



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

November 1, 2023

Via Electronic Mail

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Andrew H. Werbrock, Esq. Angelica
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55 Capitol Mall, Suite 400
Sacramento, CA 95814-4503

Dear Mr. Werbrock and Ms. Martinez:

RE: MUR 7982
(Michelle Vallejo for Congress)

On April 25, 2022, the Federal Election Commission (the "Commission") notified your clients, Michelle Vallejo for Congress and Shayne Thoman in his official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, as well as information supplied by you on behalf of your clients, the Commission, on October 17, 2023, voted to dismiss the allegation that the Committee accepted an excessive in-kind contribution, in violation of 52 U.S.C. § 30116(f) related to sharing the cost of the poll, and found no reason to believe that the Committee accepted in-kind contributions in the form of coordinated communications, in violation of 52 U.S.C. § 30118(a). Accordingly, the Commission closed its file in this matter as it pertains to the Committee. The Factual and Legal Analysis which more fully explains the Commission's decision is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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If you have any questions, please contact Wanda Brown, the attorney assigned to this matter, at (202) 694-1513.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Michelle Vallejo for Congress and **MUR 7982**
4 Shayne Thoman in his official
5 capacity as treasurer
6

7 **I. INTRODUCTION**

8 The Complaint alleges that Michelle Vallejo for Congress and Shayne Thoman in his
9 official capacity as treasurer (“Vallejo Committee”) accepted an excessive in-kind contribution
10 when it shared the cost of a poll, and that the Vallejo Committee illegally coordinated
11 communications.

12 The Vallejo Committee denies coordinating communications but admits that sharing the
13 cost of a poll may have resulted in an excessive in-kind contribution. The Vallejo Committee
14 states that it has now paid the vendor for the full cost of the poll. The Vallejo Committee
15 requests that the Commission dismiss the allegations.

16 As set forth below, the Commission dismisses the allegation that the Vallejo Committee
17 accepted an excessive in-kind contribution resulting from partial payment for a poll in violation
18 of 52 U.S.C. § 30116(f). In addition, the Commission finds no reason to believe that the Vallejo
19 Committee coordinated communications in violation of 52 U.S.C. § 30118(a).

1 II. FACTUAL BACKGROUND

2 Michelle Vallejo filed her Statement of Candidacy for Congress in the 15th
3 Congressional District of Texas on December 12, 2021, and named Michelle Vallejo for
4 Congress as her authorized committee.¹

5 After Vallejo declared her candidacy, LUPE Votes (La Unión Del Pueblo Entero Votes),
6 a nonprofit 501(c)(4) group organized and incorporated in Texas in October 2021 and an affiliate
7 of La Unión Del Pueblo Entero (“LUPE”), a 501(c)(3) organization,² endorsed her. LUPE Votes
8 subsequently made independent expenditures in the form of mailers, door hangers, and
9 canvassing to distribute the door hangers in support of Vallejo’s candidacy.³ LUPE Votes
10 disclosed on its 2022 April Quarterly Report the related disbursements on January 25, 2022, in
11 the amount of \$34,241.61 and on February 15, 2022, in the amount of \$14,431.97, prior to the
12 March 1, 2022, primary election.⁴

¹ Michelle Vallejo, Statement of Candidacy (Dec. 12, 2021). 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.

² Vallejo Committee Resp. at 2 (Aug. 29, 2022); 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. 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.

³ 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>.

⁴ LUPE Votes, 2022 April Quarterly Report at 2 (Aug. 30, 2022), <https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>. On August 30, 2022, LUPE Votes filed a 24-Hour and a 48-Hour Report of Independent Expenditures in support of Vallejo disclosing the January 25 and February 15 expenditures. 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 As alleged in the Complaint, the Vallejo Committee acknowledges that it split the cost
2 for a research poll.⁵ In March 2022, the Vallejo Committee paid \$15,037.50 to Lake Research
3 Partners for half of the cost of a poll.⁶ LUPE PAC and Daniel Diaz in his official capacity as
4 treasurer disclosed a payment to Lake Research Partners for the remainder of the cost.⁷ After it
5 received notice of this Complaint, the Vallejo Committee states that it paid Lake Research
6 Partners another \$15,037.50, the balance of the cost of the poll.⁸

7 However, the Vallejo Committee denies coordinating its strategy with LUPE Votes.⁹
8 Vallejo states that after she became a candidate, she was warned not to share non-public
9 information with any other organization and that she followed that instruction.¹⁰ The Committee
10 specifically addresses an educational roundtable and an awards event held by the Hidalgo
11 County Tejano Democrats, both attended by Vallejo and a representative of LUPE Votes, stating
12 that both events were attended by the public.¹¹ According to the Vallejo Committee, the awards
13 event was widely attended by local politicians and community members, and Vallejo did not
14 discuss campaign strategy, plans, or needs with any other member of any organizations,
15 including LUPE Votes.¹²

⁵ Vallejo Committee Resp. at 6.

⁶ Vallejo Committee, 2022 April Quarterly Report at 106 (Apr. 15, 2022),
<https://docquery.fec.gov/pdf/354/202204159496904354/202204159496904354.pdf>.

⁷ LUPE PAC, 2022 Amended April Quarterly Report at 7 (May 5, 2022),
<https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>.

⁸ Vallejo Committee Resp. at 6, 7.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 2, 3.

