

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7982**

4 DATE COMPLAINT FILED: Apr. 20, 2022

5 DATE OF NOTIFICATION: Apr. 25, 2022

6 DATE OF LAST RESPONSE: Aug. 30, 2022

7 DATE ACTIVATED: Oct. 11, 2022

8  
9 **EXPIRATION OF SOL:**

10 Earliest: February 25, 2027<sup>1</sup>

11 Latest: August 30, 2027

12 **ELECTION CYCLE:** 2022

13 **COMPLAINANT:**

Alma Espinoza

14  
15 **RESPONDENTS:**

LUPE Votes

16 LUPE PAC and Daniel Diaz in his official capacity  
17 as treasurer

18 Michelle Vallejo for Congress and Shayne Thoman  
19 in his official capacity as treasurer

20  
21 **RELEVANT STATUTES  
22 AND REGULATIONS:**

52 U.S.C. § 30101(22)

52 U.S.C. § 30104(b) and (g)

52 U.S.C. § 30116(a) and (f)

52 U.S.C. § 30118

52 U.S.C. § 30120(a)

11 C.F.R. § 100.22

11 C.F.R. § 100.26

11 C.F.R. § 100.27

11 C.F.R. § 104.4

11 C.F.R. § 109.21

11 C.F.R. § 110.11

33  
34 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

35  
36 **FEDERAL AGENCIES CHECKED:**

None

37  

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<sup>1</sup> LUPE Votes and Vallejo for Congress each signed a 20-day tolling agreement to allow for extra time to file responses.

1     **I.     INTRODUCTION**

2             The Complaint alleges that LUPE Votes, a 501(c)(4) organization, and LUPE PAC and  
3 Daniel Diaz in his official capacity as treasurer (“LUPE PAC” or “PAC”) violated the Federal  
4 Election Campaign Act of 1971, as amended (the “Act”), in a number of ways when they made  
5 expenditures in support of Michelle Vallejo, a candidate in the 15th Congressional District of  
6 Texas in 2022. First, the Complaint alleges that LUPE Votes failed to file 24- and 48-Hour  
7 Reports of independent expenditures disclosing the cost of producing and distributing mailers  
8 and door hangers supporting Vallejo. Second, the Complaint alleges that LUPE Votes failed to  
9 include complete disclaimers on the mailers and door hangers. Third, the Complaint alleges that  
10 LUPE PAC made an excessive in-kind contribution when it shared the cost of a poll with  
11 Michelle Vallejo for Congress and Shayne Thoman in his official capacity as treasurer (“Vallejo  
12 Committee”), and, more broadly, that LUPE PAC, LUPE Votes, and the Vallejo Committee  
13 illegally coordinated their spending.

14             LUPE Votes concedes in its response that it sent mailers and distributed door hangers but  
15 did not timely file 24- or 48-Hour Reports of independent expenditures regarding the costs of  
16 producing and distributing these communications in advance of the primary election on March 1,  
17 2022; it asserts that its failure to file these reports was unintentional, and, in response to the  
18 Complaint, filed the missing reports on August 30, 2022. LUPE Votes also acknowledges that  
19 neither communication included complete disclaimers but asserts that both prominently disclosed  
20 that they were paid for by LUPE Votes. LUPE Votes requests that the Commission exercise its  
21 prosecutorial discretion to dismiss these allegations. In addition, LUPE Votes denies that it  
22 impermissibly coordinated communications with LUPE PAC, Michelle Vallejo, the Vallejo  
23 Committee, or any of its agents.

1           LUPE PAC states in its response that it mistakenly paid for half the cost of the poll,  
2           which was commissioned by the Vallejo Committee, and the PAC requested a refund of its  
3           disbursement and asked that the vendor bill the Vallejo Committee. LUPE PAC states that it has  
4           only made one disbursement — for half the amount of the poll, which it did not use, nor does it  
5           intend to use — and plans to terminate when this matter is resolved. LUPE PAC requests that  
6           the Commission dismiss the Complaint's allegations.

7           The Vallejo Committee denies coordinating with LUPE Votes and LUPE PAC but admits  
8           that sharing the cost of the poll with LUPE PAC may have resulted in an excessive in-kind  
9           contribution. The Vallejo Committee states that it has now paid the vendor for the full cost of  
10          the poll. The Vallejo Committee also denies that it or Vallejo coordinated with LUPE Votes or  
11          LUPE PAC and states that they simply appeared together at community events. The Vallejo  
12          Committee also requests that the Commission dismiss the allegations.

