

August 29, 2022

Roy Q. Lockett
Acting Assistant General Counsel
Federal Election Commission
Complaints Examination and Legal Administration
999 E Street, NW
Washington, DC 20436

Re: MUR 7982

Dear Mr. Lockett:

We write to you on behalf of Michelle Vallejo for Congress and Shayne Thoman, in his official capacity as Treasurer (the "Committee"), in response to the above-referenced complaint (the "Complaint"). The Complaint alleges that certain expenditures made during the primary election by LUPE Votes, a section 501(c)(4) organization, were coordinated with the Committee based on the fact that LUPE Votes helped to recruit Ms. Vallejo to run for office, and that Ms. Vallejo and LUPE Votes' Director of Organizing, Daniel Diaz, made several public appearances together during the course of the primary campaign (one of which occurred only *after* the expenditures in question were disseminated). These are the type of speculative and conclusory allegations that the Commission has dismissed time and again and, in fact, Ms. Vallejo did not coordinate with Mr. Diaz or LUPE Votes as alleged.

The Complaint also raises the fact that the Committee and a separate organization, LUPE PAC, split the cost of a poll after the primary election. Upon further review, which was prompted by the Complaint, the Committee has determined that the Campaign's attempt to split the poll with LUPE PAC was conducted in error, and it has corrected the matter by compensating its pollster for the full value of the poll.

Accordingly, the Commission should reject the allegations made by the Complaint and should close the file.

Factual Background

Michelle Vallejo is a candidate for Congress in Texas's Fifteenth Congressional District. While this is Ms. Vallejo's first foray into electoral politics, she has deep roots in the McAllen, Texas-area community. Ms. Vallejo and her father own La Pulga Los Portales, a flea market located in Alton, Texas, in the Rio Grande Valley, which has operated as a hub for the area's Tejano community for the last 23 years. Though La Pulga is a commercial endeavor, Ms. Vallejo and her family have used the space to offer support to their community, partnering with community

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organizations to host educational events for, and provide services to, area residents, such as voter registration drives and vaccine clinics.

One of the nonprofits that Ms. Vallejo partnered with was La Unión Del Pueblo Entero, or “LUPE.” LUPE is a section 501(c)(3) membership organization that was founded by labor rights activists César Chávez and Dolores Huerta in 1989, and it has conducted community organizing in the Rio Grande Valley in South Texas since 2003. It is through her community involvement that Ms. Vallejo met Mr. Diaz in 2019. The two became casual acquaintances and would see each other at community and political events in the region from time to time.

In 2021, LUPE’s affiliated section 501(c)(4) organization, LUPE Votes, sought to identify a progressive candidate for Congress in Texas’s Fifteenth Congressional District that it could endorse. LUPE Votes reached out to Ms. Vallejo and several other community organizers during November and early December 2021 seeking to determine whether it could identify a prospective candidate whom the organization could endorse. During this process, based on her recollection, Ms. Vallejo discussed her policy positions with LUPE Votes; she did not discuss prospective campaign strategies, plans, or needs with LUPE Votes at the time, as she had not yet established a campaign. Subsequently, Ms. Vallejo decided to become a candidate for Congress and filed a Statement of Candidacy and Statement of Organization with the Commission on December 12, 2021. Once she decided to run, she was told by LUPE Votes that she should not communicate with the organization about nonpublic information about her campaign. From that point, Ms. Vallejo observed that admonition and has no recollection of communicating with Mr. Diaz except in the context of the events described herein.¹

One such event was the Hidalgo County Tejano Democrats Gala, which took place on January 13, 2022. This event was an awards dinner and was widely attended by elected officials and community members from across the county. At the event, Ms. Vallejo recalls exchanging brief greetings with Mr. Diaz and several other LUPE employees who were in attendance, and taking a group photograph with those employees; they did not discuss Ms. Vallejo’s or the Committee’s nonpublic campaign strategy, plans, or needs, nor did Ms. Vallejo request or suggest that LUPE Votes sponsor advertisements supporting her candidacy.

Another event, which took place on January 26, 2022, was a Facebook Live education roundtable. This event, which was conducted virtually on Facebook, featured Ms. Vallejo talking with several leaders in the field of education to an online audience. Because of his work both as a school counselor and a community organizer in the region, Ms. Vallejo’s campaign invited Mr. Diaz to attend and speak. The conversation with Mr. Diaz about the event was limited to the logistics of the event and Mr. Diaz’s policy views. It did not, to Ms. Vallejo’s

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knowledge, discuss the Committee's plans, projects, activities or needs nor did Ms. Vallejo request or suggest that LUPE Votes sponsor advertisements supporting her candidacy.

