he had 4,784 followers.<sup>2</sup>

VoteVets is a political action committee registered with the FEC as a hybrid PAC. It describes its mission as to “use public issue campaigns to give a voice to veterans on matters of national security, veterans’ care, and every day issues that affect the lives of those who served, and their families.”<sup>3</sup> On December 4, 2019, VoteVets endorsed Pete Buttigieg’s candidacy for President of the United States.<sup>4</sup> In 2019-2020, VoteVets made independent expenditures supporting Pete Buttigieg’s candidacy, as well as two candidates in Senate races.<sup>5</sup>

The Complaint points to a specific advertisement VoteVets ran in Nevada that it claims was coordinated with Respondents. That ad included the following, narrated by a veteran:

I am a combat marine veteran in Vietnam. We knew we were in it together; we had each other’s back. Our country now is way more divided than when I first come home from Vietnam. That’s why I’m for Pete Buttigieg for President. He served in Afghanistan. He’s good for the working men and women of this country. He’ll turn the page on all this division and hate. One team, one America, Pete’s the one who can do it.<sup>6</sup>

The ad features the same themes that VoteVets embraced throughout the Primary election. For example, a VoteVets ad placed in late January, reportedly in the New Hampshire market, featured a similar message of service and unity. That ad included the following script:

We came from cities, and towns. Different backgrounds, different stories. The one thing in common was the flag on our shoulders that meant we were in this together. It’s the legacy of service Pete Buttigieg carries and how he’ll unite our country as President, turn the page on our divisive politics to a new era where everyone belongs. It’s why he served and why he’ll be a great President.<sup>7</sup>

VoteVets ads in support of Pete Buttigieg, both before and after Halle’s tweet, featured similar themes. Those ads were consistent with its mission to advocate for the interests of veterans and its history of endorsing candidates who are veterans. Though the Complainant makes vague

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<sup>2</sup> *Id.*

<sup>3</sup> VOTEVETS, <https://www.votevets.org/> (last visited Mar. 9, 2020).

<sup>4</sup> See Reid J. Epstein, *Liberal Veterans’ Group Endorses Pete Buttigieg in 2020 Race*, N.Y. TIMES (Dec. 4, 2019), <https://www.nytimes.com/2019/12/04/us/politics/pete-buttigieg-votevets-endorsement.html>.

<sup>5</sup> See VoteVets FEC Spending Summary for 2019-2020 Cycle, <https://www.fec.gov/data/committee/C00418897/?tab=spending&cycle=2020>.

<sup>6</sup> See Compl. ¶ 12 (citing a reporter’s tweet featuring the ad).

<sup>7</sup> See Zach Montellaro (@ZachMontellaro), TWITTER (Jan. 24, 2020), <https://twitter.com/ZachMontellaro/status/1220765684977881088?s=20>.

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allegations that the Nevada ad was coordinated with Respondents, it fails to provide any support for that claim. Instead, Halle's tweet simply does not constitute coordination, and there is no indication that Respondents otherwise engaged in activity that would meet the Commission's test for coordination.

### LEGAL ANALYSIS

The Complaint alleges that Respondents, through Michael Halle's tweet, coordinated with VoteVets in the production of television ads that VoteVet placed in Nevada. A communication is a "coordinated communication" under 11 C.F.R. § 109.21 only if it satisfies all three prongs of the regulation: the payment prong, the content prong, and the conduct prong. To meet the conduct prong, a candidate, authorized committee, or an agent of the foregoing must engage in certain acts that demonstrate coordination. The Complaint fails to allege any facts that demonstrate that Respondents satisfied the "request or suggestion" or any other element of the conduct prong. Accordingly, the Commission should find no reason to believe Respondents committed a violation of the Act and close the file.

The Complaint alleges that the ads fulfill the conduct prong under 11 C.F.R. § 109.21(d)(1) because they were "created, produced, or distributed at the request or suggestion of Buttigieg's agent, Michael Halle, a senior strategic for Pete for America."<sup>8</sup> The Complaint posits that Halle's tweet — on a public and popular social media platform — comprised a request or suggestion specifically to VoteVets to create advertisements featuring specific content.

As part of the revision of the coordination regulations in 2003, the Commission established that the conduct prong would be satisfied if a campaign made a "request or suggestion" that a third party disseminate a communication on its behalf.<sup>9</sup> The Complaint cites the Commission's accompanying Explanation and Justification's note that "[a] request or suggestion encompasses the most direct form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them."<sup>10</sup> Complainant omits that the *very next paragraph* of the Commission's Explanation and Justification clarifies that "[t]he 'request or suggestion' conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, **but not those offered to the public generally. 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 conduct standard in paragraph (d)(1)**, but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1)."<sup>11</sup> The

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<sup>8</sup> Compl. at ¶ 27.

<sup>9</sup> 11 C.F.R. § 109.21(d)(1).

<sup>10</sup> Compl. at ¶ 20 (citing Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003)).

<sup>11</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (emphasis added).

