

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7535**

4 DATE COMPLAINT FILED: November 6, 2018

5 DATE OF NOTIFICATION: November 7, 2018

6 LAST RESPONSE RECEIVED: January 30, 2019

7 DATE ACTIVATED: June 20, 2019

8 EARLIEST SOL: August 15, 2023

9 LATEST SOL: November 6, 2023

10 ELECTION CYCLE: 2018

11 **COMPLAINANT:**

12 End Citizens United

13 **RESPONDENTS:**

14 Leah Vukmir

15 Leah for Senate and Travis Kabrick

16 in his official capacity as treasurer

17 Americas PAC and Tom Donelson

18 in his official capacity as treasurer

19 Restoration PAC and Sherry Gaskill

20 in her official capacity as treasurer

21 Richard Uihlein

22 **RELEVANT STATUTES
AND REGULATIONS:**

23 52 U.S.C. § 30104(b)

24 52 U.S.C. § 30116(a), (f)

25 52 U.S.C. § 30125(e)(1)(A)

26 11 C.F.R. § 300.2(m)

27 11 C.F.R. § 300.60

28 11 C.F.R. § 300.61

29 **INTERNAL REPORTS CHECKED:**

30 Disclosure Reports

31 **FEDERAL AGENCIES CHECKED:**

32 None

33 **I. INTRODUCTION**

34
35
36 The Complaint in this matter alleges that Leah Vukmir and Leah for Senate and Travis
37 Kabrick in his official capacity as treasurer (the "Committee") improperly solicited contributions
38 in excess of the applicable contribution limits from Richard Uihlein, the primary contributor to
39 Americas PAC and Tom Donelson in his official capacity as treasurer ("Americas PAC") and
40 Restoration PAC and Sherry Gaskill in her official capacity as treasurer ("Restoration PAC")

1 (collectively, the “PACs”). The Complaint also alleges that Vukmir and the Committee accepted
2 prohibited contributions from Americas PAC and Restoration PAC in the form of coordinated
3 communications.

4 As discussed below, we recommend that the Commission dismiss the allegations that
5 Leah Vukmir and Leah for Senate and Travis Kabrick in his official capacity as treasurer
6 violated 52 U.S.C. § 30125(e)(1)(A) by soliciting excessive contributions. We further
7 recommend that the Commission dismiss the allegations that Leah Vukmir and Leah for Senate
8 and Travis Kabrick in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and
9 30104(b) by receiving and failing to report excessive, prohibited in-kind contributions from the
10 PACs in the form of coordinated communications. Consistent with the above recommendations,
11 we recommend that the Commission dismiss allegations that Richard Uihlein, Americas PAC
12 and Tom Donelson in his official capacity as treasurer, and Restoration PAC and Sherry Gaskill
13 in her official capacity as treasurer, violated 52 U.S.C. §§ 30116(a), 30118(a) and 30104(b) by
14 making and failing to report excessive or prohibited in-kind contributions in the form of
15 coordinated communications.

16 **II. FACTUAL BACKGROUND**

17 Leah Vukmir was a candidate for U.S. Senate in the Wisconsin 2018 primary election,
18 and Leah for Senate and Travis Kabrick, in his official capacity as treasurer, is her authorized
19 campaign committee.¹ On August 14, 2018, Vukmir won the Republican primary election and
20 became the Republican candidate for the general election.²

¹ Leah Vukmir, FEC Form 2, Statement of Candidacy (Sept. 7, 2018), http://docquery.fec.gov/cgi-bin/fecimg/?_201709140200263093+0; Leah for Senate, FEC Form 1, Statement of Organization (Sept. 8, 2017), <http://docquery.fec.gov/pdf/097/2017091402002630971201709140200263097.pdf>.

² Vukmir lost the general election.

1 Richard “Dick” Uihlein is the primary donor and supporter of Americas PAC and
2 Restoration PAC, which the Complaint alleges results in his effectively exercising control over
3 the activities of Americas PAC and Restoration PAC.³ During the 2018 primary election,
4 Uihlein made significant contributions to Americas PAC and Restoration PAC, and both spent
5 heavily in support of Vukmir’s opponent, Kevin Nicholson.⁴

6 In mid-August 2018, after Vukmir won the primary election, she appeared on two
7 programs during which she responded to the hosts’ questions about receiving support from
8 outside groups in general and discussed Uihlein in particular. The first appearance was on a
9 podcast, “The Mark Belling Show,” on August 15, 2018, where the following exchange
10 occurred:

11 **BELLING:** Do you have any indication from the national Republican
12 strategists who decide where to allocate resources to get their support, and what
13 about some of these outside groups, I don’t know if you can communicate directly
14 with them, but some of these outside groups that put so much money into Kevin
15 [Nicholson]’s race, presumably they want a Republican Senator from Wisconsin.
16 Do you have any information as to whether or not they’re going to come around

³ Compl. at 3. The Complaint alleges, and the Commission’s records verify, that in the 2018 election cycle, Uihlein donated over \$5.4 million to Americas PAC and was responsible for virtually all of Americas PAC’s receipts. *Id.* In 2016, his donations made up 97% of Americas PAC’s total receipts; and in 2014, the first cycle Americas PAC operated, he was responsible for 89% of its total receipts. *Id.* Similarly, the Complaint contends that Uihlein and Solutions for Wisconsin, a PAC that was allegedly funded almost exclusively by Uihlein, made contributions to Restoration PAC that accounted for over 98% of its donations in the 2018 cycle. *Id.*

⁴ During the 2018 election cycle, Uihlein contributed \$5.385 million to Americas PAC, which reported spending \$2.640 million to support Republican primary candidate Kevin Nicholson. *See* FEC Committee Contribution/Expenditure Database, https://www.fec.gov/data/committee/C00559906/?cycle=2018&tab=raising;https://www.fec.gov/data/independent-expenditures/?committee_id=C00559906&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=S&candidate_id=S8WI00216&data_type=processed&is_notice=false.

During the 2018 election cycle, Uihlein contributed \$5.650 million to Restoration PAC, which reported spending \$3.671 million to support Republican primary candidate Kevin Nicholson. *See* Restoration PAC 2018 Amended Pre-General Election (May 21, 2019), <https://docquery.fec.gov/pdf/234/201905219149823234/201905219149823234.pdf>; *see also* FEC Committee Contribution/Expenditure Database, https://www.fec.gov/data/independent-expenditures/?committee_id=C00571588&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=S&candidate_id=S8WI00216&data_type=processed&is_notice=true.

1 and back you, so you can unify the party not just the two of you candidates, but
2 get the kind of money that's necessary to beat Baldwin?
3

4 **VUKMIR:** Well we are already reaching out to Dick Uihlein and I hope
5 that he will want to continue with his commitment, let's face it, he wants to defeat
6 Tammy Baldwin, and so I look forward to having that conversation with him. We
7 have a unity dinner on Friday, with Dick Uihlein and Diane Hendricks, Kevin and
8 I, and we will be bringing people together there, and Kevin's commitment to help
9 as well is very important. I have already received several phone calls from US
10 Senators who have offered to come to the state and we'll be talking and
11 continuing those discussions.⁵
12

13 A few days later, on August 19, 2018, Vukmir made a television appearance on "UpFront with
14 Mike Gousha," during which she also answered a similar question regarding seeking support
15 from Uihlein:

16 **GOUSHA:** I have to ask you, you said \$11 million was spent against you.
17 It was spent largely by one person, Richard Uihlein, who is a prominent
18 Republican, conservative donor. Do you anticipate he will ultimately support
19 your campaign, ultimately spend money on your behalf?
20

21 **VUKMIR:** Well that is ultimately what we want. We signed a unity
22 pledge. There was a unity dinner recently and we are looking forward to working
23 together. Kevin was gracious in calling me the night of the election, offered to
24 help and I think that's ultimately what's so important here, is Kevin and I both got
25 into this race because we wanted to defeat Tammy Baldwin. We believe that
26 she's not right for Wisconsin and now we need to unify and ultimately finish the
27 work that we started.⁶
28

29 On September 17, 2018, Uihlein donated \$1 million to Americas PAC and \$2 million to
30 Restoration PAC.⁷ Beginning on September 24, Americas PAC reported making \$377,000 in

⁵ Compl. Attach. A, Transcript Excerpt, *The Mark Belling Show*, 1130 WISN-AM (Aug. 15, 2018), <https://www.iheart.com/podcast/139-the-mark-belling-show-24992319/episode/81518-governor-walker-and-leah-vukmir-29719073/>.