A third event, also identified in the complaint, was a fundraiser that Mr. Diaz and Juanita Valdez-Cox hosted to raise money for Ms. Vallejo's campaign. Ms. Vallejo's campaign had initially asked Ms. Valdez-Cox to host the event, and Mr. Diaz was later added as a co-host. In planning this event, the campaign did not, to Ms. Vallejo's knowledge, disclose any of its nonpublic strategies or needs to the hosts. Similarly, Ms. Vallejo was present at the event and recalls sharing casual conversation with the hosts and the attendees, but did not discuss her campaign's plans or needs with either, nor did she request or suggest that LUPE Votes sponsor communications supporting her candidacy.

Legal Background and Analysis

1. There is no reason to believe that the Committee and LUPE Votes coordinated LUPE Votes' expenditures supporting Ms. Vallejo.

Under the Act and Commission regulations, "[t]he 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]. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented."² Moreover, "[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true."³

Here, the Complaint identifies three cases where Ms. Vallejo and Mr. Diaz were together at the same event during the primary election period, as evidenced by social media posts. The Complainant does not state that she was present at any of those events, but assumes that Ms. Vallejo and Mr. Diaz coordinated with each other based solely on their presence at the same events (one of which, the fundraiser, occurred *after* LUPE Votes' advertisements were disseminated). The Complaint concludes that "the expenditures by LUPE votes constitute an in-kind contribution directly to the Michelle Vallejo campaign." This is precisely the type of "unwarranted legal conclusion[] from asserted facts" that the Commission has long rejected. It is factually incorrect and legally flawed, and should be rejected by the Commission.

² Statement of Reasons, Commissioners Mason, Sandstrom, Smith & Thomas, MUR 4960 (Dec. 21, 2000), at 1; see 11 C.F.R. § 111.4(d).

³ *Id.* at 2; see Statement of Reasons, Commissioners Mason, Sandstrom, McDonald, Smith, Thomas & Wold, MUR 5141 (Apr. 17, 2002).

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Under Commission rules, a communication will be considered a “coordinated communication,” and therefore an in-kind contribution to a candidate, when it contains certain content⁴ and follows certain conduct. The types of conduct that can trigger the conduct prong are where (1) the candidate or an agent requests or suggests the communication; (2) the payor suggests a communication and the candidate or an agent assents to the suggestion; (3) the candidate or an agent is materially involved in decisions regarding the contents or mode of distribution of the communication in which nonpublic information about the candidate’s plans, projects, activities or needs that is material to the communication is conveyed to the payor; (4) the candidate or an agent has had one or more substantial discussions with the payor, in which nonpublic information about the candidate’s plans, projects, activities or needs that is material to the communication is conveyed to the payor; (5) the candidate and the payor share a common vendor; or (6) a former employee or independent contractor of the candidate is involved in the communication.⁵ The Complaint does not allege that Ms. Vallejo or Mr. Diaz engaged in any of these types of conduct at their public encounters – and, in fact, they did not.

Moreover, the Commission has consistently found that a personal relationship between a candidate and individuals associated with an entity that seeks to make independent expenditures is insufficient to support a reason-to-believe finding. For example, in MUR 7139, the Complaint alleged that coordination occurred between the campaign of candidate Amie Hoeber and Maryland USA, an independent expenditure only political committee that spent its entire \$3.8 million budget supporting Hoeber or opposing her opponent. Mark Epstein, the husband of candidate Hoeber, served as her campaign’s Assistant Treasurer and Custodian of Records and contributed all but \$ 8,709 of Maryland USA’s funds, including a donation of \$300,000 one week after leaving his positions with his wife’s campaign; moreover, Maryland USA and the Committee used two common vendors. The Factual and Legal Analysis assumed that, “[a]s husband and wife, Hoeber and Epstein presumably had numerous opportunities to discuss Hoeber’s campaign while and after Epstein held positions with the campaign,

⁴ To result in a coordinated communication, a communication must qualify as a “public communication” or an “electioneering communication.” 11 C.F.R. § 109.21(c). A controlling group of Commissioners has determined that door-to-door canvassing is not a “public communication” under Commission regulations. Advisory Opinion 2016-21, Concurring Statement of Vice Chair Hunter and Commissioners Goodman and Petersen. One of the independent expenditures identified by the Complaint was a door hanger that appears to be used in a door-to-door canvass; under this view, as a matter of law, this type of literature cannot constitute a coordinated communication.

⁵ 11 C.F.R. § 109.21(d).

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information that Epstein could have passed to Maryland USA.”⁶ Nonetheless, three Commissioners found this approach to be too speculative and declined to pursue enforcement.⁷

Similarly, in MUR 7731, the Commission unanimously rejected a complaint where a candidate had worked for an organization immediately before becoming a candidate, and the candidate’s husband and mother served in leadership roles of two organizations connected to groups that made independent expenditures in that candidate’s election. Because of the small amount of spending (\$23,397), and the lack of any specific information showing coordination, the Commission dismissed the matter as a matter of prosecutorial discretion.⁸ If coordination cannot be presumed in the case of two cohabitants, it cannot be presumed in the case of two acquaintances who interacted in group settings a handful of times in the course of a campaign.⁹

