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FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

December 19, 2019

Ms. Lisa J. Stevenson
Acting General Counsel
Office of the General Counsel
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

MUR # 7666 Supp

2019 DEC 23 PM 2:50

OFFICE OF
GENERAL COUNSEL

RE: Additional Evidence for VoteVets.Org Action Fund, Senator Gary Peters, and his campaign committee, Peters for Michigan

Dear Ms. Stevenson:

The Foundation for Accountability and Civic Trust (FACT) submitted a complaint dated December 4, 2019, seeking an immediate investigation into VoteVets.Org Action Fund, Senator Gary Peters, and his campaign committee, Peters for Michigan. As that complaint outlines, Senator Gary Peters appears to be using his campaign website to coordinate with outside organizations. A subpage on his website includes detailed instructions for advertisements and links to transfer campaign assets of messaging, photos, and video to be used in the advertisements. Moreover, VoteVets.Org Action Fund made an illegal contribution of at least \$1,450,000 to Peters by republishing campaign materials (messaging, photos, and video) in the format of television advertisements.

After FACT filed this complaint, another outside organization, Majority Forward, also republished Peters' campaign materials in the format of Facebook advertisements, making an illegal contribution to Peters in the amount of \$20,000 to \$25,000. FACT submitted a complaint dated December 19, 2019, seeking an immediate investigation into Majority Forward, Senator Gary Peters, and his campaign committee, Peters for Michigan.

As additional evidence and legal argument in the VoteVets.Org Action Fund, Gary Peters, and Peters for Michigan case, FACT submits the complaint against Majority Forward. Peters continues to use his website to coordinate with outside organizations and a second organization running advertisements by republishing the provided campaign materials is additional evidence of this. It is clear the provided campaign materials are not communications with voters, i.e. the video does not play on the website but is simply a link to download it from a Dropbox folder. Rather, Peters continues to use his website so outside organizations can subsidize his campaign. Moreover, the "publicly-available-information safe harbor" does not apply to the facts of this case. Peters' request or suggestion that an outside organization run this particular ad is not protected because it is

not “information.” Additionally, Peters’ transfer of campaign assets, i.e. photos and video, to be used in the ad is not protected because it is not “information.” Peters use of a website to coordinate with an outside group cannot be excused by the publicly-available-information safe harbor.¹

Respectfully submitted,



Kendra Arnold
Executive Director, Foundation for Accountability & Civic Trust

¹ For the full legal argument, see page 10-11 of the complaint against Majority Forward.

BEFORE THE FEDERAL ELECTION COMMISSION

Foundation for Accountability and Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

v.

MUR No. _____

Gary Peters
Peters for Michigan
PO Box 32072
Detroit, MI 48244

and

Majority Forward
700 13th Street NW
Suite 600
Washington, DC 20005

OFFICE OF
GENERAL COUNSEL
2019 DEC 23 PM 2:50

COMPLAINT

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good. This complaint¹ is submitted, upon information and belief, to request the Federal Election Commission (FEC) investigate and take appropriate enforcement actions to address apparent violations of the Federal Election Campaign Act by Senator Gary Peters, and Peters' campaign committee, Peters for Michigan, and Majority Forward (a 501(c)(4) organization).²

Senator Gary Peters appears to be using his campaign website to illegally coordinate with outside organizations that support his candidacy.³ Through postings on a designated webpage,

¹ This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1).

² Majority Forward, FEC Identification Number: C90016098.

³ 52 U.S.C. § 30116(a)(7)(B)(i). VoteVets.Org Action Fund has also republished this exact same campaign material. See also Ryan Lovelace, 'Dark Money' Ad Raises Questions Over Peters Campaign for Senate, Washington Times, Nov. 18, 2019, available at: <https://www.washingtontimes.com/news/2019/nov/18/dark-money-ad-raises-questions-over-gary-peters-ca/>; Lachlan Markay, Twitter, Dec. 10, 2019 (explaining the Peters campaign placed b-roll video on its website that "won't actually play on the website, it'll just download when you click" and two outside groups have used it in their ads) (Exhibit A).