⁶ Compl. Attach. A, Transcript Excerpt, *UpFront with Mike Gousha*, WISN-12 ABC (Aug. 19, 2018).

⁷ Americas PAC 2018 October Quarterly Report, <https://docquery.fec.gov/pdf/809/201810159124826809/201810159124826809.pdf>; Restoration PAC 2018 October Quarterly Report, <https://docquery.fec.gov/pdf/202/201905219149823202/201905219149823202.pdf>.

1 independent expenditures and Restoration PAC reported making \$359,000 in independent
2 expenditures opposing Vukmir's general election opponent, Senator Tammy Baldwin.⁸

3 Based on Vukmir's public statements, Uihlein's contributions to Americas PAC and
4 Restoration PAC, and those PACs' independent expenditures opposing Baldwin, the Complaint
5 alleges that Vukmir solicited excessive in-kind contributions from Uihlein.⁹ The Complaint
6 further alleges that Vukmir's solicitation resulted in prohibited contributions from Americas
7 PAC and Restoration PAC, for whom Uihlein is the largest donor and primary source of
8 financial support, because Vukmir allegedly requested or suggested that they make independent
9 expenditures to support her campaign through these public statements.¹⁰ Accordingly, the
10 Complaint alleges that Vukmir and the Committee violated 52 U.S.C. §§ 30125 and 30116(f) by
11 soliciting and accepting excessive and prohibited contributions from Uihlein, Americas PAC,
12 and Restoration PAC, and that Uihlein, Americas PAC, and Restoration PAC violated 52 U.S.C.
13 §§ 30116(a) and 30118(a) by making excessive, prohibited in-kind contributions in the form of
14 coordinated communications.¹¹

⁸ Americas PAC had already spent almost \$800,000 opposing Baldwin in the 2017-18 election cycle prior to Vukmir's primary election win. https://www.fec.gov/data/independent-expenditures/?committee_id=C00559906&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=O&candidate_id=S2WI00219&data_type=processed&is_notice=true. Similarly, Restoration PAC had spent almost \$607,000 opposing Baldwin in the 2017-18 election cycle prior to Vukmir becoming the Republican general election nominee. https://www.fec.gov/data/independent-expenditures/?committee_id=C00571588&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=O&candidate_id=S2WI00219&data_type=processed&is_notice=true.

⁹ Compl. at 2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3-4.

1 Vukmir and the Committee deny the solicitation and coordination allegations.¹² The
2 Vukmir Response, which includes an affidavit from Vukmir, states that neither she nor the
3 Committee interacted with Uihlein or personnel from either Americas PAC or Restoration PAC
4 at any time.¹³ In her affidavit, Vukmir states that although she “reached out to [Uihlein]” to seek
5 his support for her campaign, he did not attend the “unity dinner” referenced in her reported
6 comments and she never spoke to him or the PACs.¹⁴ Vukmir and the Committee contend that
7 the general expression of “hope” for support does not constitute a “solicitation” under the Act.¹⁵
8 The Committee further argues that the Complaint makes no reference to any specific
9 communication that is alleged to have been coordinated and alleges no facts that would meet the
10 standards for coordination set forth in the Commissions’ regulations.¹⁶

11 Uihlein submits an affidavit denying that he was solicited by Vukmir or the Committee.
12 Specifically, Uihlein states that he did not speak to Vukmir after she defeated Kevin Nicholson,
13 and does not know and has never met Vukmir’s campaign treasurer, Travis Kabrik.¹⁷ He further
14 states that Vukmir, Kabrik, and the Committee never solicited him for any contributions for her
15 campaign or any PAC.¹⁸ Additionally, he denies attending any dinner with Vukmir, including
16 the “unity dinner” Vukmir mentioned in her public statements.¹⁹

¹² Response of Leah Vukmir and Leah for Senate (“Committee Resp.”) at 1.

¹³ Committee Resp. at 4, Attach. A, Affidavit of Leah Vukmir (“Vukmir Aff.”) at ¶¶ 7, 10, 12, 14-15, 18-19.

¹⁴ Vukmir Aff. ¶¶ 6-10, 14-15.

¹⁵ Committee Resp. at 3-4., Vukmir Aff. 16-17.

¹⁶ Committee Resp. at 4-5.

¹⁷ Uihlein Response, Attach. A, Affidavit of Richard Uihlein (“Uihlein Aff.”) ¶¶ 2-3.

¹⁸ *Id.* ¶¶ 3-6.

¹⁹ *Id.* ¶ 4.

1 Regarding Americas PAC and Restoration PAC, Uihlein avers, “I have no control over
2 Americas PAC or any PAC to which I contributed.”²⁰ He states he is “solely a donor” and has
3 no role in choosing the candidates that the PACs support or oppose, or when any independent
4 expenditures made by the committees will be made.²¹ He also attests: “At no time did I discuss
5 the Vukmir’s campaign plans, projects, activities, or needs either with Ms. Vukmir or her
6 campaign staff, any political party committees, or any of their agents.”²² Similarly, he contends
7 that he did not discuss with any of the PACs to which he contributed “any specific plans
8 regarding their independent expenditures, including the timing or content of such
9 expenditures.”²³

10 Responses from Restoration PAC and Americas PAC deny the allegations and assert that
11 the Complaint fails to allege sufficient facts to support a claim of coordination. The responses
12 state that the Complaint fails to identify any specific communication that would satisfy the
13 payment or content standards for coordination.²⁴ Additionally, the PACs argue the Complaint
14 fails to point to any conduct that would meet the conduct prong of the coordination test. The
15 PACs contend that the Complaint relies solely on the public statements by Vukmir as evidence
16 of coordination, and these statements are insufficient to demonstrate material involvement by
17 Vukmir or the Committee in the decision-making of PAC, including in the content,

²⁰ *Id.* ¶ 7.

²¹ *Id.*

²² *Id.* ¶ 8.

²³ *Id.*

²⁴ Americas PAC Resp. at 2-3 (Dec. 18, 2018). Restoration PAC Resp. (Jan. 28, 2019).

1 audience, means or mode of communication, media outlets, timing or frequency, or any other
2 aspect of the PACs' communications.²⁵ Additionally, Americas PAC notes that Vukmir's public
3 statements make no mention of Americas PAC and are not evidence of actions by Americas PAC
4 that would meet the content or conduct standard for coordination set forth in 11 C.F.R.
5 § 109.21(c), (d).²⁶

6 **III. LEGAL ANALYSIS**

7 **A. Solicitation**

8 The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a
9 candidate shall not "solicit, receive, direct, transfer, or spend funds in connection with an
10 election for federal office . . . unless the funds are subject to the limitations, prohibitions, and
11 reporting requirements of the Act," which includes a limitation on the solicitation of
12 contributions from political action committees to \$5,000 per year.²⁷ The Commission's
13 regulations define "solicit" broadly as "to ask, request, or recommend, explicitly or implicitly,
14 that another person make a contribution, donation, transfer of funds, or otherwise provide
15 anything of value."²⁸ The regulation states that the communication should be "construed as
16 reasonably understood in the context in which it is made, contains a clear message asking,
17 requesting, or recommending that another person make a contribution, donation, transfer of
18 funds, or otherwise provide anything of value. . . . A solicitation does not include mere

²⁵ Americas PAC Resp. at 3; Restoration PAC Resp. at 2-3.

