

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR: 7666**

6 DATE COMPLAINT FILED: 12/05/19

7 SUPP. COMPLAINT FILED: 12/23/19

8 DATE OF NOTIFICATIONS: 12/11/19; 12/27/19

9 LAST RESPONSE RECEIVED: 02/14/20

10 DATE ACTIVATED: 03/03/20

11
12 SOL: 11/06/24 – 12/04/24

13 ELECTION CYCLE: 2020

14
15 **COMPLAINANT:**

Foundation for Accountability and Civic Trust

16
17 **RESPONDENTS:**

Peters for Michigan and Geraldine Buckles in her
official capacity as treasurer

18 Gary Peters

19 VoteVets.org Action Fund

20
21
22 **MUR: 7675**

23 DATE COMPLAINT FILED: 12/23/19

24 DATE OF NOTIFICATION: 12/27/19

25 LAST RESPONSE RECEIVED: 02/14/20

26 DATE ACTIVATED: 03/03/20

27
28 EXPIRATION OF SOL: 11/26/24

29 ELECTION CYCLE: 2020

30
31 **COMPLAINANT:**

Foundation for Accountability and Civic Trust

32
33 **RESPONDENTS:**

Peters for Michigan and Geraldine Buckles in her
official capacity as treasurer

34 Gary Peters

35 Majority Forward

36
37
38 **RELEVANT STATUTES
39 AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)(1)(A)

40 11 C.F.R. § 104.3(a)

41 11 C.F.R. § 109.23

42 11 C.F.R. § 110.9

43
44 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

45
46 **FEDERAL AGENCIES CHECKED:**

None

1 **I. INTRODUCTION**

2 The Complaints allege that VoteVets.org Action Fund (“VoteVets”) and Majority
3 Forward, both 501(c)(4) non-profit entities, made prohibited in-kind contributions to Peters for
4 Michigan and Geraldine Buckles in her official capacity as treasurer (the “Committee”), the
5 authorized committee of 2020 Senate candidate Gary Peters, by paying to distribute ads that
6 republished campaign materials, which the Committee had previously published on a subpage of
7 its website, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).
8 VoteVets reportedly spent \$1.45 million to air two ads on television, and Majority Forward
9 reportedly spent between \$25,000 and \$30,000 to run an ad on Facebook. The Complaints also
10 allege that the Committee coordinated with VoteVets and Majority Forward in connection with
11 the ads and thus accepted the prohibited in-kind contributions.

12 VoteVets and Majority Forward (collectively, “Respondents”) both acknowledge
13 incorporating “B-roll” video footage and still images of Peters taken from the Committee’s
14 website into their ads but argue that the reuse of these materials did not constitute
15 “republication.” They contend that their use of the Committee’s video footage and photographs
16 comprised only portions of the resulting ads, and that the messaging was their own. VoteVets
17 and Majority Forward also deny coordinating with the Committee. The Committee similarly
18 argues that the ads do not satisfy the definition of republication and denies coordinating with
19 either group. Further, the Committee argues that even if there had been republication, the
20 Committee would not have accepted an in-kind contribution because it did not coordinate with
21 VoteVets or Majority Forward.

22 As discussed below, it is undisputed that VoteVets and Majority Forward republished
23 campaign materials because each of the television and Facebook ads contained video footage or

1 photographs taken from the Committee's website. Therefore, we recommend that the
2 Commission find reason to believe that VoteVets and Majority Forward violated 52 U.S.C.
3 § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind contributions and
4 enter into pre-probable cause conciliation with them. However, because the facts are insufficient
5 to support a reasonable inference that the Committee coordinated with either VoteVets or
6 Majority Forward, we recommend that the Commission dismiss the allegations that Peters and
7 the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting
8 excessive in-kind contributions and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by
9 failing to report the contributions.¹

10 **II. FACTUAL BACKGROUND**

11 **A. Background**

12 Gary Peters is a 2020 candidate for the U.S. Senate from Michigan, and Peters for
13 Michigan is his authorized committee.² VoteVets.org and Majority Forward are 501(c)(4) social
14 welfare organizations.³ As of the date of this report, VoteVets has reported making \$226,884 in
15 independent expenditures during the 2020 election cycle and reported making \$2,040,118 in
16 independent expenditures during the 2018 election cycle.⁴ Majority Forward has not reported

¹ 11 C.F.R. § 109.23(a).