Peters instructs organizations with which he is not permitted to coordinate to run advertisements beneficial to his campaign. This is not general candidate or campaign information and not in the usual format as that provided to the general public. Rather, Peters provides detailed content for advertisements and markets in which to run the advertisements based upon the campaign's internal data and advertising needs, and provides it in a format designed to directly communicate with outside organizations. In this case, Majority Forward then republished campaign materials in the form of advertisements. This type of behavior is contrary to federal law that prohibits candidates from coordinating with outside groups⁴ and is a prohibited campaign contribution. As such, the Commission must immediately investigate and enforce the law.

Additionally, Majority Forward has made an illegal contribution to Peters for Michigan by financing the dissemination, distribution, or republication of campaign materials.⁵ The 501(c)(4) organization has republished Peters for Michigan campaign materials, spending between \$20,000 to \$25,000⁶ in violation of federal law to run advertisements, which are currently being distributed. As such, the Commission must immediately investigate and enforce the law to stop ongoing violations.

I. Facts

In recent years, several United States Senate candidates have used their campaign websites to request advertisements to be produced and run by outside organizations, with which the campaign is prohibited from coordinating.⁷ The websites use obscure pages to instruct outside groups on the content of the advertisement and where to run it (statewide or in a smaller media

⁴ See 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 111.4(a).

⁵ 52 U.S.C. § 30116(a)(7)(B)(iii).

⁶ Majority Forward, available at:

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1721333671443168.

⁷ See Maggie Severns, *Democratic Candidates Writing Instructions to Super PACs on Their Websites*, Politico (July 15, 2016); see also, e.g., Lachlan Markay, Twitter, Dec. 10, 2019 (explaining the Peters campaign placed b-roll video on its website that “won’t actually play on the website, it’ll just download when you click” and two outside groups have used it in their ads) (Exhibit A); James Arkin, Twitter, Nov. 6, 2019 (“The new ad from VoteVets focusing on his service and defense focus . . . tracks closely w/ this post that went up on Peters campaign website 11/1 [link to “What Michiganders Need to Know” Webpage]”); Ryan Lovelace, *‘Dark Money’ Ad Raises Questions Over Peters Campaign for Senate*, Washington Times, Nov. 18, 2019.

market).⁸ These webpages often provide photographs and video of the candidate to be used in the advertisement.⁹ The pages tend to identify themselves by using the “code words” of “voters need to know” or “people from state X should know,” and identify the media market with specific geographical descriptions.¹⁰ The purpose and effect of these webpages is clear: to give explicit instructions to outside organizations on the content and audiences for advertisements supporting their campaigns.

On November 1, 2019, Senator Gary Peters, who is running for re-election to the U.S. Senate in 2020, uploaded material on a subpage of his campaign website that contains photographs, b-roll footage, messaging, and instructions on the audience to target with the material.¹¹ The Peters subpage is entitled, “An Important Update[:] WHAT MICHIGANDERS NEED TO KNOW.”¹² This subpage also includes a link to a PDF document that obviously highlights six specific points within nine pages of research material.¹³

The subpage and document focus entirely on a single issue: the military.¹⁴ The seven photographs posted all are either Peters in a military uniform or Peters in a shirt with a Navy marking.¹⁵ The b-roll footage includes scenes of Peters shaking hands with Navy veterans and touring what looks like an industrial plant and a control center.¹⁶ Importantly, the b-roll video does not actually play on the website, but it is a link to a Dropbox page to download the video.¹⁷ The subpage also includes new instructions about the particular media markets that should be

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Peters for Michigan, An Important Update[:] What Michiganders Need To Know, available at <https://petersformichigan.com/what-michiganders-need-to-know/> (Exhibit B).

¹² *Id.*

¹³ Peters for Michigan, <https://petersformichigan.com/wp-content/uploads/2019/11/191101-Security-Doc.pdf>.

¹⁴ Peters for Michigan, An Important Update[:] What Michiganders Need To Know, available at <https://petersformichigan.com/what-michiganders-need-to-know/> (Exhibit B).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

targeted with the materials. This was accomplished by adding a note at the outset of the post specifying, “What Michiganders *from all parts of the state* need to know.”¹⁸