Nor does the fact that LUPE Votes vetted, and ultimately endorsed, Ms. Vallejo’s candidacy create any inference of coordination. Commission rules recognize that advocacy organizations like LUPE Votes have a constitutional right to discuss their policy positions with their elected leaders, and to learn about the policy positions of those who seek elected office, so that they can determine which candidates they will support.¹⁰ To that end, Commission rules provide for a safe harbor whereby a candidate may respond to inquiries about their positions on legislative or policy issues; so long as the candidate does not discuss their campaign plans, projects, activities or needs, such policy discussions will not result in a coordinated communication.¹¹ As stated above, when Ms. Vallejo was initially interviewed by LUPE Votes in November 2021 before she became a candidate, she shared information about her policy positions, so that LUPE Votes could determine whether or not it would endorse her candidacy. She does not

⁶ Factual and Legal Analysis, MUR 7139, at 10 (Jan. 25, 2021).

⁷ Statement of Reasons of Chairman Dickerson and Commissioners Cooksey and Trainor, MUR 7139, at 1-2 (Feb. 14, 2022).

⁸ Enforcement Priority System Dismissal Report, MUR 7731 (Mar. 31, 2022)

⁹ *See also* MUR 7067 (Murphy) (finding no reason to believe where the father of a candidate and a family owned business contributed \$750,000 to an independent expenditure only political committee that supported the candidate); MUR 6668 (Chen) (finding no reason to believe where the brother of a federal candidate provided \$765,000 to an independent expenditure only political committee that supported the candidate); MUR 5774 (finding no reason to believe where the candidate’s campaign manager and the executive director of the independent spender were brothers).

¹⁰ *See Clifton v. Fed. Election Comm’n*, 114 F.3d 1309, 1314 (1st Cir. 1997); *FEC v. Christian Coal.*, 52 F. Supp. 2d 45, 93 (D.D.C. 1999).

¹¹ 11 C.F.R. § 109.21(f).

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recall sharing any nonpublic information about her campaign plans, projects, activities or needs; in fact, as an individual who was considering a candidacy but who had no prior experience in electoral politics, she did not have any campaign plans at the time to share.

The Complaint also alleges that Mr. Diaz acted simultaneously as an agent for LUPE Votes and “as an agent of the campaign hosting a fundraising event for Michelle Vallejo for Congress and appearing with the candidate.” This conclusion, too, is legally flawed. For purposes of the coordination rules, an agent of a campaign is a person who has express or implied authority to (1) “request or suggest that a communication be created, produced or distributed”; (2) “make or authorize a communication” that meets the content prong of the coordination rules; (3) “request or suggest that any other person create, produce, or distribute any communication”; (4) be materially involved in decisions regarding the content or distribution of a communication; (5) “provide material or information to assist another person in the creation, production, or distribution of any communication”; or (6) make or direct a communication.¹² Merely co-hosting a fundraiser for a candidate falls far below this threshold.

In short, then, the complaint offers nothing but rank speculation to support its allegation that the Committee and LUPE Votes improperly coordinated when LUPE Votes interviewed Ms. Vallejo during her pre-candidacy phase, and when Ms. Vallejo and Mr. Diaz attended the same events in group settings – and, in fact, they did not. Accordingly, the Commission should find that there is no reason to believe that the Committee received in-kind contributions in the form of coordinated communications.

2. The Committee has determined that it should have born the full cost of the poll, and has taken corrective action.

The Complaint also raises the fact that, after the primary election, the Committee split a poll with LUPE PAC. This does not support the Complaint’s allegations of coordination, as it was conducted *after* the spending in question and involved a separate organization. However, in reviewing this matter, the Committee has determined that by splitting the cost of the poll, it may have received an in-kind contribution from LUPE PAC. In March 2021, the Committee conducted a public opinion poll through its vendor, Lake Research Partners. The Committee had been advised by a third-party organization that it could reduce its polling expenses by splitting the poll with an allied organization. Accordingly, the Committee requested that Lake Research Partners invoice LUPE PAC for half of the cost of the PAC. In retrospect, the Committee recognizes that it should have born the full cost of the expense and it has accordingly paid Lake Research Partners for the full cost of the poll.

¹² 11 C.F.R. § 109.3(b).

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While the Committee regrets this error, it respectfully contends that Commission should not find reason to believe that Respondents violated the Act and should, instead, dismiss this matter as a matter of prosecutorial discretion. The cost of the poll was \$15,037.50, which was \$12,137.50 over the applicable contribution limit for the runoff period. Because of the small amount at issue, and the fact that the Committee has disgorged the benefit received, we believe this matter is appropriate for treatment under *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). However, to the extent that the Commission believes that dismissal is inappropriate, we respectfully request that the matter be referred to the Alternative Dispute Resolution unit.

Conclusion

For the reasons described herein, the Commission should find no reason to believe that Respondents have violated the Act or Commission regulations, and it should promptly close the file.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew H. Werbrock", followed by a long horizontal flourish.

Andrew Harris Werbrock
Angelica Martinez
Counsel to Michelle Vallejo for Congress