² Gary Peters Amended Statement of Candidacy (Mar. 4, 2020); Peters for Michigan Amended Statement of Org. (Mar. 4, 2020).

³ MUR 7666 VoteVets Resp. at 1; MUR 7675 Majority Forward Resp. at 2.

⁴ VoteVets 2020 Committee Overview, <https://www.fec.gov/data/committee/C90010620/?cycle=2020>; VoteVets 2018 Committee Overview, <https://www.fec.gov/data/committee/C90010620/?cycle=2018> (last accessed May 14, 2020).

1 any independent expenditures during the 2020 election cycle but reported making \$40,273,268 in
2 independent expenditures during the 2018 election cycle.⁵

3 On November 1, 2019, Peters for Michigan posted material to a subpage of its website
4 titled “What Michiganders Need to Know.” This included: (1) a link to download a “B-roll”
5 video comprised of clips of Peters appearing to interact with constituents in various settings;
6 (2) seven still images of Peters; and (3) a PDF document (“Peters Talking Points”) listing talking
7 points about Peters’s accomplishments related to national security with links to news articles
8 relating to each claim.⁶

9 **B. VoteVets Ads**

10 On November 6, 2019, VoteVets posted a video to its YouTube page entitled “Sen. Gary
11 Peters Has Always Been There for Veterans.”⁷ VoteVets paid \$750,000 to distribute the video,
12 entitled “Secure,” on television, according to a report by *The Detroit News* which references a
13 press release by VoteVets.⁸ On Dec. 4, 2019, VoteVets posted a second video to its YouTube

⁵ Majority Forward 2020 Committee Overview, <https://www.fec.gov/data/committee/C90016098/?tab=summary&cycle=2020>; Majority Forward 2018 Committee Overview, <https://www.fec.gov/data/committee/C90016098/?tab=summary&cycle=2018> (last accessed May 14, 2020).

⁶ <https://web.archive.org/web/20191108102221/https://petersformichigan.com/what-michiganders-need-to-know> (archived from Nov. 8, 2019) (providing link to download the Peters B-roll, [https://www.dropbox.com/s/1jsx00li9qtxrjg/Trailer mp4?dl=1](https://www.dropbox.com/s/1jsx00li9qtxrjg/Trailer%20mp4?dl=1)) (showing Peters in a number of typical settings, such as talking to constituents and touring businesses and government facilities) (“Peters Website Archive”); MUR 7666 Compl. at 3; *id.*, Ex. B (“Peters Talking Points”) (describing Peters’s military service; legislative record related to border security; efforts to pass legislation authorizing defense contracts for Michigan businesses; and reputation as “one of the most effective and bipartisan members of Congress”). The Peters Talking Points document is still available on the “What Michiganders Need to Know” page of the Committee’s website, but the photos and link to the B-roll video have since been removed from the website. Compare <https://web.archive.org/web/20191108102221/https://petersformichigan.com/what-michiganders-need-to-know> (archived from Nov. 8, 2019), with <https://petersformichigan.com/what-michiganders-need-to-know> (last accessed Mar. 25, 2020).

⁷ VoteVets, *Sen. Gary Peters Has Always Been There for Veterans*, YOUTUBE (Nov. 6, 2019), <https://www.youtube.com/watch?v=a17K-i31q-c> (Nov. 1, 2019) (“Secure”). Although the name of the video does not contain “secure” in the title, we refer to the ad by the title used in the VoteVets Response for the sake of clarity.

⁸ MUR 7666 Compl. at 4 (citing Beth LeBlanc & Craig Mauger, *Insider: Dark Money Veterans Group Backs Peters With Ads*, THE DETROIT NEWS, Nov. 7, 2019) (attached to MUR 7666 Complaint as Exhibit C). We could not locate this press release, or the press release mentioned below, on the VoteVets.org website.