On November 26, 2019, Majority Forward, a 501(c)(4) organization, began running advertisements using Peters’ campaign materials and spent between \$20,000 to \$25,000 on Facebook advertisements.¹⁹ The advertisement utilized material posted on the “WHAT MICHIGANDERS NEED TO KNOW” webpage: messaging and three clips of b-roll footage.²⁰ Specifically, the November 1st, 2019 post on Peters’ instructive website, focuses solely on military and defense and states in part, “Gary is keeping Michigan safe. . . . and has led efforts to boost Michigan’s defense industry.”²¹ The Majority Forward advertisement’s narration states, “Standing up for Michigan, that’s how Gary Peters has spent his life. In the Senate, Peters has made keeping Michigan safe a priority, leading the effort to grow Michigan jobs in the defense industry. Thank Gary Peters for fighting for Michigan.”²² The advertisement’s video uses three clips of the b-roll video posted on Peters’ website, approximately half of the advertisement.²³

II. Law

Under federal law, candidates for federal office are subject to regulations that limit or prohibit contributions from and interactions with individuals, groups, and organizations. Among these regulations, federal candidates are prohibited from accepting contributions from an individual or a non-multicandidate PAC in excess of \$2,800, from a multicandidate PAC in excess of \$5,000, or from any corporation or labor organization in any amount.²⁴ Federal candidates are

¹⁸ *Id.* (emphasis added).

¹⁹ Majority Forward, available at: https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1721333671443168.

²⁰ Peters for Michigan, An Important Update[:] What Michiganders Need To Know, available at <https://petersformichigan.com/what-michiganders-need-to-know/> (Exhibit B).

²¹ Peters for Michigan, <https://petersformichigan.com/wp-content/uploads/2019/11/191101-Security-Doc.pdf>.

²² Majority Forward, available at: https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1721333671443168.

²³ *Id.*

²⁴ 52 U.S.C. §§ 30116, 30118.

also prohibited from accepting contributions from entities that accept contributions from corporations or labor organizations.²⁵ On the other hand, individuals, groups, and organizations are also prohibited from making any illegal contribution.²⁶ Contributions are broadly defined to include cash donations, but also “anything of value . . . for the purpose of influencing any election for Federal office.”²⁷

Additionally, federal law sets forth three specific expenditures that are defined as contributions:

(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for the purpose of this paragraph[.]²⁸

In order to determine whether a communication was made in cooperation with a candidate under subsection (i), a three-part test applies: (1) the communication is paid for by a third-party; (2) the communication satisfies a “content” standard of 11 C.F.R. § 109.21(c); and (3) the communication satisfies one of the “conduct” standards of 11 C.F.R. § 109.21(d).²⁹

In order to determine whether a communication was a dissemination, distribution, or republication of campaign materials under subsection (iii), the “general rule” applies:

²⁵ 52 U.S.C. §§ 30101, 30118.

²⁶ *See, e.g.*, 52 U.S.C. § 30116(a)(7)(B).

²⁷ 52 U.S.C. § 30101(8)(A).

²⁸ 52 U.S.C. § 30116(a)(7)(B).

²⁹ 11 C.F.R. § 109.21.

a. General Rule. The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.³⁰

The only exceptions to the general rule are specifically enumerated:

b. Exceptions. The following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

1. The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;
2. The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;
3. The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;
4. The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; or
5. A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.³¹

The contributions specified in subsections (i) and (iii) are separate and distinct ways to make an illegal contribution.

³⁰ 11 C.F.R. § 109.23(a).

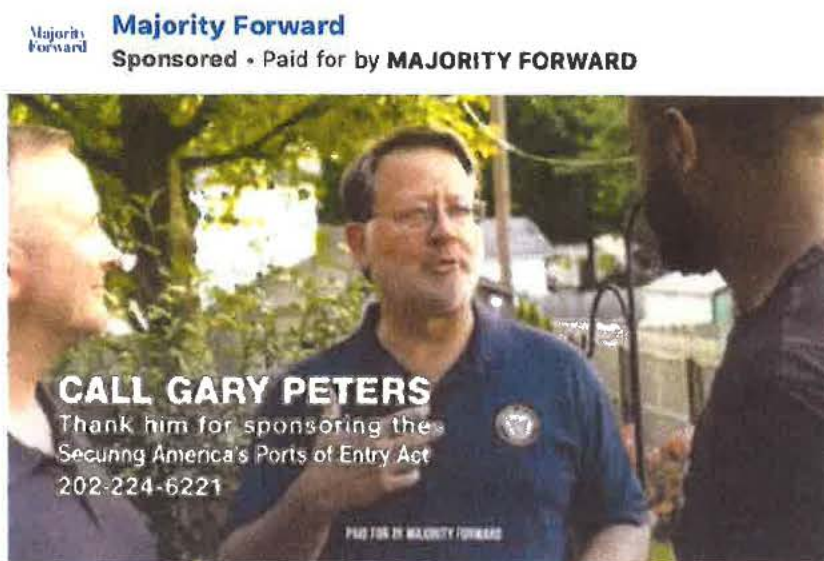
³¹ 11 C.F.R. § 109.23(b).