13          As set forth below, we recommend that the Commission find reason to believe that LUPE  
14          Votes violated 52 U.S.C. §§ 30104(g) and 30120(a) and 11 C.F.R. §§ 104.4(b) and (c) and  
15          110.11 by failing to timely file 24- and 48-Hour Reports of independent expenditures and by  
16          failing to include proper disclaimers on public communications and enter into pre-probable cause  
17          conciliation with LUPE Votes. We also recommend that the Commission dismiss the allegation  
18          that LUPE PAC made, and the Vallejo Committee accepted, an excessive in-kind contribution  
19          resulting from the PAC's partial payment for the poll, in violation of 52 U.S.C. § 30116(a) and  
20          (f), and caution Respondents. Finally, we recommend that the Commission find no reason to  
21          believe that LUPE Votes and the Vallejo Committee coordinated communications, in violation  
22          of 52 U.S.C. § 30118(a).

1 **II. FACTUAL BACKGROUND**

2 **A. LUPE Votes**

3 LUPE Votes (La Unión Del Pueblo Entero Votes) states that it is a nonprofit 501(c)(4)  
4 group organized and incorporated in Texas in October 2021 and is an affiliate of La Unión Del  
5 Pueblo Entero (“LUPE”), a 501(c)(3) organization,<sup>2</sup> founded by labor rights activists César  
6 Chávez and Dolores Huerta.<sup>3</sup> Daniel Diaz is a staff member of LUPE Votes<sup>4</sup> and described in  
7 the Complaint as LUPE Votes’ primary spokesperson and Director of Organizing.<sup>5</sup> LUPE Votes  
8 states it is a “community-based non-profit that is dedicated to winning justice for working-class  
9 South Texans through issue advocacy and a certain amount of electoral activity.”<sup>6</sup> To that end,  
10 LUPE Votes asked its followers on social media to nominate community leaders to run for  
11 Congress in Texas’s 15th Congressional District and interviewed potential candidates.<sup>7</sup>

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<sup>2</sup> La Unión Del Pueblo Entero, Form 990, 2019 Return of Organization Exempt from Income Tax (Nov. 16, 2020), [https://apps.irs.gov/pub/epostcard/cor/931029197\\_201912\\_990\\_2021040217864422.pdf](https://apps.irs.gov/pub/epostcard/cor/931029197_201912_990_2021040217864422.pdf). The Internal Revenue Service (“IRS”) notes on its website that it is experiencing delays in updating tax exempt information, and that it is just starting to process paper filings sent in 2021. The organization’s 2019 form 990 is the latest available on the IRS site. There is no filing available for LUPE Votes, which was formed in 2021.

<sup>3</sup> LUPE Votes Resp. at 1 (Aug. 30, 2022); *see also* *About, LUPE*, <https://lupenet.org> and *About, LUPE VOTES*, <https://lupevotes.org/about-lupe-votes/>. (Last visited Mar. 21, 2023.)

<sup>4</sup> LUPE Votes Resp. at 8.

<sup>5</sup> Compl. at 2-3.

<sup>6</sup> LUPE Votes Resp. at 1; *see About, LUPE VOTES*, <https://lupenet.org/about-lupe-votes/>. (Last visited Mar. 21, 2023).

<sup>7</sup> LUPE Votes Resp. at 7; *see* LUPE Votes, FACEBOOK, Nov. 1, 2021 (post includes “#WeThePueblo are taking our district back! Nominate leaders in our community who are ready to fight in Congress for working-class South Texans at [wethepueblo.org](http://wethepueblo.org)”).

1           **B.     LUPE PAC**

2           LUPE PAC is a hybrid PAC that filed its Statement of Organization with the Commission  
3           on December 9, 2021, and Diaz is its treasurer.<sup>8</sup> Since its inception, the PAC has raised \$25,000,  
4           including a \$15,000 contribution from LUPE Votes received on March 30, 2022.<sup>9</sup>

5           **C.     Activities in Support of Vallejo's Candidacy**

6           Michelle Vallejo filed her Statement of Candidacy for Congress in the 15th  
7           Congressional District of Texas and named Michelle Vallejo for Congress as her authorized  
8           committee on December 12, 2021, after LUPE Votes candidate recruitment efforts in November  
9           2021.<sup>10</sup>

10          After Vallejo declared her candidacy, LUPE Votes endorsed her.<sup>11</sup> LUPE Votes  
11          subsequently made independent expenditures in the form of mailers, door hangers, and  
12          canvassing to distribute the door hangers in support of Vallejo's candidacy.<sup>12</sup> The door hangers,  
13          pictured below, included Vallejo's photo, along with the statement "Michelle Vallejo for U.S.

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<sup>8</sup> LUPE PAC, Statement of Organization (Dec. 9, 2021),  
<https://docquery.fec.gov/pdf/956/202112099469827956/202112099469827956.pdf>.

<sup>9</sup> Financial Summary, LUPE Votes, <https://www.fec.gov/data/committee/C90021304/> (last visited Mar. 21, 2023); LUPE PAC, Amended April Quarterly Report at 6 (May 5, 2022),  
<https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>.