1 page entitled “Raise.”⁹ VoteVets spent \$700,000 to distribute the ad on television, according to
 2 a report by *Politico* which also references a press release from VoteVets.¹⁰ The VoteVets
 3 Response acknowledges that “Secure” and “Raise” were aired on television but does not include
 4 any information on amounts spent.¹¹

5 “Secure” is 30 seconds long. Seven seconds of the ad consists of two still images of
 6 Peters performing military duties and eight seconds consists of portions of the Peters B-roll, all
 7 of which were taken from the Committee webpage.¹² The ad includes text and spoken audio
 8 touting Peters’s military service and voting record on national security-related issues.¹³ The
 9 messaging in “Secure” appears to be thematically similar to the Peters Talking Points.¹⁴

10 “Raise” is also 30 seconds long. It includes approximately 22 seconds of video from the
 11 Peters B-roll taken from the Committee webpage, as well as 2 photos of Peters which are

⁹ VoteVets, *Gary Peters MI Ad – “Raise”* / VoteVets, <https://www.youtube.com/watch?v=oz1jZqkX85E> (Dec. 4, 2019).

¹⁰ MUR 7666 Compl. at 4 (citing Zach Montellaro, *Court allows North Carolina congressional map to stand*, POLITICO, Dec. 3, 2019, <https://www.politico.com/newsletters/morning-score/2019/12/03/court-allows-north-carolina-congressional-map-to-stand-783269>) (attached to MUR 7666 Complaint as Exhibit A).

¹¹ MUR 7666 VoteVets Resp. at 2.

¹² Compare “Secure” at 0:07-0:13, 0:18-0:22, 0:26-0:30, with Peters Website Archive (still images of Peters in his Navy uniform), Peters B-roll at 0:18-0:46 (visiting what appears to be a security operations office at a federal facility), 2:34-2:45 (mingling with people at a gathering in a residential backyard); see also MUR 7666 VoteVets Resp, Attach. B (providing a Source Sheet for “Secure” identifying “Peters for Michigan” and the “What Michiganders Need to Know” subpage on the Committee website as the source of the video and still images of Peters). But see MUR 7666 VoteVets Resp. at 8 (contending that “Secure” consists of approximately 15 seconds of materials obtained from the Committee website).

¹³ *Id.*, Attach. A (providing a Script for “Secure”).

¹⁴ Compare “Secure” at 0:06-0:13 (“Standing up for Michigan and helping secure America; that’s how Gary Peters has spent his life. After serving as a lieutenant commander in the Navy Reserve, Gary Peters volunteered again after the September 11th attacks. In the Senate, Peters has made keeping Michigan safe a priority, working with Republicans to pass stricter inspections at ports of entry and leading the effort to grow Michigan jobs in the defense industry.”), with Peters Talking Points at 1-8 (beginning with five headings that read “Gary served as a lieutenant commander in the U.S. Navy Reserve,” “Soon after the September 11th attacks, Gary volunteered to serve again,” “Gary was a leader on the Homeland Security Committee and a member of the Armed Services Committee,” “Gary made border security his top priority with the passage of key security bills he wrote,” and “Gary led efforts to boost Michigan’s defense industry”) (case changed from all caps in original to sentence case for readability).

1 overlaid on portions of the B-roll.¹⁵ “Raise” contains text and spoken audio touting Peters’s
 2 military service, efforts to get a pay raise for military members, and “work to keep Michigan
 3 safe.”¹⁶ Again, the messaging in “Secure” appears to be thematically similar to the Peters
 4 Talking Points.¹⁷

5 **C. Majority Forward Ad**

6 Majority Forward purchased a Facebook ad that appears to be a fifteen-second version of
 7 the “Secure” ad by VoteVets.¹⁸ Majority Forward paid between \$25,000-\$30,000 to run the
 8 untitled ad from November 26, 2019, to December 23, 2019.¹⁹ It includes approximately nine
 9 seconds of footage from the Peters B-roll taken from the Committee webpage.²⁰

¹⁵ Compare “Raise” at 0:03-0:07, 0:08-0:14, 0:26-0:30, with Peters Website Archive (still images of Peters in his Navy uniform), Peters B-roll at 1:50-2:01 (riding a motorcycle), 2:34-2:45 (mingling with people at a gathering in a residential backyard), 2:09-2:17 (speaking to what appears to be a group of veterans in motorcycle riding apparel); see also MUR 7666 VoteVets Resp., Attach. D (providing a Source Sheet for “Raise” identifying “Peters for Michigan” and the “What Michiganders Need to Know” subpage on the Committee website as the source of the video and still images of Peters). But see MUR 7666 VoteVets Resp. at 8 (contending that “Raise” consists of “slightly less than fifteen seconds” of materials obtained from the Committee website).

¹⁶ *Id.*, Attach. C (providing a script for “Raise”).