III. Analysis

A. Illegal Contribution of Coordinated Communication (52 U.S.C. § 30116(a)(7)(B)(i)).

Peters and Peters for Michigan have solicited and accepted an illegal contribution from Majority Forward by coordinating communications valued at \$20,000 to \$25,000. This is established by applying the three-prong “coordinated communication” test to the advertisement: (1) the communication satisfies the “payment” standard with a third-party payment; (2) the communication satisfies a “content” standard of 11 C.F.R. § 109.21(c); and (3) the communication satisfies one of the “conduct” standards of 11 C.F.R. § 109.21(d).³²

1. Payment Standard. The “payment” standard is satisfied when a communication is paid for by an entity “other than that candidate, authorized committee, or political party committee.”³³ Here, the advertisement’s disclaimer states, “Paid for by Majority Forward”.³⁴



Thus, from the face of the communication, it is clear the advertisement was paid for by Majority Forward, and not Peters for Michigan.

³² 11 C.F.R. § 109.21.

³³ *Id.*

³⁴ Majority Forward, available at:

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1721333671443168 .

2. Content Standard. The advertisement meets several of the “content” standards under 11 C.F.R. § 109.21(c): the communication is a public communication that “disseminates, distributes or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee,”³⁵ is a public communication that expressly advocates for the election or defeat of a clearly identified candidate for Federal office,³⁶ and “is the functional equivalent of express advocacy.”³⁷ All three of these standards are demonstrated by the advertisement—the advertisement reproduces the campaign material (as fully discussed in the following section B), contains information that can only be understood to be providing information to convince a voter to vote for Peters, and the advertisement conveys information the candidate wanted voters to know because it is advocacy.

3. Conduct Standard. The communication meets one of the “conduct” standards of 11 C.F.R. § 109.21(d): “The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee.”³⁸ Although the content of the advertisement demonstrates it distributes campaign materials, additionally the advertisement is clearly in response to a request or suggestion by Peters to disseminate, distribute, and republish the campaign materials and where to do so. Circumstances showing the request or suggestion include: (1) the campaign using “code words” to identify the provided campaign materials for the advertisement and identify the market in which to run the advertisement; (2) the campaign provided materials to be republished by posting messaging in a PDF document and a video that could only be downloaded, establishing it was not for public purposes but provided to be republished by outside groups; (3) Majority Forward reproducing the campaign materials specially identified and provided by the campaign; and (3) the close proximity in time between the campaign providing the materials and Majority Forward running the advertisement.³⁹

³⁵ 11 C.F.R. § 109.21(c)(2). The communication uses messaging content and b-roll footage prepared by the Peters for Michigan campaign committee and posted on its website as discussed below.

³⁶ 11 C.F.R. § 109.21(c)(3).

³⁷ 11 C.F.R. § 109.21(c)(5). The advertisements are clearly “an appeal to vote for or against a clearly identified Federal candidate.” This is evidenced by the fact that Peters desired this specific information be conveyed to specific voters as he requested on his campaign website.

³⁸ 11 C.F.R. § 109.21(d)(1).

³⁹ See also, Ryan Lovelace, ‘Dark Money’ Ad Raises Questions Over Peters Campaign for Senate, Washington Times, Nov. 18, 2019; Lachlan Markay, Twitter, Dec. 10, 2019 (explaining the Peters campaign placed b-roll video

Specifically, Peters appears to have uploaded content to a specific subpage of his website in order to provide the content for advertisements. Peters' webpage uses the same "what voters need to know" language as other candidates who have communicated with outside organizations via specific website posts to coordinate advertisements.⁴⁰ The website subpage contains no information about any issues other than the military, making it clear what the advertisement should use for its content. It is unlikely the only thing Peters wants Michiganders to know about him is his record on military issues. The subpage also links to a PDF document. In addition, the subpage goes out of its way to clarify that Michiganders "*from all parts of the state*" should hear this message—the inclusion of this superfluous language makes sense only as an indicator of which markets to target. The campaign materials and advertisement also share messaging language and b-roll footage. And finally, the temporal proximity between the November 1 webpage post and the November 26 distribution date of Majority Forward's advertisement demonstrates the effectiveness. All of these facts are evidence of a "request or suggestion."