²⁶ Americas PAC Resp. at 3.

²⁷ 52 U.S.C. §§ 30116(a)(1)(C), 30125(e).

²⁸ 11 C.F.R. § 300.2(m); *see also Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (final rulemaking defining "to solicit" as to "ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary.").

1 statements of political support[.]”²⁹ This test is objective and does not turn on the subjective
2 interpretations of the person making the communication or its recipients.³⁰ The speaker’s
3 conduct may also be relevant to the meaning of a statement.³¹ The Commission has explained
4 that its objective standard “hinges on whether the recipient should have reasonably understood
5 that a solicitation was made.”³² Moreover, “words that would by their plain meaning normally
6 be understood as a solicitation, may not be a solicitation when considered in context, such as
7 when the words are used as part of a joke or parody.”³³ The Commission has determined that the
8 context of the statements in question is crucial to evaluating whether a solicitation occurred.³⁴

9 Commission regulations provide a non-exhaustive list of specific types of
10 communications that constitute solicitations: “(i) A communication that provides a method of
11 making a contribution or donation, . . . (ii) A communication that provides instructions on how or
12 where to send contributions or donations, . . . [and] (iii) A communication that identifies a Web
13 address where the Web page displayed is specifically dedicated to facilitating the making of a

²⁹ 11 C.F.R. § 300.2(m); *see also* Definitions of “Solicit” and “Direct”; Final Rule; 71 Fed. Reg. 13,926, 13,928 (Mar. 20, 2006) (“E&J”).

³⁰ 11 C.F.R. § 300.2(m); *see also* E&J, 71 Fed. Reg. at 13,928.

³¹ E&J, 71 Fed. Reg. at 13,928.

³² *Id.* at 13,929.

³³ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992) (concluding that no reasonable listener would understand that a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” to be accusing the producer of the actual crime of robbery)).

³⁴ Factual & Legal Analysis, MUR 6939 (Mike Huckabee, *et al.*) (dismissing an allegation that Presidential candidate Mike Huckabee impermissibly solicited a million dollar contribution to an independent expenditure-only political committee when he suggested that attendants at the rally give as much as they legally could to his campaign and then contribute “a million dollars” to the PAC because the context and manner in which he made the statement were such that a reasonable person could not have believed he was being earnest).

1 contribution or donation[.]”³⁵ The regulations also provide specific examples of statements that
2 constitute solicitations, which include, but are not limited to the following:

- 3 • “Please give \$100,000 to Group X.”
4
5 • “It is important for our State party to receive at least \$100,000 from each of you in
6 this election.”
7
8 • “Group X has always helped me financially in my elections. Keep them in mind this
9 fall.”³⁶
10

11 In support of its allegations concerning the solicitation of excessive and prohibited
12 contributions, the Complaint cites public statements made by Vukmir during the Belling podcast
13 regarding the support she could expect to receive from “outside groups” in the general election.
14 The Complaint argues that Vukmir’s statement that she “hoped” Uihlein would continue with his
15 commitment amounts to a solicitation of excessive and impermissible funds both from Uihlein
16 and the PACs to which he was contributing at the time, which included Americas PAC and
17 Restoration PAC.³⁷ Given the context of the conversation, which focused on whether Vukmir’s
18 campaign would receive from the PACs the same kind of monetary support they gave to her
19 primary opponent, the Complaint argues that Vukmir’s invocation of Uihlein’s name is
20 tantamount to soliciting him and the PACs.³⁸

21 The Complaint further argues Vukmir’s statements a few days later during a local news
22 segment expressing a similar desire for Uihlein’s support amount to a solicitation of excessive

³⁵ 11 C.F.R. § 300.2(m)(1) (i)-(iii).

³⁶ *Id.* at 300.2(m)(2).

³⁷ Compl. at 4.

³⁸ *Id.*

1 and prohibited contributions from Uihlein and the PACs.³⁹ Because Uihlein did not spend the
2 funds directly in the primary election, but only through the PACs to which he was the primary
3 contributor, the Complaint contends that Vukmir's invocation of Uihlein's name was essentially
4 a request that Uihlein contribute to the PACs in excess of the amount that Uihlein would legally
5 have been permitted to contribute directly to Vukmir's authorized committee.⁴⁰

6 As discussed above, the Commission has specifically defined the term "solicit" to be a
7 direct or indirect request by another person "to make a contribution or donation, or transfer of
8 funds, or to provide anything of value," and it has stated that the solicitation must contain a
9 "clear message" that could only be reasonably construed by an objective listener to be a
10 solicitation.⁴¹

11 There is some force to the Complaint's contention that Vukmir's statements amounted to a
12 solicitation. Both of the questions Vukmir answered were posed in the context of a discussion of
13 financial support — specifically, the spending against Vukmir's candidacy during the primary
14 election and the prospect of spending on her behalf during the general election. In the earlier
15 interview, Vukmir named Uihlein when asked about the prospect of "outside groups" spending
16 millions of dollars in the general election, though the interviewer had not mentioned Uihlein in
17 his question. And while the second interviewer mentioned Uihlein before Vukmir did, her
18 answer that she "want[ed]" Uihlein to support her campaign or spend money on her behalf at
19 least comes close to constituting a clear message requesting a contribution from him.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 11 C.F.R. § 300.2(m).

1 At the same time, there are also reasons to conclude that the statements did not contain
2 the requisite clear message of solicitation, and, on balance, we find that these reasons counsel in
3 favor of dismissal. The settings in which Vukmir made her comments make it less clear that her
4 statements could only have been a solicitation of impermissible funds. A podcast and local
5 television segment are not like a fundraising event or rally. In the latter settings, the Commission
6 has indicated that a statement “hoping” for the support of a donor, absent a clear and
7 conspicuous disclaimer to the contrary, could only be construed to be a solicitation of excessive
8 or prohibited funds.⁴² Thus, this situation can be distinguished from MUR 7048 (Cruz), where
9 the Commission found reason to believe an impermissible solicitation occurred when the
10 candidate’s agent who was the emcee and co-host of an official fundraiser explicitly suggested
11 that guests “max out” contributions to the campaign, referenced the maximum individual per election
12 contribution amount, and then told guests to “get engaged” with the Super PAC that was supporting
13 the candidate and was present at the event because it could accept unlimited or corporate dollars.⁴³
14 Vukmir’s statements can also be distinguished from the closest example of a solicitation
15 included in the regulations: “I appreciate all you’ve done in the past for our party in this state
16 I’d be very happy if you could maintain the same level of financial support for our State
17 party this year.”⁴⁴ Here, unlike the example included in the regulations, Vukmir was not
18 speaking directly to Uihlein or another potential contributor, and the link to the concept of

⁴² See, e.g., Advisory Op. 2003-03 (Cantor) (concluding that requestor, a candidate, could appear and participate activities at non-federal fundraising event so long as he did not solicit funds outside Act’s limits and prohibitions and issued clear and conspicuous disclaimers to that effect); Advisory Op. (2003-26) (RGA) (same).

⁴³ Factual and Legal Analysis at 10-12, MUR 7048 (Cruz)

⁴⁴ 11 C.F.R. § 300.2(m)(2).

1 continuing a practice of past support is more attenuated because of Uihlein's previous support of
 2 Vukmir's primary opponent.