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Commission subsequently confirmed that the use of publicly available information by a third party does not satisfy the conduct prong, noting that “[u]nder the new safe harbor, a communication created with information found, for instance, on a candidate’s or political party’s Web site, or learned from a public campaign speech, is not a coordinated communication if that information is subsequently used in connection with a communication.”<sup>12</sup> ***A request or suggestion made on a publicly available website, like Twitter, simply does not satisfy the conduct prong under longstanding Commission precedent.***

The Commission recently re-affirmed this basic principle in several enforcement actions. For example, in FEC Matter Under Review 6821, the complaint alleged Shaheen for Senate coordinated with Senate Majority PAC after the latter began airing advertisements with similar themes to those contained in a message posted on the publicly available website of Shaheen for Senate. In finding that there was no reason to believe a violation of the Act occurred, the Commission concluded that “a communication resulting from a general request to the public or the use of publicly available information, including information contained on a candidate’s campaign website, does not satisfy the conduct standards.”<sup>13</sup> Later, in FEC Matter Under Review 7124, the Commission voted 5-0 to find no reason to believe that Katie McGinty coordinated communications with Women Vote! and Majority Forward when those groups paid for advertisements featuring similar themes to those posted on Katie McGinty’s website with the phrase “voters need to know,” allegedly signaling to outside groups that certain communications should be disseminated. The Commission made clear that “the ‘request or suggestion’ ‘conduct’ standard refers to requests or suggestions ‘made to a select audience, but not those offered to the public generally’” and that a request that is posted on a web page that is available to the general public does not trigger the request or suggestion content standard.<sup>14</sup>

Ignoring Commission precedent, the Complaint nonetheless alleges that the public tweet was “directed to a specific audience.”<sup>15</sup> The Complaint fails to cite evidence for this claim beyond speculative allegations that because VoteVets was “the only super PAC or other outside group making significant independent expenditures supporting Buttigieg,” they were the target of the

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<sup>12</sup> Coordinated Communications, 71 Fed. Reg. 33190, 33205 (June 8, 2006). Complainant states that the Commission declined to extend the publicly available information safe harbor to the request or suggestion conduct standard. Compl. at ¶ 21. The Commission declined to formally extend the policy to the request or suggestion prong only because the request or suggestion standard, unlike other conduct standards, is not dependent on the nature of information conveyed to a third-party payor. Coordinated Communications, 71 Fed. Reg. 33190, 33205 (June 8, 2006). Thus, it reasoned that a *private* request or suggestion for communications involving public information could still meet the test for coordination. *Id.* This does not negate the Commission’s longstanding precedent, in both the 2003 Explanation and Justification and subsequent enforcement matters, that the coordination regulation is not meant to cover purported requests or suggestions offered to the public generally.

<sup>13</sup> See FEC Matter Under Review 6821 (Shaheen for Senate), Factual and Legal Analysis at 8 (Dec. 2, 2015).

<sup>14</sup> See FEC Matter Under Review 7124 (Katie McGinty for Senate), Factual and Legal Analysis at 8-9 (May 4, 2017).

<sup>15</sup> Compl. at ¶ 27.

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tweet.<sup>16</sup> But, as prior Commission precedent has consistently shown, posting a message on a public website does not constitute coordination. There may not be a website more “public” than Twitter. Indeed, as of this writing, the tweet received 642 responses, received attention from the press, and is the subject of this Complaint.

The Complaint also alleges that a quote in a *Politico* article from a spokesperson for the Committee provides evidence that the tweet was directed at VoteVets. But the quote simply acknowledged that the Buttigieg campaign was supported by veterans and noted that “if the largest progressive veterans group wants to help spread the word about [Pete Buttigieg’s] service, we welcome it.”<sup>17</sup> The quote, provided by a spokesperson and not Michael Halle, did not even mention Halle’s tweet or an intended audience for the tweet. Instead, it functioned to draw contrast between Pete Buttigieg and his opponents, noting at the outset “Pete is the only candidate who isn’t a millionaire or billionaire” and then referencing the Committee’s welcoming of support from the veterans group.<sup>18</sup> It is a blatant *non sequitur* to suggest that a spokesperson’s response to the tweet, *after* it was published and *after* receiving media inquiries on the subject, is in any way indicative of the drafter’s intended audience. And, again, the Complainant appears to have prematurely stopped reading its source. The very next paragraph includes a statement from VoteVets — the alleged intended audience — declaring that VoteVets independently decides its strategy and “cannot and [does] not coordinate our ads with the campaign in any way.”<sup>19</sup>

The presence of the quote, and whatever tortured reading the Complainant tries to make of it, does not change the fact that the tweet does not constitute coordination. The Complaint does not allege any facts that, if proven true, would demonstrate that Halle’s public tweet was a request or suggestion to a specific audience. “The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”<sup>20</sup> “Unwarranted legal conclusions from asserted facts” or “mere speculation” are not accepted as true.<sup>21</sup> At base, the entirety of the Complaint is comprised of “mere speculation” — from allegations regarding the intended audience of the tweet, to even the identification of the communications alleged to have been coordinated, which the Complainant admits are based on published reports that “indicate” the specific ad the Complainant references ran in Nevada.<sup>22</sup>

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

<sup>17</sup> See 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>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> FEC Matter Under Review 4960 (Clinton for U.S. Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).

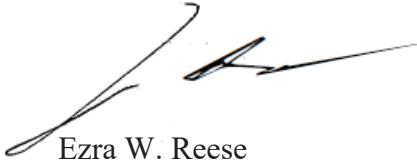
<sup>21</sup> *Id.* at 2.

<sup>22</sup> Compl. at ¶ 13.

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Because of the speculative nature of the Complaint and the Commission's clear standard that communications on a public website do not support claims of coordination, we respectfully request that the Commission find no reason to believe a violation has occurred and close the file.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ezra W. Reese', with a long horizontal flourish extending to the right.

Ezra W. Reese  
Antoinette M. Fuoto  
*Counsel to Respondents*