The "WHAT MICHIGANDERS NEED TO KNOW" subpage is only designed to provide content and distribution directions to entities with which coordination is prohibited. Although the information, photos, and video were provided through a public web page, this does not excuse Peters' request. First, there must have been some other communications between the candidate and outside organizations for both parties to know how the information would be formatted, i.e. make the request on a specific subpage of the campaign webpage, titled with specific language of "Michiganders Need to Know," and use the coded language to provide the desired content and media market in which to run the advertisement. The Peters' campaign either asked how to format the request or was told of this method to make the request and assented to it. There is no other reasonable explanation for why the candidate formatted the information in this manner other than to directly coordinate with outside organizations. For example, the video footage does not actually play on the website but simply links to a Dropbox download and the messaging specifics are in a PDF document link. Moreover, less than a month elapsed between posting the information and the

on its website that "won't actually play on the website, it'll just download when you click" and two outside groups have used it in their ads) (Exhibit A); James Arkin, Twitter, Nov. 6, 2019 ("The new ad from VoteVets focusing on his service and defense focus . . . tracks closely w/ this post that went up on Peters campaign website 11/1 [link to "What Michiganders Need to Know" Webpage]")

⁴⁰ *Id.*

advertisement airing, indicating there was some other prior communication. The facts clearly demonstrate there must have been some “privately conveyed” information along with the use of the publicly available information.⁴¹

Second, the “publicly-available-**information** safe harbor” does not apply to the facts of this case. It only applies to “information”—not a request or suggestion and not the transfer of other types of campaign assets and materials, i.e. photos and video. Although the “request or suggestion conduct standard” does not include a safe harbor, the conduct standards that do include the safe harbor state: “This paragraph . . . is not satisfied if the **information** material to the creation, production, or distribution of the communication was obtained from a publicly available source.”⁴² Information is defined as “(1) knowledge obtained from investigation, study, or instruction; (2) intelligence, news; (3) facts, data.”⁴³ As discussed below, the Commission recognized “information” was not appropriately applied to “request or suggestion.”⁴⁴ Moreover, the law generally recognizes the difference between “information” and “assets,” including “campaign materials.” For example, where the “publicly-available-information safe harbor” applies, the regulations states it is in the context of “decisions,” “discussion,” or knowledge of common employees or vendors—all applications are to conveyance of knowledge or facts.⁴⁵ On the other hand, the regulations distinguish “information” from “campaign materials” that are prepared by the campaign.⁴⁶ For example, the content standards are based upon republication of campaign

⁴¹ See Coordinated Communications, 71 Fed. Reg. 33190, 33204-05 (June 8, 2006).

⁴² See, e.g., 11 C.F.R. § 109.21(d)(2) (emphasis added).

⁴³ “Information,” Merriam-Webster Online Dictionary 2019, available at <https://www.merriam-webster.com/dictionary/information>, last accessed Dec. 18, 2019.

⁴⁴ Coordinated Communications, 71 Fed. Reg. 33190, 33204-05 (June 8, 2006) (explaining the plain language of the statute did not contain an exception for the use of publicly available information and it would be inappropriate to include this type of exception: “Moreover, the four conduct standards that are being revised to include a safe harbor for the use of publicly available information all concern conduct that conveys material information that is subsequently used to create a communication, whereas the “request or suggestion” conduct standard concerns only a candidate’s or political party’s request or suggestion that a communication be created, produced or distributed, and is not dependent upon the nature of information conveyed.”).

⁴⁵ Compare 11 C.F.R. § 109.21(d) (applying the “publicly-available-information safe harbor” to “decisions,” “discussion,” and knowledge of a common employee or vendor), with 11 C.F.R. § 109.21(d)(6) (providing certain conduct standards are only satisfied “that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished”).

⁴⁶ *Id.*

materials and the conduct standards are based upon the communication of information.⁴⁷ The photos and videos were prepared and paid for by the Peters' campaign and have copyright protections, and thus would be an "item of value" or an "asset."⁴⁸ The advertisements created by Majority Forward used campaign assets that it took from a website and not "information" and thus, the "publicly-available-information safe harbor" does not apply. Peters' use of a website to make a request or suggestion and provide campaign assets to fulfill that request or suggestion cannot be excused by a "information" safe harbor that does not apply.