<sup>10</sup> Michelle Vallejo, Statement of Candidacy (Dec. 12, 2021),  
<https://docquery.fec.gov/pdf/134/202112129469832134/202112129469832134.pdf>; Michelle Vallejo for Congress,  
Amended Statement of Organization (Oct. 15, 2022),  
<https://docquery.fec.gov/pdf/335/202210159533228335/202210159533228335.pdf>. Vallejo came in second place in  
the Democratic primary election on March 1, 2022, won the runoff primary election on May 24, 2022, and lost the  
general election on November 8, 2022.

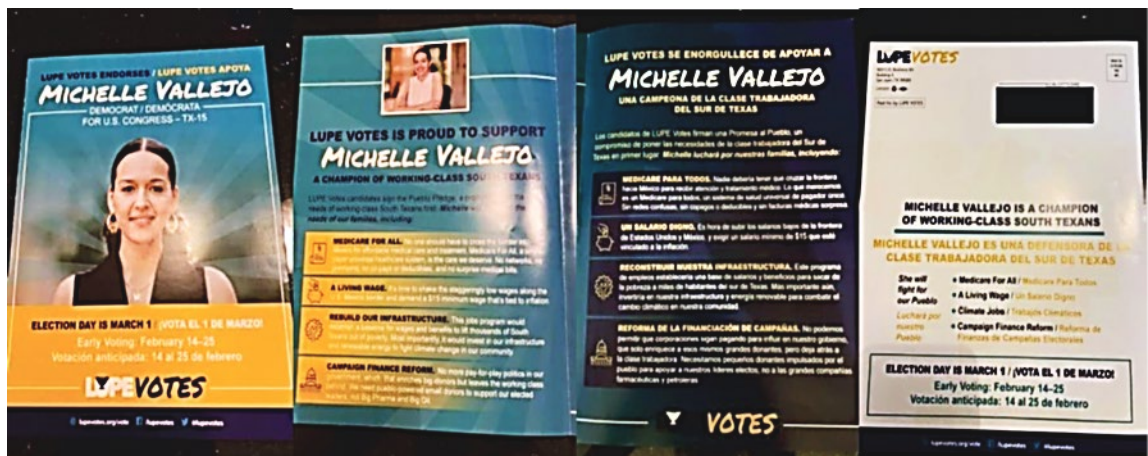
<sup>11</sup> LUPE Votes Resp. at 7.

<sup>12</sup> LUPE Votes, 2022 April Quarterly Report at 2 (Aug. 30, 2022),  
<https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>; LUPE Votes, 24- and 48-Hour  
Reports of Independent Expenditures (Aug. 30, 2022),  
<https://docquery.fec.gov/pdf/134/202208309528298134/202208309528298134.pdf>;  
<https://docquery.fec.gov/pdf/142/202208309528298142/202208309528298142.pdf>.

- 1 Congress” and the dates for early voting and the date of the election.<sup>13</sup> The statement “Paid for  
 2 by LUPE Votes,” printed in a box, appears at the bottom of the door hanger.



- 3  
 4 The mailers, pictured below, included the same information, and a boxed “paid for”  
 5 statement printed below the return address.<sup>14</sup>



- 6  
 7 LUPE Votes disclosed on its 2022 April Quarterly Report disbursements made on January 25,  
 8 2022, in the amount of \$34,241.61 and on February 15, 2022, in the amount of \$14,431.97, prior

<sup>13</sup> Compl. at 4, 7.

<sup>14</sup> *Id.* at 7.

1 to the March 1, 2022, primary election.<sup>15</sup> On August 30, 2022, LUPE Votes filed a 24-Hour and  
2 a 48-Hour Report of Independent Expenditures in support of Vallejo disclosing the January 25  
3 and February 15 expenditures.<sup>16</sup>

4 As alleged in the Complaint, both LUPE PAC and the Vallejo Committee acknowledge  
5 that they split the cost for a research poll.<sup>17</sup> In March 2022, each committee paid \$15,037.50 to  
6 Lake Research Partners.<sup>18</sup> LUPE PAC made its payment for the poll on March 31, 2022, after its  
7 payments for its communications on January 25 and February 15, 2022, in connection with the  
8 March 1, 2022, primary election.<sup>19</sup> After both committees received notice of this Complaint, the  
9 Vallejo Committee states that it paid Lake Research Partners LUPE PAC's portion, and LUPE  
10 PAC states that it requested a refund from Lake Research Partners.<sup>20</sup>

11 The Complaint also alleges that Diaz hosted a fundraiser for the Vallejo Committee and  
12 participated in activities on behalf of the Vallejo Committee.<sup>21</sup> LUPE Votes admits that Diaz

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<sup>15</sup> LUPE Votes, 2022 April Quarterly Report at 2 (Aug. 30, 2022),  
<https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>.