¹⁷ Compare “Raise” (“He’s been called one of the most effective members of the U.S. Senate. Gary Peters served in the Navy Reserve and after the September 11th attacks, volunteered to serve again.”), with Peters Talking Points at 1, 9 (including headings that read: “Gary was named one of the most effective and bipartisan members of the US senate,” “Gary served as a lieutenant commander in the U.S. Navy Reserve,” “Soon after the September 11th attacks, Gary volunteered to serve again”) (case changed from all caps in original to sentence case for readability).

¹⁸ MUR 7675 Compl. at 4; Facebook Ad Library, <https://www.facebook.com/ads/library/?id=1246348528907738> (accessible version of Majority Forward Ad).

¹⁹ Facebook Ad Library, <https://www.facebook.com/ads/library/?id=1246348528907738> (last accessed May 6, 2020).

²⁰ Compare Majority Forward Ad at 0:02-0:04, 0:06-0:09, 0:12-0:15, with Peters B-roll at 2:46-2:55 (talking to people in an office building), 0:18-0:46 (visiting what appears to be a security operations office at a federal facility), 2:34-2:45 (mingling with people at a gathering in a residential backyard).

1 **III. LEGAL ANALYSIS**

2 **A. Relevant Law**

3 The Act prohibits any person from making, and any candidate or committee from
4 knowingly accepting, an excessive contribution.²¹ For the 2020 election cycle, contributions by
5 persons other than multicandidate committees to any candidate and his or her authorized political
6 committees are limited to \$2,800 per election.²² Committee treasurers are required to disclose
7 the identification of each person who makes one or more contributions to the committee
8 aggregating in excess of \$200 within the calendar year (or election cycle, in the case of an
9 authorized committee), together with the date and amount of any such contribution.²³

10 Under the Act, “the financing by any person of the dissemination, distribution, or
11 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
12 campaign materials prepared by the candidate, his campaign committees, or their authorized
13 agents shall be considered to be an expenditure.”²⁴ Commission regulations further provide that
14 the republication of campaign materials “shall be considered a contribution for the purposes of
15 contribution limitations and reporting responsibilities of the person making the expenditure.”²⁵
16 Under Commission regulations, however, the candidate who prepared the materials is not
17 considered to have received an in-kind contribution and is not required to report an expenditure

²¹ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

²² 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and
Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).
Multicandidate committees are subject to separate limits. *See* 52 U.S.C. § 30116(a)(2).

²³ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

²⁴ 52 U.S.C. § 30116(a)(7)(B)(iii); *accord* 11 C.F.R. § 109.23(a). 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. 52 U.S.C.
§ 30116(a)(7)(B)(i).

²⁵ 11 C.F.R. § 109.23(a).

1 unless the dissemination, distribution, or republication of campaign materials is a coordinated
2 communication or a party coordinated communication.²⁶

3 **B. The Commission Should Find Reason to Believe that VoteVets and Majority**
4 **Forward Each Made Excessive In-Kind Contributions to Peters and the**
5 **Committee by Republishing Campaign Materials**

6 Both VoteVets and Majority Forward acknowledge that they incorporated materials
7 obtained from the Committee's website into their television and Facebook ads.²⁷ As described
8 above, 15 seconds of the 30-second "Secure" (half) and 22 seconds of the 30-second "Raise"
9 (more than two-thirds) were comprised of photos and B-roll video taken from the Committee
10 website.²⁸ VoteVets apparently spent \$750,000 to distribute "Secure" and \$700,000 to distribute
11 "Raise" on television, a total of \$1.45 million, according to the available news articles, which
12 cite to press releases issued by VoteVets (its Response does not dispute these amounts).²⁹ A
13 review of the Majority Forward ad as it appears on the Facebook Ad Library shows that
14 approximately nine seconds of the fifteen-second ad (almost two-thirds) were comprised of
15 the Peters B-roll.³⁰ Majority Forward spent between \$25,000 and \$30,000 to run its ad,
16 according to the Facebook Ad Library.³¹

17 Because VoteVets and Majority Forward republished campaign materials, their payments
18 to disseminate the ads were in-kind contributions to Peters and the Committee for the purposes

²⁶ *Id.*; *see also id.* § 109.21 (coordinated communications); *id.* § 109.37 (party coordinated communications).

²⁷ MUR 7666 VoteVets Resp. at 7-8, Exs. A-D; MUR 7675 Majority Forward Resp. at 1, 5-6.