Finally, the "publicly-available-information safe harbor" does not apply generally to the "request or suggestion" conduct standard. The language of the "request or suggestion" conduct standard does **not** state it is not satisfied if the "information material to the creation, production, or distribution of the communication was obtained from a publicly available source."⁴⁹ This is unlike every other conduct standard, which does explicitly provide for a publicly-available-information safe harbor.⁵⁰ To interpret the "request or suggestion" standard as not applying if

⁴⁷ See 11 C.F.R. § 109.21(d)(6).

⁴⁸ "Asset," Merriam-Webster Online Dictionary 2019, available at: <https://www.merriam-webster.com/dictionary/asset>, last accessed Dec. 19, 2019 (defining "asset" as an "item of value owned"); 11 C.F.R. § 100.51(a) ("The term contribution includes payment, services, or other things of value . . ."); 11 C.F.R. § 100.52(d)(1) (stating that in-kind contributions include "the provisions of goods or services" including "securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists").

⁴⁹ Compare 11 C.F.R. § 109.21(d)(1) (stating in full: "Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section: 1. REQUEST OR SUGGESTION. i. The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or ii. The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion."), with 11 C.F.R. § 109.21(d)(2) ("This paragraph, (d)(2), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source."), 11 C.F.R. § 109.21(d)(3) ("This paragraph, (d)(3), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source."), 11 C.F.R. § 109.21(d)(4) ("This paragraph, (d)(4)(iii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source."), and 11 C.F.R. § 109.21(d)(5) ("This paragraph, (d)(5)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source.").

⁵⁰ *Id.*

information was obtained from a publicly available source is directly contrary to the plain language of the regulation, and unreasonable and contrary to the statute.⁵¹

The 2006 E&J notes the Commission decided that the publicly-available-information-safe-harbor “more appropriately applies to only four of the five conduct standards, and is being added to the paragraphs currently containing those four conduct standards.”⁵² The “request or suggestion” conduct standard is only applicable to a candidate’s request or suggestion that a communication be created, produced, or distributed, whereas the four standards to which the publicly-available-information-safe-harbor was added “all concern conduct that conveys material information that is subsequently used to create a communication.”⁵³ The request or suggestion standard is different than the other four because it simply is the request or ask, whereas the other four require conveyance of **information** material to the creation of the communication. Thus, by its plain language a “request or suggestion” is not “information” and the publicly-available-information-safe-harbor could not apply.

In addition to the fact that it was not technically applicable, it was noted that one concern commentators expressed was if the publicly-available-information-safe-harbor was added to the “request or suggestion” conduct standard, it may allow for a loophole that could be exploited by precluding “certain communications from satisfying the coordinated communications test simply because a portion of a given communication was based on publicly available information, even if a candidate privately conveyed a request that a communication be made.”⁵⁴ The choice not to apply the publicly-available-information safe harbor to the request or suggestion conduct standard was to make the regulation stronger—it was intended to prevent any argument the communication was based upon some information that was publicly available, and it did not allow for a request or suggestion to be made publicly. In fact, the concerns addressed ensured that no part of the ask

⁵¹ Compare Coordinated Communications, 71 Fed. Reg. 33190, 33204-05 (June 8, 2006) (explaining the plain language of the statute did not contain an exception for the use of publicly available information and it would be inappropriate to include this type of exception); with FEC, Factual and Legal Analysis, Shaheen for Senate, MUR 6821 (Dec. 2, 2015) (stating “that a communication resulting from a general request to the public or the use of publicly available information, including information contained on a candidate’s website, does not satisfy the content standard.”) and FEC, First General Counsel’s Report, MUR 7136 (Oct. 24, 2017) (same).

⁵² Coordinated Communications, 71 Fed. Reg. 33190, 33205 (June 8, 2006).

⁵³ *Id.*

⁵⁴ *Id.*

could be made publicly. The language of the statute prevails—the request or suggestion conduct standard does not contain a safe harbor for publicly available information.

The advertisement was paid for by Majority Forward, the content of the advertisement clearly demonstrates it is campaign materials, and the advertisement is clearly in response to a request by Peters to disseminate, distribute, and republish the campaign materials, and where to do so.