<sup>16</sup> LUPE Votes, 24- and 48-Hour Reports of Independent Expenditures (Aug. 30, 2022),  
<https://docquery.fec.gov/pdf/134/202208309528298134/202208309528298134.pdf>;  
<https://docquery.fec.gov/pdf/142/202208309528298142/202208309528298142.pdf>;  
<https://www.fec.gov/data/committee/C90021304/?tab=filings>. LUPE Votes filed another 24-Hour Report of  
Independent Expenditure on August 30, 2022, related to activity that is not part of this matter, a \$24,629.36  
disbursement for "mail" on May 10, 2022, in support of Vallejo. LUPE Votes had previously disclosed this  
independent expenditure by 24-hour report on May 11, 2022, and on its 2022 Form 5 July Quarterly Report. LUPE  
Votes, 24-Hour Report of Independent Expenditure at 2 (May 11, 2022),  
<https://docquery.fec.gov/pdf/742/202205119502721742/202205119502721742.pdf>; LUPE Votes, 2022 July  
Quarterly Report at 3 (Aug. 30, 2022),  
<https://docquery.fec.gov/pdf/126/202208309528298126/202208309528298126.pdf>.

<sup>17</sup> LUPE PAC Resp. at 2 (Aug. 29, 2022); Vallejo Committee Resp. at 6 (Aug. 29, 2022).

<sup>18</sup> LUPE PAC, 2022 Amended April Quarterly Report at 7 (May 5, 2022),  
<https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>; Vallejo Committee, 2022 April  
Quarterly Report at 106 (Apr. 15, 2022),  
<https://docquery.fec.gov/pdf/354/202204159496904354/202204159496904354.pdf>.

<sup>19</sup> LUPE PAC, 2022 Amended April Quarterly Report.

<sup>20</sup> LUPE PAC Resp. at 2; Vallejo Committee Resp. at 6, 7.

<sup>21</sup> Compl. at 3, 4.

1 hosted a fundraiser on behalf of the Vallejo Campaign but states that Diaz was not an “agent of  
2 the campaign” as the Complaint asserts because the fundraiser occurred on his own personal time  
3 after the communications in question were produced and disseminated.<sup>22</sup> LUPE Votes also  
4 states that Diaz was invited to participate in an education policy roundtable discussion because of  
5 his education policy background, not as a supporter of Vallejo.<sup>23</sup> The Vallejo Committee also  
6 denies coordinating its strategy with LUPE Votes, LUPE PAC, or Diaz at these events.<sup>24</sup> Vallejo  
7 states that after she became a candidate, LUPE Votes warned her not to share non-public  
8 information with the organization and that she followed that instruction.<sup>25</sup> The Committee  
9 specifically addresses the educational roundtable and an awards event held by the Hidalgo  
10 County Tejano Democrats, both attended by Vallejo and Diaz, stating that both events were  
11 attended by the public.<sup>26</sup> According to the Vallejo Committee, the awards event was widely  
12 attended by local politicians and community members, and Vallejo did not discuss campaign  
13 strategy, plans, or needs with Diaz or any other member of the LUPE organizations.<sup>27</sup> Further,  
14 the Vallejo Committee states that Diaz was added as a last-minute co-host for the fundraiser at  
15 issue and that she did not discuss strategy or campaign plans with Diaz.<sup>28</sup>

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<sup>22</sup> LUPE Votes Resp. at 6, 8.

<sup>23</sup> *Id.* at 8.

<sup>24</sup> Vallejo Committee Resp. at 2.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> Vallejo Committee Resp. at 2, 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 3, 4.



1 **III. LEGAL ANALYSIS**

2 **A. The Commission Should Find Reason to Believe that LUPE Votes Failed to**  
3 **Properly Disclose Independent Expenditures and Failed to Include Sufficient**  
4 **Disclaimers on Public Communications**

5 1. Independent Expenditure Reporting

6 Committees and other persons that make independent expenditures aggregating \$1,000 or  
7 more with respect to a given election after the 20th day, but more than 24 hours before the date  
8 of that election, must file a 24-Hour Report to disclose such independent expenditures by the day  
9 following the date on which a communication is publicly distributed or otherwise publicly  
10 disseminated.<sup>29</sup> The Act and Commission regulations include a separate requirement to file 48-  
11 Hour Reports for Independent Expenditures aggregating \$10,000 or more at any time up to and  
12 including the 20th day before the date of an election.<sup>30</sup>

13 LUPE Votes acknowledges that it did not timely disclose its independent expenditures in  
14 24- and 48-hour Reports.<sup>31</sup> Specifically, LUPE Votes reported \$34,241.61 in expenditures on  
15 January 25, 2022, that should have been disclosed in a 48-Hour Report of Independent  
16 Expenditures, and \$14,431.97 in expenditures on February 15, 2022, prior to Texas's primary  
17 election that should have been disclosed in a 24-Hour Report of Independent Expenditures.<sup>32</sup>  
18 After the Complaint in this matter was filed, LUPE Votes filed these independent expenditure  
19 reports on August 30, 2022. Accordingly, we recommend that the Commission find reason to  
20 believe that LUPE Votes violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b) and (c) by  
21 failing to timely file 24- and 48-Hour Reports of Independent Expenditures.

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<sup>29</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

<sup>30</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

<sup>31</sup> LUPE Votes Resp. at 5.