3 In addition, there is also some arguable uncertainty regarding the potential recipient of
 4 the alleged solicitation or solicitations by Vukmir. Even assuming her statements were directed
 5 to Uihlein, they did not name the entities Uihlein should contribute to, and Americas PAC and
 6 Restoration PAC are not the only PACs to which Uihlein reportedly made contributions.⁴⁵
 7 Relatedly, in the first interview, the discussion between Belling and Vukmir also included
 8 statements regarding the prospect of unifying the Republican Party for the upcoming general
 9 election in addition to the discussion of financial support. Vukmir's statements concerned her
 10 plans to work with her primary opponent and others to "unify" the party to defeat Baldwin in the
 11 general election, in addition to the discussion of financial support.⁴⁶

⁴⁵ Other PACs that reported Uihlein as a contributor in 2018 include House Freedom Action, Women Speak Out, Susan B. Anthony List PAC, and Tea Party Patriots Citizens Fund, among others. He donated hundreds of thousands of dollars to these PACs, which did not report any independent expenditures in the Vukmir election. *See* https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=richard+e+uihleln.

Both American PAC and Restoration PAC reported spending less on the general election than the primary, having spent more than twice as much on independent expenditures opposing Baldwin during the primary election, before Vukmir became the Republican nominee and made her statements. *See* https://www.fec.gov/data/independent-expenditures/?committee_id=C00559906&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=S&data_type=processed&is_notice=false; https://www.fec.gov/data/independent-expenditures/?committee_id=C00571588&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=S&data_type=processed&is_notice=true; https://www.fec.gov/data/independent-expenditures/?committee_id=C00559906&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&data_type=processed&is_notice=false&support_oppose_indicator=O&candidate_id=S2WI00219; https://www.fec.gov/data/independent-expenditures/?committee_id=C00571588&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=O&data_type=processed&is_notice=true&candidate_id=S2WI00219.

⁴⁶ *See* Compl. Attach. A, Transcript Excerpt, *The Mark Belling Show*, ("Well we are already reaching out to Dick Uihlein and I hope that he will want to continue with his commitment, let's face it, he wants to defeat Tammy Baldwin, . . . [w]e have a unity dinner on Friday, with Dick Uihlein and Diane Hendricks, Kevin and I, and we will be bringing people together there."); Compl. Attach. A, Transcript Excerpt, *UpFront with Mike Gousha* ("There was a unity dinner recently and we are looking forward to working together. Kevin was gracious in calling me the night

1 In MUR 6748 (Hanabusa for Hawaii), the Commission dismissed allegations that a
2 candidate or her agent may have solicited a representative of a corporation during a “meet and
3 greet” and subsequent email conversations, when they asked for “support” for the campaign and
4 explained that the campaign was at a “significant financial disadvantage.”⁴⁷ The Commission
5 concluded that the facts surrounding the alleged solicitation were unclear, the meaning of the
6 requests for “support” were sufficiently vague, and no contributions followed the alleged
7 solicitation.⁴⁸ Vukmir’s statements of the desire for support from Uihlein in the context of a
8 media interview are arguably less clear than statements made in MUR 6748, where the
9 committee’s agents discussed the campaign’s financial situation and need for support,
10 particularly on the issue of independent expenditure spending, directly with the corporation
11 during a “meet and greet” and later in email and telephone communications. Here, unlike in
12 MUR 6748, there is no information indicating that there was direct communication between the
13 candidate or her agents and Uihlein or the PACs. Indeed, both Uihlein and Vukmir attest that
14 there was not communication between them or their agents, and Vukmir states that she and her
15 agents did not communicate with the PACs and swears that had she spoken to Uihlein directly,
16 she would only have asked for a legally permissible contribution to her campaign.⁴⁹

17 Considering the available information as a whole, we recommend that the Commission
18 dismiss the allegations that Leah Vukmir and Leah for Senate and Travis Kabrick in his official

of the election, offered to help . . . Kevin and I both got into this race because we wanted to defeat Tammy Baldwin.”).

⁴⁷ Factual & Legal Analysis at 4, MUR 6748 (Hanabusa for Hawaii).

⁴⁸ *Id.* at 9.

⁴⁹ Uihlein Aff. ¶¶ 2-3 (denying speaking to Vukmir or Committee treasurer Travis Kabrick); Vukmir Aff. ¶¶ 7, 10 14-15 (denying speaking with Uihlein or “any person from his organization” as well as “any person related to Americas PAC or Restoration PAC”).

1 capacity as treasurer, solicited excessive and prohibited contributions, in violation of 52 U.S.C.
2 § 30125(e)(1)(A).

3 **B. Coordination**

4 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
5 deposit of money or anything of value made by any person for the purpose of influencing any
6 election for Federal office.”⁵⁰ “Anything of value” includes in-kind contributions.⁵¹ In-kind
7 contributions result when goods or services are provided without charge or at less than the usual
8 and normal charge,⁵² and when a person makes an expenditure in cooperation, consultation or in
9 concert with, or at the request or suggestion of a candidate or the candidate’s authorized
10 committee or their agents.⁵³ Independent expenditure-only political committees such as
11 Americas PAC and Restoration PAC are prohibited from making contributions to candidates and
12 their authorized committees.⁵⁴

13 Under the Commission’s regulations, a communication is “coordinated” with a candidate,
14 an authorized committee, a political party committee, or agent thereof, and, thus treated as an in-
15 kind contribution, if the communication: (1) is paid for, partly or entirely, by a person other than
16 the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at
17 least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the

⁵⁰ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

⁵¹ 11 C.F.R. § 100.52(d)(1).

⁵² *Id.*

⁵³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also* *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁵⁴ *See* 52 U.S.C. § 30116(a), 30118(a); Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2; Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 “conduct standards” at 11 C.F.R. § 109.21(d).⁵⁵ A communication must satisfy all three prongs
2 to be a “coordinated communication” under the Commission’s regulations.

3 Though the Complaint does not identify specific public communications that are alleged
4 to have been coordinated, Americas PAC and Restoration PAC reported making independent
5 expenditures totaling \$377,000 and \$359,000, respectively, during the general election attacking
6 Vukmir’s opponent, Tammy Baldwin.⁵⁶ Thus, the payment and content prongs of the
7 coordination standard are satisfied.

8 The “conduct prong” may be satisfied by: (1) communications made at the “request or
9 suggestion” of the relevant candidate or committee; (2) communications made with the “material
10 involvement” of the relevant candidate or committee; (3) communications made after a
11 “substantial discussion” with the relevant candidate or committee; (4) specific actions of a
12 “common vendor”; (5) specific actions of a “former employee or independent contractor”; and
13 (6) specific actions relating to the dissemination of campaign material.⁵⁷

⁵⁵ 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see also* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication).

⁵⁶ *See* Americas PAC 2018 October Quarterly Report, <https://docquery.fec.gov/pdf/809/201810159124826809/201810159124826809.pdf>, 2018 Pre-General Report, <https://docquery.fec.gov/pdf/929/201810259130901929/201810259130901929.pdf>, and 2018 Post-General Report, <https://docquery.fec.gov/pdf/433/201812059134116433/201812059134116433.pdf>. *See also*, Restoration PAC 2018 Pre-General Report, <https://docquery.fec.gov/pdf/234/201905219149823234/201905219149823234.pdf>.

⁵⁷ *Id.* § 109.21(d).