B. Illegal Contribution of Dissemination, Distribution, or Republication of Campaign Materials (52 U.S.C. § 30116(a)(7)(B)(iii))

Majority Forward has made an illegal contribution in the amount \$20,000 to \$25,000⁵⁵ by financing “the dissemination, distribution, or republication, in whole or part” of Peters for Michigan campaign materials.⁵⁶ The Peters’ campaign posted messaging content focused on one issue and stated: “Gary is keeping Michigan safe. . . . and has led efforts to boost Michigan’s defense industry.”⁵⁷ The primary substance in the voiceover stated: “In the Senate, Peters has made keeping Michigan safe a priority, leading the effort to grow Michigan jobs in the defense industry.”⁵⁸ In addition to the Peters’ campaign message content, the advertisement uses three clips of the campaign’s video, approximately half of the advertisement.⁵⁹ The Peters’ campaign essentially stated it wanted this content distributed and by doing so, Majority Forward benefited the Peters’ campaign by subsidized the distribution of the materials. Majority Forward has simply republished Peters for Michigan campaign materials in the form of a video advertisement and thus, has disseminated, distributed, and republished campaign materials prepared by Peters for Michigan.

⁵⁵ Majority Forward, available at:

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1721333671443168.

⁵⁶ 11 C.F.R. § 109.23.

⁵⁷ Peters for Michigan, <https://petersformichigan.com/wp-content/uploads/2019/11/191101-Security-Doc.pdf>.

⁵⁸ Majority Forward, available at:

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1721333671443168.

⁵⁹ *Id.*

Finally, none of the exceptions of 11 CFR § 109.23 allow Majority Forward to republish the campaign materials. Only the exceptions expressly listed permit republication of campaign materials, and none of the five narrow circumstances⁶⁰ are even remotely applicable here.⁶¹ Unlike the analysis under subsection (i) above, there is no requirement the candidate knew of or requested the dissemination, distribution, or republication and there is no exception for publicly available information. Moreover, the use of a campaign materials is not “information,” but rather assets that cannot be reproduced under the law. The law is clear—no exception applies that permits reproduction of video prepared and paid for by the campaign.⁶²

IV. Conclusion

Based on the timing, messaging, photographs, and b-roll found in the advertisement and campaign subpage, it appears that Peters is using the “WHAT MICHIGANDERS NEED TO KNOW” subpage to coordinate with outside entities. This conduct has resulted in the airing of advertisements that likely constitutes an illegal contribution to Peters’ campaign. If the Commission does not act and punish such a clear violation, candidates will continue coordinating with outside groups in violation of federal law.

Majority Forward has made an illegal contribution by financing, in the amount of \$20,000 to \$25,000, the dissemination, distribution, or republication of Peters for Michigan campaign materials. Not only has Majority Forward paid for the campaign materials to run, but it continues

⁶⁰ The exceptions are:

1. The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;
2. The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;
3. The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;
4. The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; or
5. A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.

11 C.F.R. § 109.23.

⁶¹ 11 C.F.R. § 109.23. *See also*, Federal Election Commission, First General Counsel’s Report, MUR 6357(Aug. 31, 2011) (finding the use of a video clip does not fall under the exception 11 C.F.R. § 109.23(b)(4) of consisting of a brief quote).

⁶² Regardless of what prior Commissioners have opined, the plain language of the law prevails.

to do so.⁶³ This is an ongoing violation that must be immediately addressed. If the Commission does not act and punish such a clear violation, other organizations will simply copy and disseminate campaign materials and completely eviscerate any campaign contribution limits and contribution source prohibitions.

FACT respectfully requests the Commission immediately investigate and hold the Respondents accountable.

Respectfully submitted,

K Arnold

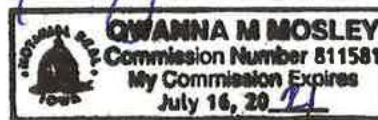
Kendra Arnold, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

STATE OF IOWA)
) ss.
COUNTY OF POLK)

Subscribed and sworn to before me on December 19th, 2019.

Quanna Mosley

Notary Public in and for the State of Iowa



⁶³ The advertisement is classified as "active" on Facebook's ad transparency database. See Exhibit C.



Lachlan Markay @lachlan

ho hum, just placing some b-roll on my campaign website for no particular reason. It won't actually play on the website, it'll just download when you click.