<sup>32</sup> LUPE Votes 2022 April Quarterly Report.

1                   2.       Disclaimers

2                   The Act and Commission regulations require a disclaimer on certain types of  
3       communications identifying who paid for the communication and, where applicable, whether a  
4       communication was authorized by a candidate.<sup>33</sup> Disclaimers are required on all “public  
5       communications” made by any person that expressly advocate the election or defeat of a clearly  
6       identified federal candidate.<sup>34</sup> “Public communications” include mass mailings, which are  
7       mailings of more than 500 pieces of mail of an identical or substantially similar nature within  
8       any 30-day period, and “communication[s] by means of any . . . outdoor advertising facility . . .  
9       or any other form of general public political advertising.”<sup>35</sup>

10                If a communication is paid for by a person or entity other than a candidate’s authorized  
11       committee, but authorized by a candidate, the candidate’s authorized committee, or an agent of  
12       either, the communication must clearly state that it has been paid for by such other persons and  
13       authorized by the candidate’s authorized political committee.<sup>36</sup> If a communication is not  
14       authorized by candidate’s authorized committee, it must clearly state the name and permanent  
15       address, telephone number or website address of the person who paid for the communication and  
16       state that the communication is not authorized by any candidate or candidate’s committee.<sup>37</sup> The  
17       disclaimer must be “presented in a clear and conspicuous manner, to give the reader, observer, or  
18       listener adequate notice of the identity of the person or political committee that paid for, and

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<sup>33</sup>       52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)-(c).

<sup>34</sup>       11 C.F.R. § 110.11(a)(2).

<sup>35</sup>       52 U.S.C. § 30101(22); 11 C.F.R. § 100.26. On December 1, 2022, the Commission approved a Final Rule and Explanation and Justification revising its disclaimer requirements at 11 C.F.R. § 100.26 for certain public communications placed for a fee on the internet. 87 Fed. Reg. 77467-77480 (Dec. 19, 2022). Our analysis in this matter is not affected by the revisions.

<sup>36</sup>       11 C.F.R. § 110.11(b)(2).

<sup>37</sup>       *Id.* § 110.11(b)(3).

1 where required, that authorized the communication.”<sup>38</sup> For printed communications, disclaimers  
2 must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a  
3 printed box set apart from the other contents of the communication, and must clearly state who  
4 paid for the communication.<sup>39</sup>

5 LUPE Votes states that it paid a vendor \$14,431.97 for the mailers, which were  
6 distributed to “households in Texas’ 15th congressional district” and, therefore, appears to be a  
7 mass mailing and thus a public communication.<sup>40</sup> LUPE Votes also states that it paid \$2,574.95  
8 for the printing of the door hangers that were “distributed throughout the district by volunteers  
9 and paid canvassers.”<sup>41</sup> LUPE Votes paid canvassers \$21,080 to distribute the door hangers.<sup>42</sup>  
10 The Commission has previously determined that campaign literature distributed to the public at  
11 their place of residence constitutes general public advertising and is therefore a public  
12 communication.<sup>43</sup> Further, the mailers and the door hangers expressly advocate for the election  
13 of Vallejo by stating “Michelle Vallejo Democrat For U.S. Congress.”<sup>44</sup>

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<sup>38</sup> *Id.* § 110.11(c).

<sup>39</sup> *Id.* § 110.11(c)(2).

<sup>40</sup> LUPE Votes Resp. at 3.

<sup>41</sup> *Id.*

<sup>42</sup> LUPE Votes, 2022 April Quarterly Report at 3-10 (Aug. 30, 2022), <https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>. On January 25, 2022, the same day that LUPE Votes paid for the door hangers, it paid 15 individuals for “canvassing.” *Id.* In its response, LUPE Votes states that “paid and volunteer canvassers” distributed the door hangers. *See* LUPE Votes Resp. at 2.

<sup>43</sup> *See* Factual and Legal Analysis (“F&LA”) at 6, MUR 6138 (Democrats for Good Government and David Knox) (Commission finding that campaign literature distributed to the public at their place of residence constitutes general public advertising and therefore a public communication); F&LA at 5-7, MUR 4741 (Mary Bono Committee) (same).

<sup>44</sup> *See* 11 C.F.R. § 100.22(a) (a communication contains express advocacy when, among other things, it uses campaign slogans or individual words such as “*Smith for Congress*,” and “*Bill McKay in '94*,” which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate); *see also* LUPE Votes Resp. at 7 (“the door hanger and direct mail piece contained express advocacy encouraging recipients to vote for Michelle Vallejo in the March 1, 2022 primary election.”).