¹² *Id.*

1 **A. The Commission Exercises its Prosecutorial Discretion to Dismiss the Allegation**
2 **that Vallejo for Congress Accepted an In-kind Contribution**
3

4 The Act provides that no person shall make contributions to any candidate or authorized
5 committee in excess of the Act’s limits.¹³ For the 2022 election cycle, the Act limits
6 contributions by persons to any candidate and his or her authorized political committees to
7 \$2,900 per election.¹⁴ No candidate or committee shall knowingly accept excessive
8 contributions.¹⁵

9 A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or
10 anything of value made by any person for the purpose of influencing any election for Federal
11 office.”¹⁶ “Anything of value” includes all in-kind contributions, such as the provision of goods
12 or services without charge or at a charge less than the usual and normal charge.¹⁷ The
13 Commission’s regulations define “usual and normal charge” as “the price of those goods in the
14 market from which they ordinarily would have been purchased at the time of the contribution.”¹⁸
15 In the polling context, the Commission’s regulations permit political committees to split polling
16 results with campaign committees by choosing an allocation method that reasonably reflects the
17 use and benefit each committee derives.¹⁹ This allows the benefitting committees to share the
18 cost of the poll without resulting in an in-kind contribution.

¹³ 52 U.S.C. § 30116(a).

¹⁴ *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).

¹⁵ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

¹⁶ 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”).

¹⁷ 11 C.F.R. § 100.52(d)(1).

¹⁸ *Id.* § 100.52(d)(2).

¹⁹ *Id.* § 106.4(e).

1 The Vallejo Committee accepted an in-kind contribution on March 31, 2022, when it paid
2 \$15,037.50 to a vendor for only half of the cost of a public opinion poll that the Complaint
3 alleges benefited Vallejo’s campaign.²⁰ The remaining cost of the poll, paid for by LUPE
4 PAC,²¹ exceeded the \$2,900 per candidate per election contribution limit because LUPE PAC
5 never used nor intended to use the poll for its own benefit.²² The Vallejo Committee states it has
6 remedied the in-kind contribution by paying for the full cost of the poll.²³ The Vallejo
7 Committee states that it was only after the Complaint that they learned that payment for a portion
8 of the poll would result in a contribution.²⁴ Although the Vallejo Committee appears to have
9 knowingly accepted an excessive contribution, the amount in violation is small, and the Vallejo
10 Committee, upon learning of the violation, remedied the contribution by asking the vendor to
11 refund \$15,037.50 to LUPE PAC and invoice the Vallejo Committee for that portion of the cost,
12 which the Vallejo Committee paid.²⁵ Under these circumstances, the Commission exercises its
13 prosecutorial discretion and dismisses the allegation that the Vallejo Committee knowingly
14 accepted an excessive in-kind contribution in violation of 52 U.S.C. § 30116(f).²⁶

²⁰ Vallejo Committee, 2022 April Quarterly Report at 106 (Apr. 15, 2022),
<https://docquery.fec.gov/pdf/354/202204159496904354/202204159496904354.pdf>.

²¹ LUPE PAC, 2022 Amended April Quarterly Report at 7 (May 5, 2022),
<https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>.

²² LUPE PAC Resp. at 2 (Aug. 30, 2022).

²³ Vallejo Committee Resp. at 6.

²⁴ *Id.* at 3.

²⁵ *Id.* at 6; 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>.

²⁶ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 **B. The Commission Should Find No Reason to Believe that the Vallejo**
2 **Committee Coordinated its Communications**

3
4 The Complaint broadly alleges that Michelle Vallejo for Congress coordinated its efforts
5 to advocate for Vallejo’s election. As support for the allegation, the Complaint alleges that
6 Vallejo attended events and communicated at those events regarding the Committee’s needs and
7 strategies.²⁷ Respondent does not deny attendance at those events but asserts that the events,
8 such as educational round-tables, voting drives, vaccine clinics, and an awards dinner, were
9 widely attended and open to the public, and that Vallejo did not coordinate at those events.²⁸
10 The Vallejo Committee states that Vallejo did not, to her knowledge, disclose any nonpublic
11 strategies or needs with any individual, nor did she request or suggest that any person or
12 organization sponsor communications supporting her candidacy.²⁹

13 To the extent the Complaint alleges that the Vallejo Committee coordinated
14 communications with LUPE Votes, a communication is “coordinated” with a candidate, an
15 authorized committee, or agent thereof, and is treated as an in-kind contribution, if the
16 communication meets a three-part test under the Commission’s regulations: (1) payment for the
17 communication by a third party; (2) satisfaction of one of five “content” standards of 11 C.F.R.
18 § 109.21(c); and (3) satisfaction of one of six “conduct” standards of 11 C.F.R. § 109.21(d).³⁰
19 All three prongs are required for a communication to be considered a coordinated
20 communication.³¹ Corporations are prohibited from making contributions to federal candidates

²⁷ Compl. at 5 (Apr. 20, 2022).

²⁸ Vallejo Committee Resp. at 2.

²⁹ *Id.*

³⁰ 11 C.F.R. § 109.21.

³¹ *Id.* § 109.21(a).

1 and their committees, and candidate committees are prohibited from knowingly accepting
2 corporate contributions.³²

3 The Vallejo Committee asserts that once Vallejo decided to run for Congress in
4 December 2021, she was told that she should not communicate with any organization about
5 nonpublic information regarding her campaign.³³ From that point, the Committee asserts,
6 Vallejo observed that admonition and has no recollection of communicating with any individual
7 or organization except in the context of the events described in the Complaint and responses.³⁴
8 Here, the record does not contain any specific allegations of conduct constituting coordination of
9 communications, and the Commission is not otherwise aware of any.³⁵ Accordingly, the
10 Commission finds no reason to believe the allegation that the Vallejo Committee violated
11 52 U.S.C. § 30118(a) by receiving a corporate contribution in the form of coordinated
12 communications.

³² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³³ Vallejo Committee Resp. at 2.

³⁴ *Id.*

³⁵ *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).