Well would you look at that, a dark money group and a super PAC both decided to use it in their ads, what a coincidence!



10:28 AM Dec 10, 2019 TweetDeck

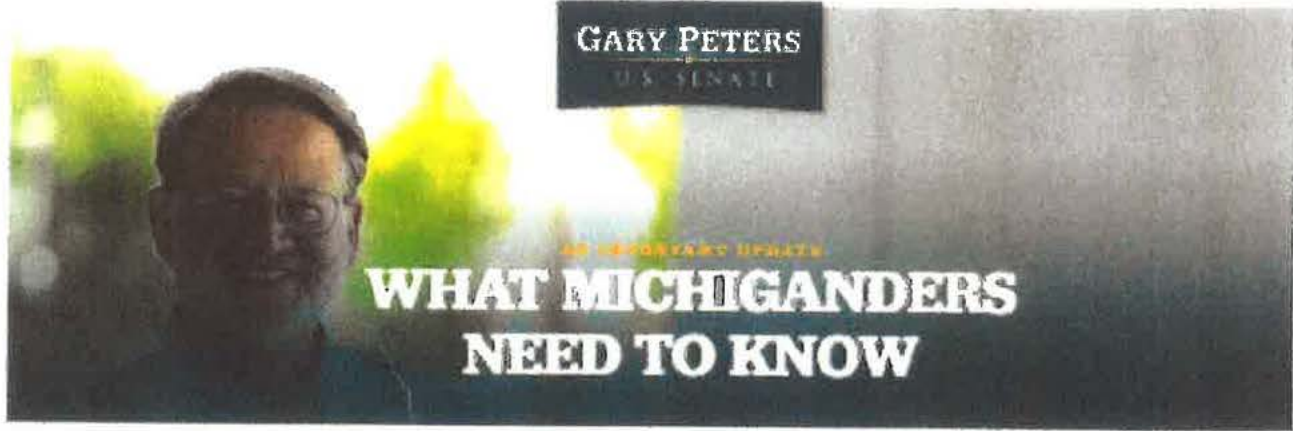
26 Retweets 56 Likes



Lachlan Markay @lachlan · 56m
Replying to @lachlan

correction: two dark money groups. VoteVets has a PAC, but this is their c4





[Faint, mostly illegible text, likely bleed-through from the reverse side of the page.]

PHOTOS - JUNE 2, 2019.





VIDEO - SEPTEMBER 9, 2010



CONTRIBUTE NOW

GARY PETERS

U.S. SENATE

<http://garypeters.senate.gov>

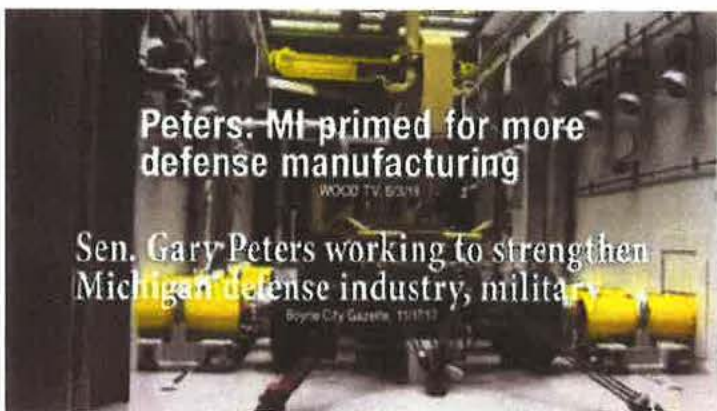
PO BOX 22873
DETROIT, MI 48224

Senator Peters was a Lieutenant Commander in the U.S. Navy Reserve. Use of his military rank, title, insignia and photographs in this item does not imply endorsement by the Department of the Navy or the Department of Defense.

PAID FOR BY PETERS FOR MICHIGAN



Majority Forward
Sponsored - Paid for by MAJORITY FORWARD
ID: 1246348528907738



About the disclaimer

When an advertiser categorizes their ad as being about social issues, elections or politics, they are required to disclose who paid for the ad. [Learn more](#)

Information from the advertiser

About the Page

Data About This Ad

Active
Started running on Nov 26, 2019
ID: 1246348528907738



500K - 600K
Impressions

\$20K - \$25K
Money spent (USD)

Who Was Shown This Ad

Age and Gender

Men Women Unknown