1 The Complaint's sole basis for the claim that Respondents' actions satisfied the conduct
2 prong for coordination are the alleged solicitations made by Vukmir.⁵⁸ The Complaint does not
3 point to any other communications between Vukmir and the Committee and either Uihlein,
4 Americas PAC or Restoration PAC, instead suggesting that Vukmir's public statements amount
5 to requests or suggestions under the conduct standard for coordinated communications.⁵⁹
6 However, as discussed above, Vukmir and Uihlein deny any communication with each other or
7 each other's agents⁶⁰ and the available information does not indicate that Uihlein, Americas
8 PAC, or Restoration PAC were aware of Vukmir's statements.⁶¹ Here, the PACs' spending on
9 communications that oppose Vukmir's opponent in a general election is insufficient by itself to
10 meet the conduct standard for coordination.⁶² Because the available information is insufficient
11 to satisfy the conduct prong for coordination, we recommend that the Commission dismiss the
12 allegation that Leah for Senate and Travis Kabrick in his official capacity as treasurer, violated
13 52 U.S.C. §§ 30116(f) and 30104(b), by receiving and failing to report excessive, prohibited in-
14 kind contributions from the PACs in the form of coordinated communications.

⁵⁸ Compl. at 4-5.

⁵⁹ *Id.*

⁶⁰ Uihlein Aff. ¶¶ 2-3; Vukmir Aff. ¶¶ 7, 10, 14-15.

⁶¹ In order to meet the "request or suggestion" conduct standard, the benefiting candidate or committee must make a direct request to a specific individual, group or audience and not simply to the public generally. *See* First Gen. Counsel's Rpt. at 12-13, MUR 6411 (Pelosi); First Gen. Counsel's Rpt. at 8, MUR 6821 (Shaheen); *see also* *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (explanation and justification) ("E&J").

⁶² Americas PAC and Restoration PAC each spent almost twice as much on independent expenditures opposing Baldwin before Vukmir became the Republican general election candidate as they did after she became the candidate. *See* Americas PAC 2018 April and July Quarterly Reports, <https://docquery.fec.gov/pdf/721/201805119112017721/201805119112017721.pdf>, <https://docquery.fec.gov/pdf/177/201807149115486177/201807149115486177.pdf>; *see also*, Restoration PAC 2017 Mid-Year and Year End Reports, <https://docquery.fec.gov/pdf/580/201707319069901580/201707319069901580.pdf>, <https://docquery.fec.gov/pdf/374/201801309090927374/201801309090927374.pdf>.

1 Consistent with the foregoing recommendations, we also recommend that the
2 Commission dismiss allegations that Richard Uihlein, Americas PAC and Tom Donelson in his
3 official capacity as treasurer, and Restoration PAC and Sherry Gaskill in her official capacity as
4 treasurer, violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b) by making and failing to
5 report excessive, prohibited in-kind contributions in the form of coordinated communications.

6 **IV. RECOMMENDATIONS**

- 7 1. Dismiss allegations that that Leah Vukmir and Leah for Senate and Travis Kabrick, in
8 his official capacity as treasurer, violated 52 U.S.C. § 30125(e)(1)(A) by soliciting
9 excessive contributions;
- 10 2. Dismiss allegations that Leah for Senate and Travis Kabrick, in his official capacity
11 as treasurer, violated 52 U.S.C. §§ 30116(f) and 30104(b) by receiving and failing to
12 report excessive, prohibited in-kind contributions in the form of coordinated
13 communications;
- 14 3. Dismiss allegations that Richard Uihlein violated 52 U.S.C. § 30116(a) by making
15 excessive in-kind contributions;
- 16 4. Dismiss allegations that Americas PAC and Tom Donelson, in his official capacity as
17 treasurer, and Restoration PAC and Sherry Gaskill, in her official capacity as
18 treasurer, violated 52 U.S.C. §§ 30118(a) and 30104(b) by making and failing to
19 report prohibited in-kind contributions;
- 20 5. Dismiss allegations that Restoration PAC and Sherry Gaskill, in her official capacity
21 as treasurer, violated 52 U.S.C. §§ 30118(a) and 30104(b) by making and failing to
22 report prohibited in-kind contributions;
- 23 6. Approve the attached Factual and Legal Analysis;
- 24 7. Approve the appropriate letters; and

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

1
2
3
4
5 **RESPONDENTS:** Leah Vukmir **MUR: 7535**
6 Leah for Senate and Travis Kabrick,
7 in his official capacity as treasurer
8 Americas PAC and Tom Donelson
9 in his official capacity as treasurer
10 Restoration PAC and Sherry Gaskill
11 in her official capacity as treasurer
12 Richard Uihlein
13

I. INTRODUCTION

14
15 The Complaint in this matter alleges that Leah Vukmir and Leah for Senate and Travis
16 Kabrick in his official capacity as treasurer (the “Committee”) improperly solicited contributions
17 in excess of the applicable contribution limits from Richard Uihlein, the primary contributor to
18 Americas PAC and Tom Donelson in his official capacity as treasurer (“Americas PAC”) and
19 Restoration PAC and Sherry Gaskill in her official capacity as treasurer (“Restoration PAC”)
20 (collectively, the “PACs”). The Complaint also alleges that Vukmir and the Committee accepted
21 prohibited contributions from Americas PAC and Restoration PAC in the form of coordinated
22 communications.

23 Based upon the available information, the Commission does not find reason to believe
24 the allegations that Leah Vukmir and Leah for Senate and Travis Kabrick in his official capacity
25 as treasurer violated 52 U.S.C. § 30125(e)(1)(A) by soliciting excessive contributions, the
26 allegations that Leah Vukmir and Leah for Senate and Travis Kabrick in his official capacity as
27 treasurer violated 52 U.S.C. §§ 30116(f) and 30104(b) by receiving and failing to report
28 excessive, prohibited in-kind contributions from the PACs in the form of coordinated
29 communications, or the allegations that Richard Uihlein, Americas PAC and Tom Donelson in
30 his official capacity as treasurer, and Restoration PAC and Sherry Gaskill in her official capacity

1 as treasurer, violated 52 U.S.C. §§ 30116(a), 30118(a) and 30104(b) by making and failing to
 2 report excessive or prohibited in-kind contributions in the form of coordinated communications.

3 **II. FACTUAL BACKGROUND**

4 Leah Vukmir was a candidate for U.S. Senate in the Wisconsin 2018 primary election,
 5 and Leah for Senate and Travis Kabrick, in his official capacity as treasurer, is her authorized
 6 campaign committee.¹ On August 14, 2018, Vukmir won the Republican primary election and
 7 became the Republican candidate for the general election.²

8 Richard “Dick” Uihlein is the primary donor and supporter of Americas PAC and
 9 Restoration PAC, which the Complaint alleges results in his effectively exercising control over
 10 the activities of Americas PAC and Restoration PAC.³ During the 2018 primary election,
 11 Uihlein made significant contributions to Americas PAC and Restoration PAC, and both spent
 12 heavily in support of Vukmir’s opponent, Kevin Nicholson.⁴

¹ Leah Vukmir, FEC Form 2, Statement of Candidacy (Sept. 7, 2018), http://docquery.fec.gov/cgi-bin/fecimg/?_201709140200263093+0; Leah for Senate, FEC Form 1, Statement of Organization (Sept. 8, 2017), <http://docquery.fec.gov/pdf/097/2017091402002630971201709140200263097.pdf>.

² Vukmir lost the general election.

³ Compl. at 3. The Complaint alleges, and the Commission’s records verify, that in the 2018 election cycle, Uihlein donated over \$5.4 million to Americas PAC and was responsible for virtually all of Americas PAC’s receipts. *Id.* In 2016, his donations made up 97% of Americas PAC’s total receipts; and in 2014, the first cycle Americas PAC operated, he was responsible for 89% of its total receipts. *Id.* Similarly, the Complaint contends that Uihlein and Solutions for Wisconsin, a PAC that was allegedly funded almost exclusively by Uihlein, made contributions to Restoration PAC that accounted for over 98% of its donations in the 2018 cycle. *Id.*

⁴ During the 2018 election cycle, Uihlein contributed \$5.385 million to Americas PAC, which reported spending \$2.640 million to support Republican primary candidate Kevin Nicholson. *See* FEC Committee Contribution/Expenditure Database, https://www.fec.gov/data/committee/C00559906/?cycle=2018&tab=raising;https://www.fec.gov/data/independent-expenditures/?committee_id=C00559906&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=S&candidate_id=S8WI00216&data_type=processed&is_notice=false.