²⁸ *Supra* notes 12, 15.

²⁹ *Supra* notes 8, 10.

³⁰ *Supra*, note 20.

³¹ *Supra*, note 19.

1 of their contribution limitations and reporting responsibilities.³² The amounts of their in-kind
2 contributions (\$1.45 million for VoteVets and \$25,000 to \$30,000 for Majority Forward) exceed
3 the applicable limitations.³³ VoteVets, Majority Forward, and the Committee, however, argue
4 that the ads did not republish campaign materials within the meaning of the statute and
5 regulation. None of their arguments are persuasive.

6 VoteVets argues that its use of campaign materials was limited to “brief segments of
7 materials from the campaign’s website,” and that the borrowed footage and photographs were
8 “incidental background to the core message of the communication,” which was developed by
9 VoteVets.³⁴ Majority Forward similarly argues that its ad only used “short snippets” of
10 campaign materials, and that, despite sharing similar themes and similar language with the
11 campaign’s materials, the Majority Forward Ad “contain[ed] its own words and reflect[ed] its
12 own message.”³⁵ The Committee also claims that the ads contained only “short snippets” of the
13 B-roll — and in the case of “Secure,” two still images “only shown on screen for a few seconds”
14 — and argues that such use falls under the “brief quote” exemption.³⁶

15 However, contrary to these arguments, the statute and the regulation both expressly
16 include “republishing, *in whole or in part, of any . . .* campaign materials.”³⁷ To the extent that
17 VoteVets and Majority Forward added their own messaging, this does not negate the fact that the

³² See 11 C.F.R. § 109.23(a).

³³ See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i).

³⁴ MUR 7666 VoteVets Resp. at 7-8.

³⁵ MUR 7675 Majority Forward Resp. at 1, 5-6.

³⁶ MUR 7666 Committee Resp. at 5-7; MUR 7675 Committee Resp. at 5-6. Whether there was republication is relevant to the “content” prong of the “coordinated communications” test, which is required for a finding that the Committee accepted the in-kind contributions. See *infra* Part III.C.2.

³⁷ 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (same).

1 ads incorporated (*i.e.*, republished) Committee materials. And, though the Commission has
2 carved out a regulatory exemption for “a brief quote of materials that demonstrate a candidate’s
3 position as part of a person’s expression of its own views,”³⁸ the exemption does not apply here:

4 The use of campaign materials in the ads at issue do not appear to have been brief
5 because each ad incorporated a significant amount of campaign materials (half or more).³⁹
6 Moreover, in promulgating the regulation, the Commission explained that the exemption is
7 designed to “illustrate a candidate’s position on an issue.”⁴⁰ But the B-roll and still images that
8 VoteVets and Majority Forward incorporated into their ads were devoid of anything expressing
9 Peters’s position on any issue. In sum, Respondents’ use of campaign materials does not
10 constitute a brief quote of materials that demonstrate the candidate’s position on an issue.

11 The Complaints also allege republication based on similarities between text in the “What
12 Michiganders Need to Know” subpage of the Committee website and text in the VoteVets and
13 Majority Forwards ads.⁴¹ For instance, regarding the “Secure” ad created by VoteVets, which
14 also appears to have been used to create the Majority Forward ad, the MUR 7666 Complaint
15 claims that “entire voiceover comes from the material highlighted within the document posted on
16 the Peters’[s] campaign website six days before its airing.”⁴² However, regardless of potential

³⁸ See 11 C.F.R. § 109.23(b)(4).

³⁹ We calculate that VoteVets used the Peters B-roll to account for 15 of 30 seconds in “Secure” (half) and 22 of 30 seconds in “Raise” (two-thirds), and Majority Forward used the Peters B-roll to account for 9 of 15 seconds in its untitled ad (approximately two-thirds). *Supra* notes 12, 15, 20. The VoteVets Response, however, calculates that campaign materials make up 49% of “Secure” and 48% of “Raise.” MUR 7666 VoteVets Resp. at 8. In any event, whether the ads contained half or two-thirds, this was still a significant amount.

⁴⁰ Coordinated and Independent Expenditures Explanation and Justification, 68 Fed. Reg. 421, 443 (Jan. 8, 2003) (“E&J”).

⁴¹ MUR 7666 Compl. at 11-12; MUR 7675 Compl. at 13.