1           Because the door hangers and mailers are public communications that expressly advocate  
2 the election of Vallejo, they required disclaimers. Both communications' disclaimers stated  
3 "Paid for by LUPE Votes" but did not state whether the communications were authorized by any  
4 candidate or candidate committee.<sup>45</sup> LUPE Votes acknowledges that the disclaimers lacked this  
5 required candidate authorization statement.<sup>46</sup> The Commission previously found reason to  
6 believe in MURs 7190/7208 (Alaska Republican Party) that a committee violated the disclaimer  
7 requirements on a communication on which the disclaimer stated that it was paid for by the  
8 committee but failed to include any candidate authorization statement.<sup>47</sup>

9           LUPE Votes acknowledges the incomplete disclaimers on its communications, but asks  
10 the Commission to dismiss the allegation, citing previous matters dismissed by the Commission  
11 where a communication lacked a sufficient disclaimer. Those matters, however, are  
12 distinguishable from the matter at hand, as they involved low amounts in violation and all but  
13 one were addressed as EPS dismissals.<sup>48</sup> And the other matters cited by LUPE Votes, MURs  
14 7460, 7536, and 7551 (Fair People for Fair Government, Coalition for a Safe Secure America, *et*  
15 *al.*), were addressed by six Commissioners in a Statement of Reasons setting forth the basis of  
16 the dismissal as the lack of available information regarding the funding organization and that an

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<sup>45</sup> See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(b).

<sup>46</sup> LUPE Votes Resp. at 3.

<sup>47</sup> See F&LA at 5-6, MURs 7190/7208 (Alaska Republican Party). See also MUR 5833 (Ohio Democratic Party) (reason to believe finding where disclaimer only stated "Paid for by the Ohio Democratic Party" and lacked a candidate authorization statement).

<sup>48</sup> LUPE Votes Resp. n.10. See, e.g., MUR 7069 (Ron Hedlund) (EPS dismissal where alleged disclaimer violation, citing "the fact that it is unlikely the general public would have been misled as to who was responsible for the letter" and the amount in violation was \$900); and MUR 7906 (Charles W. Herbster, *et al.*) (EPS Dismissal regarding allegation of failure to include disclaimer on a \$9,000 magazine advertisement).

1 investigation would be a poor use of Commission resources.<sup>49</sup> In the instant matter, LUPE Votes  
 2 makes clear that it paid for the communications and paid canvassers to distribute the door  
 3 hangers, but admits that the candidate authorization statement was missing from the disclaimer.  
 4 Finally, the cited matters contained no other allegations, and this Office was not recommending  
 5 reason to believe findings as to any other violation.

6 Accordingly, we recommend that the Commission find reason to believe that LUPE  
 7 Votes violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include complete  
 8 disclaimers on the mailer and the door hanger.

9 **B. The Commission Should Exercise its Prosecutorial Discretion to Dismiss the**  
 10 **Allegation that LUPE PAC Made, and Vallejo for Congress Accepted, an In-**  
 11 **kind Contribution**

12  
 13 The Act provides that no person shall make contributions to any candidate or authorized  
 14 committee in excess of the Act's limits.<sup>50</sup> For the 2022 election cycle, the Act limits  
 15 contributions by persons to any candidate and his or her authorized political committees to  
 16 \$2,900 per election.<sup>51</sup> No candidate or committee shall knowingly accept excessive  
 17 contributions.<sup>52</sup>

18 A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or  
 19 anything of value made by any person for the purpose of influencing any election for Federal

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<sup>49</sup> Statement of Reasons, Comm'rs Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub, MURs 7460, 7536, and 7551 (Fair People for Fair Government, Coalition for a Safe Secure America, *et al.*) (explaining dismissal of alleged disclaimer and reporting violations pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985)). Three Commissioners issued a separate Statement of Reasons. Statement of Reasons, Comm'rs Cooksey, Dickerson, and Trainor, MURs 7460, 7536, and 7551 (Fair People for Fair Government, Coalition for a Safe Secure America, *et al.*).

<sup>50</sup> 52 U.S.C. § 30116(a).

<sup>51</sup> *Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867-7869 (Feb. 2, 2021).

<sup>52</sup> 52 U.S.C. §§ 30116(f), 30118(a); 11 C.F.R. §§ 110.9, 114.2(d).

1 office.”<sup>53</sup> “Anything of value” includes all in-kind contributions, such as the provision of goods  
2 or services without charge or at a charge less than the usual and normal charge.<sup>54</sup> The  
3 Commission’s regulations define “usual and normal charge” as “the price of those goods in the  
4 market from which they ordinarily would have been purchased at the time of the contribution.”<sup>55</sup>

5 LUPE PAC made, and the Vallejo Committee accepted, an in-kind contribution on  
6 March 31, 2022, when LUPE PAC paid \$15,037.50 to a vendor for half of the cost of a public  
7 opinion poll that benefited the Vallejo Committee.<sup>56</sup> LUPE PAC’s contribution exceeded the  
8 \$2,900 per candidate per election contribution limit. Both LUPE PAC and the Vallejo  
9 Committee state they have remedied the in-kind contribution, LUPE PAC by requesting a refund  
10 and the Vallejo Committee by paying the full cost of the poll.<sup>57</sup> LUPE PAC states that it did not  
11 intend to use the information secured with the poll and did not do so,<sup>58</sup> and given the PAC’s  
12 limited activity, it appears that the poll was for the benefit of the Vallejo Committee.<sup>59</sup> The  
13 Vallejo Committee states that it was only after the Complaint that they learned that the PAC’s  
14 payment for a portion of the poll would result in a contribution.<sup>60</sup> Although LUPE PAC made  
15 and the Vallejo Committee appears to have knowingly received the contribution, the amount of

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<sup>53</sup> 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

<sup>54</sup> 11 C.F.R. § 100.52(d)(1).