During the 2018 election cycle, Uihlein contributed \$5.650 million to Restoration PAC, which reported spending \$3.671 million to support Republican primary candidate Kevin Nicholson. *See* Restoration PAC 2018 Amended Pre-General Election (May 21, 2019), <https://docquery.fec.gov/pdf/234/201905219149823234/201905219149823234.pdf>; *see also* FEC Committee Contribution/Expenditure Database, <https://www.fec.gov/data/independent->

1 In mid-August 2018, after Vukmir won the primary election, she appeared on two
2 programs during which she responded to the hosts' questions about receiving support from
3 outside groups in general and discussed Uihlein in particular. The first appearance was on a
4 podcast, "The Mark Belling Show," on August 15, 2018, where the following exchange
5 occurred:

6 **BELLING:** Do you have any indication from the national Republican
7 strategists who decide where to allocate resources to get their support, and what
8 about some of these outside groups, I don't know if you can communicate directly
9 with them, but some of these outside groups that put so much money into Kevin
10 [Nicholson]'s race, presumably they want a Republican Senator from Wisconsin.
11 Do you have any information as to whether or not they're going to come around
12 and back you, so you can unify the party not just the two of you candidates, but
13 get the kind of money that's necessary to beat Baldwin?

14
15 **VUKMIR:** Well we are already reaching out to Dick Uihlein and I hope
16 that he will want to continue with his commitment, let's face it, he wants to defeat
17 Tammy Baldwin, and so I look forward to having that conversation with him. We
18 have a unity dinner on Friday, with Dick Uihlein and Diane Hendricks, Kevin and
19 I, and we will be bringing people together there, and Kevin's commitment to help
20 as well is very important. I have already received several phone calls from US
21 Senators who have offered to come to the state and we'll be talking and
22 continuing those discussions.⁵

23
24 A few days later, on August 19, 2018, Vukmir made a television appearance on "UpFront with
25 Mike Gousha," during which she also answered a similar question regarding seeking support
26 from Uihlein:

27 **GOUSHA:** I have to ask you, you said \$11 million was spent against you.
28 It was spent largely by one person, Richard Uihlein, who is a prominent
29 Republican, conservative donor. Do you anticipate he will ultimately support
30 your campaign, ultimately spend money on your behalf?
31

<https://www.heart.com/podcast/139-the-mark-belling-show-24992319/episode/81518-governor-walker-and-leah-vukmir-29719073/>

⁵ Compl. Attach. A, Transcript Excerpt, *The Mark Belling Show*, 1130 WISN-AM (Aug. 15, 2018), <https://www.heart.com/podcast/139-the-mark-belling-show-24992319/episode/81518-governor-walker-and-leah-vukmir-29719073/>.

1 **VUKMIR:** Well that is ultimately what we want. We signed a unity
2 pledge. There was a unity dinner recently and we are looking forward to working
3 together. Kevin was gracious in calling me the night of the election, offered to
4 help and I think that's ultimately what's so important here, is Kevin and I both got
5 into this race because we wanted to defeat Tammy Baldwin. We believe that
6 she's not right for Wisconsin and now we need to unify and ultimately finish the
7 work that we started.⁶

8
9 On September 17, 2018, Uihlein donated \$1 million to Americas PAC and \$2 million to
10 Restoration PAC.⁷ Beginning on September 24, Americas PAC reported making \$377,000 in
11 independent expenditures and Restoration PAC reported making \$359,000 in independent
12 expenditures opposing Vukmir's general election opponent, Senator Tammy Baldwin.⁸

13 Based on Vukmir's public statements, Uihlein's contributions to Americas PAC and
14 Restoration PAC, and those PACs' independent expenditures opposing Baldwin, the Complaint
15 alleges that Vukmir solicited excessive in-kind contributions from Uihlein.⁹ The Complaint
16 further alleges that Vukmir's solicitation resulted in prohibited contributions from Americas
17 PAC and Restoration PAC, for whom Uihlein is the largest donor and primary source of
18 financial support, because Vukmir allegedly requested or suggested that they make independent

⁶ Compl. Attach. A, Transcript Excerpt, *UpFront with Mike Gousha*, WISN-12 ABC (Aug. 19, 2018).

⁷ Americas PAC 2018 October Quarterly Report, <https://docquery.fec.gov/pdf/809/201810159124826809/201810159124826809.pdf>; Restoration PAC 2018 October Quarterly Report, <https://docquery.fec.gov/pdf/202/201905219149823202/201905219149823202.pdf>.

⁸ Americas PAC had already spent almost \$800,000 opposing Baldwin in the 2017-18 election cycle prior to Vukmir's primary election win. https://www.fec.gov/data/independent-expenditures/?committee_id=C00559906&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=O&candidate_id=S2WI00219&data_type=processed&is_notice=true. Similarly, Restoration PAC had spent almost \$607,000 opposing Baldwin in the 2017-18 election cycle prior to Vukmir becoming the Republican general election nominee. https://www.fec.gov/data/independent-expenditures/?committee_id=C00571588&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&support_oppose_indicator=O&candidate_id=S2WI00219&data_type=processed&is_notice=true.

⁹ Compl. at 2.

1 expenditures to support her campaign through these public statements.¹⁰ Accordingly, the
2 Complaint alleges that Vukmir and the Committee violated 52 U.S.C. §§ 30125 and 30116(f) by
3 soliciting and accepting excessive and prohibited contributions from Uihlein, Americas PAC,
4 and Restoration PAC, and that Uihlein, Americas PAC, and Restoration PAC violated 52 U.S.C.
5 §§ 30116(a) and 30118(a) by making excessive, prohibited in-kind contributions in the form of
6 coordinated communications.¹¹

7 Vukmir and the Committee categorically deny the solicitation and coordination
8 allegations.¹² The Vukmir Response, which includes an affidavit from Vukmir, states that
9 neither she nor the Committee interacted with Uihlein or personnel from either Americas PAC or
10 Restoration PAC at any time.¹³ In her affidavit, Vukmir states that while she “reached out to try
11 to speak to Mr. Uihlein,” she was “not able to make contact with Mr. Uihlein and have never
12 spoken to him, either before or after the 2018 election.”¹⁴ Moreover, Vukmir’s affidavits states
13 that “[h]ad I spoken to Mr. Uihlein, I would have asked him to contribute the maximum
14 permissible amount to my campaign.”¹⁵ Vukmir and the Committee contend that the general
15 expression of “hope” for support does not constitute a “solicitation” under the Act.¹⁶ The
16 Committee further argues that the Complaint makes no reference to any specific communication

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3-4.

¹² Response of Leah Vukmir and Leah for Senate (“Committee Resp.”) at 1.

¹³ Committee Resp. at 4, Attach. A, Affidavit of Leah Vukmir (“Vukmir Aff.”) at ¶¶ 7, 10, 12, 14-15, 18-19.

¹⁴ Vukmir Aff. at ¶¶ 6-7.

¹⁵ *Id.* at ¶ 10.

¹⁶ Committee Resp. at 3-4., Vukmir Aff. 16-17.