⁴² MUR 7666 Compl. at 12.

1 thematic similarities, republication is established by Respondents' significant use of the Peters
2 B-roll and still images.⁴³

3 In conclusion, because VoteVets and Majority Forward paid to republish campaign
4 materials, their payments should be treated as in-kind contributions for the purposes of their
5 contribution limitations. Therefore, we recommend that the Commission find reason to believe
6 that VoteVets and Majority Forward violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R.
7 § 110.1(b)(1) by making excessive in-kind contributions.⁴⁴

8 **C. The Commission Should Dismiss the Allegations that Peters and the**
9 **Committee Accepted Excessive In-Kind Contributions from VoteVets and**
10 **Majority Forward**

11 As noted above, the candidate, candidate's authorized committee, or an agent of either
12 who prepared the campaign material does not accept an in-kind contribution, and is not required
13 to report an in-kind contribution, unless, as relevant here, the republication of campaign
14 materials is a "coordinated communication."⁴⁵

15 Commission regulations provide a three-part test for determining when a communication
16 is a "coordinated communication."⁴⁶ The communication must: (1) be paid for by a third party;
17 (2) satisfy one of the enumerated "content" standards; and (3) satisfy one of the enumerated

⁴³ The Commission has explained that republication occurs "where the candidate/author generally views the republication of his or her campaign materials . . . as a benefit." E&J, 68 Fed. Reg. at 443.

⁴⁴ This Office has made this recommendation in cases with similar facts. *See, e.g.*, First Gen. Counsel's Rpt. at 7-11, MUR 6357 (American Crossroads) (10-15 seconds of 30-second ad); First Gen. Counsel's Rpt. at 9-12, MUR 6603 (Ben Chandler for Congress) (10-13 seconds of multiple 30-second ads); First Gen. Counsel's Rpt. at 8-9, MUR 6777 (House Majority PAC) (14 seconds of 29-second ad); First Gen. Counsel's Rpt. at 6-8, MUR 7185 (Sheriff Scott Jones for Congress) (17 seconds of a 30-second ad); First Gen. Counsel's Rpt. at 5-8, MUR 6801 (Senate Majority PAC) (16 seconds of a 30-second ad). The recommendations in these matters have resulted in split votes by the Commission.

⁴⁵ 11 C.F.R. § 109.23(a) (citing 11 C.F.R. § 109.21).

⁴⁶ *Id.* § 109.21(a).

1 “conduct” standards.⁴⁷ All three prongs are required to be satisfied for a communication to be
2 considered a coordinated communication.⁴⁸ With respect to communications that satisfy the
3 content standard by republication of campaign materials, three of the conduct prong standards —
4 request or suggest, material involvement, and substantial discussion — may be satisfied only on
5 the basis of conduct between the campaign and third party “that occurs after the original
6 preparation of the campaign materials that are disseminated, distributed, or republished.”⁴⁹

7 1. Payment

8 The payment prong is satisfied where a communication “[i]s paid for, in whole or in part,
9 by a person other than [the] candidate, authorized committee, or political party committee.”⁵⁰ The
10 payment prong is clearly satisfied, as VoteVets admits to paying to distribute the ads at issue,
11 and Majority Forward does not dispute the information in the Facebook Ads Library.⁵¹

12 2. Content

13 The content prong is satisfied if, *inter alia*, the communication at issue is a “public
14 communication” that “disseminates, distributes, or republishes in whole or in part, campaign
15 materials prepared by a candidate or the candidate’s authorized committee unless the
16 dissemination, distribution, or republication is excepted under 11 C.F.R. § 109.23(b).”⁵² The
17 term “public communication” includes television ads and “communications placed for a fee on

⁴⁷ *Id.* (referencing content and conduct standards at 11 C.F.R. § 109.21(c) and (d), respectively)).

⁴⁸ *Id.*

⁴⁹ *Id.* § 109.21(d)(6).

⁵⁰ *Id.* § 109.21(a)(1).

⁵¹ MUR 7666 VoteVets Resp. at 3-4; MUR 7675 Majority Forward Resp. at 4.

⁵² 11 C.F.R. § 109.21(c)(2).