<sup>55</sup> *Id.* § 100.52(d)(2).

<sup>56</sup> LUPE PAC, 2022 Amended April Quarterly Report at 7 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>.

<sup>57</sup> LUPE PAC Resp. at 2; Vallejo Committee Resp. at 6.

<sup>58</sup> LUPE PAC Resp. at 2.

<sup>59</sup> Because the available information does not indicate that LUPE PAC received the results of the poll, and because LUPE PAC made no other disbursements that would suggest they used information from the poll, the cost of the poll would not be allocated between the PAC and the Vallejo Committee. *See* 11 C.F.R. § 106.4.

<sup>60</sup> Vallejo Committee Resp. at 3.

1 the excessive is small In addition,  
2 Respondents remedied the excessive contribution when the Vallejo Committee asked the vendor  
3 to invoice it for the portion of the cost paid by LUPE PAC, and LUPE PAC requested a refund  
4 from the vendor for the cost paid.<sup>62</sup> And the Vallejo Committee disclosed the additional  
5 payment and LUPE PAC disclosed the receipt of the refund.<sup>63</sup> Under these circumstances, we  
6 recommend that the Commission exercise its prosecutorial discretion and dismiss, with a caution,  
7 the allegation that LUPE PAC made, and the Vallejo Committee knowingly accepted, an  
8 excessive in-kind contribution in violation of 52 U.S.C. §§ 30116(a) and 30116(f),  
9 respectively.<sup>64</sup>

10 **C. The Commission Should Find No Reason to Believe that LUPE Votes**  
11 **Coordinated its Communications with the Vallejo Committee**  
12

13 The Complaint broadly alleges that LUPE Votes, LUPE PAC, and the Vallejo Committee  
14 coordinated their efforts to advocate for Vallejo's election. As support for the allegation, the  
15 Complaint alleges that Vallejo and Daniel Diaz, director and treasurer of LUPE Votes and  
16 treasurer for LUPE PAC, attended the same events and communicated at those events and

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<sup>62</sup> Vallejo Committee Resp. at 6.

<sup>63</sup> Michelle Vallejo for Congress, 2022 October Quarter Report at 613 (Oct. 15, 2022), <https://docquery.fec.gov/pdf/438/202210159533228438/202210159533228438.pdf#navpanes=0>; LUPE PAC, 2022 Post-General Election Report at 6 (Dec. 7, 2022), <https://docquery.fec.gov/pdf/204/202212079547290204/202212079547290204.pdf>.

<sup>64</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985). LUPE PAC's cash on hand of \$17,000 when it made the in-kind contribution was mostly comprised of a \$15,000 contribution from LUPE Votes on March 30, 2022. *See* LUPE PAC, 2022 Amended April Quarterly Report at 3, 6 (May 5, 2022). LUPE Votes describes itself as an incorporated 501(c)(4) organization, and while LUPE PAC's IEOPC account can permissibly accept corporate contributions, the PAC's use of the funds to make an in-kind contribution to the Vallejo Committee may comprise an impermissible corporate contribution. Given the modest amount of the in-kind contribution and our dismissal recommendation, we do not explore a potential violation of 52 U.S.C. § 30118.

1 alleges that Diaz co-hosted a fundraiser event for Vallejo.<sup>65</sup> Respondents do not deny attendance  
2 at those events<sup>66</sup> but assert that the events, such as educational round-tables, voting drives,  
3 vaccine clinics, and an awards dinner, were widely attended and open to the public, and that Diaz  
4 and Vallejo did not coordinate at those events.<sup>67</sup> LUPE Votes acknowledges that two staff  
5 members, including Diaz, hosted a fundraiser for Vallejo, but state that the individuals did so on  
6 their own time and not on behalf of LUPE Votes, and that the event was held after the  
7 communications at issue were produced and disseminated.<sup>68</sup> The Vallejo Committee states that  
8 Vallejo did not, to her knowledge, disclose any nonpublic strategies or needs to these hosts.<sup>69</sup>  
9 Further, the Vallejo Committee, on behalf of Vallejo, states that she did not discuss her  
10 campaign's plans or needs with either, nor did she request or suggest that LUPE Votes sponsor  
11 communications supporting her candidacy.<sup>70</sup>

12 To the extent the Complaint alleges that LUPE Votes' communications were coordinated  
13 with the Vallejo Committee, a communication is "coordinated" with a candidate, an authorized  
14 committee, or agent thereof, and is treated as an in-kind contribution, if the communication  
15 meets a three-part test under the Commission's regulations: (1) payment for the communication  
16 by a third party; (2) satisfaction of one of five "content" standards of 11 C.F.R. § 109.21(c); and  
17 (3) satisfaction of one of six "conduct" standards of 11 C.F.R. § 109.21(d).<sup>71</sup> All three prongs

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<sup>65</sup> Compl. at 5.