1 that is alleged to have been coordinated and alleges no facts that would meet the standards for
 2 coordination set forth in the Commissions' regulations.¹⁷

3 Uihlein submits an affidavit categorically denying that he was solicited by Vukmir or the
 4 Committee. Specifically, Uihlein states that he did not speak to Vukmir after she defeated Kevin
 5 Nicholson, and does not know and has never met Vukmir's campaign treasurer, Travis Kabrik.¹⁸
 6 He further states that Vukmir, Kabrik, and the Committee never solicited him for any
 7 contributions for her campaign or any PAC.¹⁹ Additionally, he denies attending any dinner with
 8 Vukmir, including the "unity dinner" Vukmir mentioned in her public statements.²⁰

9 Regarding Americas PAC and Restoration PAC, Uihlein avers, "I have no control over
 10 Americas PAC or any PAC to which I contributed."²¹ He states he is "solely a donor" and has
 11 no role in choosing the candidates that the PACs support or oppose, or when any independent
 12 expenditures made by the committees will be made.²² He also attests: "At no time did I discuss
 13 the Vukmir's campaign plans, projects, activities, or needs either with Ms. Vukmir or her
 14 campaign staff, any political party committees, or any of their agents."²³ Similarly, he contends
 15 that he did not discuss with any of the PACs to which he contributed "any specific plans

¹⁷ Committee Resp. at 4-5.

¹⁸ Uihlein Response, Attach. A, Affidavit of Richard Uihlein ("Uihlein Aff.") ¶¶ 2-3.

¹⁹ *Id.* ¶¶ 3-6.

²⁰ *Id.* ¶ 4.

²¹ *Id.* ¶ 7.

²² *Id.*

²³ *Id.* ¶ 8.

1 regarding their independent expenditures, including the timing or content of such
2 expenditures.”²⁴

3 Restoration PAC did not submit a response to the Complaint. Americas PAC’s Response
4 denies the allegations and asserts that the Complaint fails to allege sufficient facts to support a
5 claim of coordination against Americas PAC. Americas PAC states that the Complaint fails to
6 identify any specific communication that would satisfy the payment or content standards for
7 coordination.²⁵ Moreover, Americas PAC argues the Complaint fails to point to any conduct by
8 Americas PAC that would meet the conduct prong of the coordination test. Specifically, it
9 contends that the Complaint relies solely on the public statements by Vukmir as evidence of
10 coordination, and these statements are insufficient to demonstrate material involvement by
11 Vukmir or the Committee in the decision-making of the PACs, including in the content,
12 audience, means or mode of communication, media outlets, timing or frequency, or any other
13 aspect of the PACs’ communications.²⁶ Additionally, Americas PAC notes that Vukmir’s public
14 statements make no mention of Americas PAC and are not evidence of actions by Americas PAC
15 that would meet the content or conduct standard for coordination set forth in 11 C.F.R.
16 §§ 109.21(c), (d).²⁷

²⁴ *Id.*

²⁵ Americas PAC Response (Dec. 18, 2018) at 2-3.

²⁶ *Id.* at 3.

²⁷ *Id.*

1 **III. LEGAL ANALYSIS**

2 **A. Solicitation**

3 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
4 candidate shall not “solicit, receive, direct, transfer, or spend funds in connection with an
5 election for federal office . . . unless the funds are subject to the limitations, prohibitions, and
6 reporting requirements of the Act,” which includes a limitation on the solicitation of
7 contributions from political action committees to \$5,000 per year.²⁸ The Commission’s
8 regulations define “solicit” broadly as “to ask, request, or recommend, explicitly or implicitly,
9 that another person make a contribution, donation, transfer of funds, or otherwise provide
10 anything of value.”²⁹ The regulation states that the communication should be “construed as
11 reasonably understood in the context in which it is made, contains a clear message asking,
12 requesting, or recommending that another person make a contribution, donation, transfer of
13 funds, or otherwise provide anything of value. . . . A solicitation does not include mere
14 statements of political support[.]”³⁰ This test is objective and does not turn on the subjective
15 interpretations of the person making the communication or its recipients.³¹ The speaker’s
16 conduct may also be relevant to the meaning of a statement.³² The Commission has explained
17 that its objective standard “hinges on whether the recipient should have reasonably understood

²⁸ 52 U.S.C. §§ 30116(a)(1)(C), 30125(e).

²⁹ 11 C.F.R. § 300.2(m); *see also Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (final rulemaking defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary.”).

³⁰ 11 C.F.R. § 300.2(m); *see also* Definitions of “Solicit” and “Direct”; Final Rule; 71 Fed. Reg. 13,926, 13,928 (Mar. 20, 2006) (“E&J”).

³¹ 11 C.F.R. § 300.2(m); *see also* E&J, 71 Fed. Reg. at 13,928.

³² E&J, 71 Fed. Reg. at 13,928.

1 that a solicitation was made.”³³ Moreover, “words that would by their plain meaning normally
 2 be understood as a solicitation, may not be a solicitation when considered in context, such as
 3 when the words are used as part of a joke or parody.”³⁴ The Commission has determined that the
 4 context of the statements in question is crucial to evaluating whether a solicitation occurred.³⁵

5 Commission regulations provide a non-exhaustive list of specific types of
 6 communications that constitute solicitations: “(i) A communication that provides a method of
 7 making a contribution or donation, . . . (ii) A communication that provides instructions on how or
 8 where to send contributions or donations, . . . [and] (iii) A communication that identifies a Web
 9 address where the Web page displayed is specifically dedicated to facilitating the making of a
 10 contribution or donation[.]”³⁶ The regulations also provide specific examples of statements that
 11 constitute solicitations, which include, but are not limited to the following:

- 12 • “Please give \$100,000 to Group X.”
- 13
- 14 • “It is important for our State party to receive at least \$100,000 from each of you in
 15 this election.”
- 16
- 17 • “Group X has always helped me financially in my elections. Keep them in mind this
 18 fall.”³⁷
- 19

³³ *Id.* at 13,929.

³⁴ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992) (concluding that no reasonable listener would understand that a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” to be accusing the producer of the actual crime of robbery)).

³⁵ Factual & Legal Analysis, MUR 6939 (Mike Huckabee, *et al.*) (dismissing an allegation that Presidential candidate Mike Huckabee impermissibly solicited a million dollar contribution to an independent expenditure-only political committee when he suggested that attendants at the rally give as much as they legally could to his campaign and then contribute “a million dollars” to the PAC because the context and manner in which he made the statement were such that a reasonable person could not have believed he was being earnest).

³⁶ 11 C.F.R. § 300.2(m)(1) (i)-(iii).

³⁷ *Id.* at 300.2(m)(2).

1 In support of its allegations concerning the solicitation of excessive and prohibited
2 contributions, the Complaint cites public statements made by Vukmir during the Belling podcast
3 regarding the support she could expect to receive from “outside groups” in the general election.
4 The Complaint argues that Vukmir’s statement that she “hoped” Uihlein would continue with his
5 commitment amounts to a solicitation of excessive and impermissible funds both from Uihlein
6 and the PACs to which he was contributing at the time, which included Americas PAC and
7 Restoration PAC.³⁸ Given the context of the conversation, which focused on whether Vukmir’s
8 campaign would receive from the PACs the same kind of monetary support they gave to her
9 primary opponent, the Complaint argues that Vukmir’s invocation of Uihlein’s name is
10 tantamount to soliciting him and the PACs.³⁹

11 The Complaint further argues Vukmir’s statements a few days later during a local news
12 segment expressing a similar desire for Uihlein’s support amount to a solicitation of excessive
13 and prohibited contributions from Uihlein and the PACs.⁴⁰ Because Uihlein did not spend the
14 funds directly in the primary election, but only through the PACs to which he was the primary
15 contributor, the Complaint contends that Vukmir’s invocation of Uihlein’s name was essentially
16 a request that Uihlein contribute to the PACs in excess of the amount that Uihlein would legally
17 have been permitted to contribute directly to Vukmir’s authorized committee.⁴¹

18 As discussed above, the Commission has specifically defined the term “solicit” to be a
19 direct or indirect request by another person “to make a contribution or donation, or transfer of

³⁸ Compl. at 4.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

1 funds, or to provide anything of value,” and it has stated that the solicitation must contain a
2 “clear message” that could only be reasonably construed by an objective listener to be a
3 solicitation.⁴²

4 Vukmir’s statements do not constitute such a “clear message.”⁴³ She was not speaking
5 directly to Uihlein or another potential contributor. On “The Mark Belling Show,” she stated
6 that her campaign was “reaching out” to Uihlein. Presumably, any solicitation would have
7 occurred upon successfully “reaching out” to Uihlein—not through the prism of a media
8 interview. On “UpFront with Mike Gousha,” she answered a question about whether Uihlein
9 *would* support her by replying that “ultimately” she would want a former political opponent to
10 support her. Again, at best, Vukmir is previewing that she wished to talk to Uihlein—an event
11 that both Vukmir and Uihlein have attested never occurred—not making a solicitation through a
12 local news program.

13 Moreover, the evidence is clear that no solicitation has occurred at any other point after
14 Vukmir’s interviews, as both Vukmir and Uihlein have provided categorical, sworn denials that
15 they ever spoke to one another, let alone that Vukmir solicited Uihlein for contributions to two
16 specific super PACs—neither of which Vukmir named in either of her two interviews.

17 The Commission finds no reason to believe that Leah Vukmir and Leah for Senate and
18 Travis Kabrick in his official capacity as treasurer, solicited excessive and prohibited
19 contributions, in violation of 52 U.S.C. § 30125(e)(1)(A).

⁴² 11 C.F.R. § 300.2(m).

⁴³ *Id.*

1 **B. Coordination**

2 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
3 deposit of money or anything of value made by any person for the purpose of influencing any
4 election for Federal office.”⁴⁴ “Anything of value” includes in-kind contributions.⁴⁵ In-kind
5 contributions result when goods or services are provided without charge or at less than the usual
6 and normal charge,⁴⁶ and when a person makes an expenditure in cooperation, consultation or in
7 concert with, or at the request or suggestion of a candidate or the candidate’s authorized
8 committee or their agents.⁴⁷ Independent expenditure-only political committees such as
9 Americas PAC and Restoration PAC are prohibited from making contributions to candidates and
10 their authorized committees.⁴⁸

11 Under the Commission’s regulations, a communication is “coordinated” with a candidate,
12 an authorized committee, a political party committee, or agent thereof, and, thus treated as an in-
13 kind contribution, if the communication: (1) is paid for, partly or entirely, by a person other than
14 the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at
15 least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the
16 “conduct standards” at 11 C.F.R. § 109.21(d).⁴⁹ A communication must satisfy all three prongs
17 to be a “coordinated communication” under the Commission’s regulations.

⁴⁴ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

⁴⁵ 11 C.F.R. § 100.52(d)(1).

⁴⁶ *Id.*

⁴⁷ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁴⁸ *See* 52 U.S.C. § 30116(a), 30118(a); Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2; Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

⁴⁹ 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications). The “content standard” requirement is satisfied if the communication at issue

1 Though the Complaint does not identify specific public communications that are alleged
2 to have been coordinated, Americas PAC and Restoration PAC reported making independent
3 expenditures totaling \$377,000 and \$359,000, respectively, during the general election attacking
4 Vukmir’s opponent, Tammy Baldwin.⁵⁰ Thus, the payment and content prongs of the
5 coordination standard are satisfied.

6 The “conduct prong” may be satisfied by: (1) communications made at the “request or
7 suggestion” of the relevant candidate or committee; (2) communications made with the “material
8 involvement” of the relevant candidate or committee; (3) communications made after a
9 “substantial discussion” with the relevant candidate or committee; (4) specific actions of a
10 “common vendor”; (5) specific actions of a “former employee or independent contractor”; and
11 (6) specific actions relating to the dissemination of campaign material.⁵¹

12 The Complaint’s sole basis for the claim that Respondents’ actions satisfied the conduct
13 prong for coordination are the alleged solicitations made by Vukmir.⁵² The Complaint does not
14 point to any other communications between Vukmir and the Committee and either Uihlein,
15 Americas PAC or Restoration PAC, instead suggesting that Vukmir’s public statements amount

constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see also* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication).

⁵⁰ *See* Americas PAC 2018 October Quarterly Report, <https://docquery.fec.gov/pdf/809/201810159124826809/201810159124826809.pdf>, 2018 Pre-General Report, <https://docquery.fec.gov/pdf/929/201810259130901929/201810259130901929.pdf>, and 2018 Post-General Report, <https://docquery.fec.gov/pdf/433/201812059134116433/201812059134116433.pdf>. *See also*, Restoration PAC 2018 Pre-General Report, <https://docquery.fec.gov/pdf/234/201905219149823234/201905219149823234.pdf>.

⁵¹ *Id.* § 109.21(d).

⁵² Compl. at 4-5.

1 to requests or suggestions under the conduct standard for coordinated communications.⁵³
 2 However, as discussed above, Vukmir and Uihlein deny any communication with each other or
 3 each other’s agents⁵⁴ and the available information does not indicate that Uihlein, Americas
 4 PAC, or Restoration PAC were aware of Vukmir’s statements.⁵⁵ Here, the PACs’ spending on
 5 communications that oppose Vukmir’s opponent in a general election is insufficient by itself to
 6 meet the conduct standard for coordination.⁵⁶ Because the available information is insufficient
 7 to satisfy the conduct prong for coordination, the Commission dismisses the allegation that Leah
 8 for Senate and Travis Kabrick in his official capacity as treasurer, violated 52 U.S.C. §§ 30116(f)
 9 and 30104(b), by receiving and failing to report excessive, prohibited in-kind contributions from
 10 the PACs in the form of coordinated communications.

11 Consistent with the foregoing recommendations, the Commission finds no reason to
 12 believe allegations that Richard Uihlein, Americas PAC and Tom Donelson in his official
 13 capacity as treasurer, and Restoration PAC and Sherry Gaskill in her official capacity as

⁵³ *Id.*

⁵⁴ Uihlein Aff. ¶¶ 2-3; Vukmir Aff. ¶¶ 7, 10, 14-15.

⁵⁵ In order to meet the “request or suggestion” conduct standard, the benefiting candidate or committee must make a direct request to a specific individual, group or audience and not simply to the public generally. *See* First Gen. Counsel’s Rpt. at 12-13, MUR 6411 (Pelosi); First Gen. Counsel’s Rpt. at 8, MUR 6821 (Shaheen); *see also* *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (explanation and justification) (“E&J”).

⁵⁶ Americas PAC and Restoration PAC each spent almost twice as much on independent expenditures opposing Baldwin before Vukmir became the Republican general election candidate as they did after she became the candidate. *See* Americas PAC 2018 April and July Quarterly Reports, <https://docquery.fec.gov/pdf/721/201805119112017721/201805119112017721.pdf>, <https://docquery.fec.gov/pdf/177/201807149115486177/201807149115486177.pdf>; *see also*, Restoration PAC 2017 Mid-Year and Year End Reports, <https://docquery.fec.gov/pdf/580/201707319069901580/201707319069901580.pdf>, <https://docquery.fec.gov/pdf/374/201801309090927374/201801309090927374.pdf>.

- 1 treasurer, violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b) by making and failing to
- 2 report excessive, prohibited in-kind contributions in the form of coordinated communications.