<sup>66</sup> Although the Vallejo Committee and LUPE PAC deny allegations that they coordinated at events attended by Diaz and Vallejo, the committees did share the cost of a poll, *see supra*, which would infer that there was some coordination between the committees.

<sup>67</sup> Vallejo Committee Resp. at 2; LUPE Votes Resp. at 6, 8.

<sup>68</sup> LUPE Votes Resp. at 6.

<sup>69</sup> Vallejo Committee Resp. at 3.

<sup>70</sup> *Id.*

<sup>71</sup> 11 C.F.R. § 109.21.



1 are required for a communication to be considered a coordinated communication.<sup>72</sup> As a  
2 corporation, LUPE Votes is prohibited from making contributions to federal candidates and their  
3 committees, and candidate committees are prohibited from knowingly accepting corporate  
4 contributions.<sup>73</sup>

5 LUPE Votes concedes that the communications at issue in the Complaint, the mailer and  
6 the door hanger, satisfy the “payment prong” and the “content prong” of the Commission’s  
7 coordination test — LUPE Votes paid for the mailer and door hanger that expressly advocate the  
8 election of Michelle Vallejo. Respondents deny, however, conduct that would result in  
9 coordinated communications.<sup>74</sup> The Vallejo Committee asserts that once Vallejo decided to run  
10 for Congress, in December 2021, she was told by LUPE Votes that she should not communicate  
11 with the organization about nonpublic information regarding her campaign.<sup>75</sup> From that point,  
12 the Committee asserts, Vallejo observed that admonition and has no recollection of  
13 communicating with Diaz of LUPE Votes except in the context of the events described in the  
14 Complaint and responses.<sup>76</sup> LUPE Votes asserts that the Complaint fails to assert any specific  
15 evidence of impermissible coordination satisfying any conduct standard and argues that the  
16 events occurred after the communications were produced and disseminated.<sup>77</sup> While the  
17 responses do not provide any sworn denials, neither does the record contain any specific  
18 allegations of conduct constituting coordination of LUPE Votes’ communications, and we are

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<sup>72</sup> *Id.* § 109.21(a).

<sup>73</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>74</sup> *Id.* § 109.21(d); LUPE Votes Resp. at 6, 8; Vallejo Committee Resp. at 3.

<sup>75</sup> Vallejo Committee Resp. at 2.

<sup>76</sup> *Id.*

<sup>77</sup> LUPE Votes Resp. at 7.

1 not otherwise aware of any.<sup>78</sup> Accordingly, we recommend that the Commission find no reason  
2 to believe the allegation that LUPE Votes and the Vallejo Committee violated 52 U.S.C.  
3 § 30118(a) by coordinating their communications.

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<sup>78</sup> See F&LA at 6, MUR 7166 (Nelson for Wisconsin, *et al.*) (dismissing coordination allegation where complaint failed to allege specific facts regarding the conduct standard and finding timing of advertisement was insufficient support for the coordination allegation). Although the payment for the poll was coordinated in some fashion — LUPE PAC and the Vallejo Committee each paid half — and was an in-kind contribution from LUPE PAC to the Vallejo Committee, *see supra* section III.B., such coordination does not appear to indicate that the relevant communications, including LUPE PAC's mailers and doorhangers, constituted coordinated communications because LUPE PAC had already paid for the communications on January 25 and February 15, 2022, in connection with the March 1, 2022, primary election *before* LUPE PAC paid for the polling on March 31, 2022.

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**V. RECOMMENDATIONS**

1. Find reason to believe that LUPE Votes violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b) and (c) for failing to timely file 24- and 48-Hour Reports of Independent Expenditures;
2. Find reason to believe that LUPE Votes violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include sufficient disclaimers on communications;
3. Dismiss, with a caution, the allegation that LUPE PAC and Daniel Diaz in his official capacity as treasurer violated 52 U.S.C. § 30116(a) by making an excessive in-kind contribution;
4. Dismiss, with a caution, the allegation that Michelle Vallejo for Congress and Shayne Thoman in his official capacity as treasurer violated 52 U.S.C. § 30116(f) by accepting an excessive in-kind contribution;
5. Find no reason to believe that LUPE Votes and Michelle Vallejo for Congress and Shayne Thoman in his official capacity as treasurer violated 52 U.S.C. § 30118(a) by making and accepting prohibited in-kind contributions in the form of coordinated communications;
6. Approve the attached Factual and Legal Analyses;
7. Enter into conciliation with LUPE Votes prior to a finding of probable cause to believe;