1 another person's Web site."⁵³ Since "Secure" and "Raise" were disseminated on television and
2 the Majority Forward ad was a paid placement on Facebook, all three meet the definition of
3 "public communication." Furthermore, as discussed above, all three ads republished Peters's
4 campaign materials. Thus, since none of the section 109.23(b) exceptions⁵⁴ apply, the content
5 prong appears to be satisfied as to all three ads.

6 3. Conduct

7 The Complaints allege that the conduct prong was satisfied with respect to all three ads
8 because the Committee's actions amounted to a "request or suggestion" to republish materials
9 hosted on the subpage of its website.⁵⁵ The argument rests on assertions that: (a) the Committee
10 used "code words" on the subpage; (b) it is unusual to post video footage using a link to
11 download the video rather than streaming the video; and (c) the short time between the date the
12 campaign subpage went live and dates the ads ran on television and Facebook. In addition, the
13 Complaints allege that Respondents carried out the Committee's request or suggestion, based on
14 the thematic similarities and the significant use of campaign materials (Peters B-roll and still
15 images).⁵⁶ According to the Complaints, the alleged "request or suggestion" is evidenced by
16 "the campaign using 'code words' to identify the provided materials for the ad and identify the
17 market in which to run the ad;" by Respondents "reproducing the campaign materials specially

⁵³ *Id.* § 100.26.

⁵⁴ *Id.* § 109.23(b) (listing exceptions for the following situations: (1) the campaign material is republished by the campaign that initially prepared the material; (2) the campaign material is incorporated into a communication that advocates the defeat of the candidate; (3) the campaign material is subject to the press exemption; (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, state, or local party committee pays for the republication of campaign materials using coordinated party expenditure authority under 11 C.F.R § 109.32).

⁵⁵ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

⁵⁶ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

1 identified and provided by the campaign;” and by “the close proximity in time between the
2 campaign providing the materials and [Respondents] running [their ads].”⁵⁷ The Complaint in
3 MUR 7675 also notes that “the campaign provided materials to be republished by posting
4 messaging in a PDF document and a video that could only be downloaded,” and argues that this
5 “establish[es] it was not for public purposes but provided to be republished by outside groups.”⁵⁸

6 Both Complaints assert that “[t]he ‘What Michiganders Need to Know’ subpage [of the
7 Committee website] is only designed to provide content and distribution directions to entities
8 with which coordination is prohibited,” and that “[t]here is no other reasonable explanation for
9 why the candidate formatted the information in this manner other than to directly coordinate with
10 outside organizations.”⁵⁹ Indeed, the subpage, given the technical nature of the talking points
11 documents and the downloadable B-roll footage that does not play through the website, could be
12 seen as a roadmap for third parties wishing to make ads that support or feature Peters. The
13 information, and the way that it was posted, communicates how the Committee wished Peters to
14 be presented in terms of imagery and messaging, and both VoteVets and Majority Forward
15 created and distributed ads that closely followed the roadmap. Yet, there is no record of any
16 direct request by the Committee to these specific groups or any other contacts related to the ads
17 at issue, which is required under coordination.

18 The relevant Commission Explanation and Justification on coordination explains that “[a]
19 request or suggestion encompasses the most direct form of coordination, given that the candidate

⁵⁷ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

⁵⁸ MUR 7675 Compl. at 8.

⁵⁹ MUR 7666 Compl. at 9; MUR 7675 Compl. at 9.

1 or political party committee communicates desires to another person who effectuates them.”⁶⁰
2 The Commission went on to clarify that the “request or suggestion” definition “is intended to
3 cover requests or suggestions made to a select audience but not those offered to the public
4 generally.”⁶¹ The E&J juxtaposes two scenarios: (1) a request that is posted on a web page that
5 is available to the general public, which does not trigger the conduct standard; and (2) a request
6 posted through an intranet service or sent via electronic mail directly to a discrete group of
7 recipients, which constitutes a request to a select audience and thereby satisfies the conduct
8 standard.⁶² The Commission has analyzed previous cases alleging “request or suggestion” based
9 on similar facts using this framework, concluding that information on public website does not
10 satisfy the meaning of “request or suggest” under the conduct standard.⁶³

11 Here, the materials posted to the Committee’s website — including the B-roll of Peters
12 interacting with constituents, still images of Peters in various settings, and the Peters Talking
13 Points PDF document which lists various talking points about Peters’s accomplishments related
14 with links to supporting news articles (with the exhortation that “Michiganders from all parts of
15 the state need to know”) — fit into the first category. Although the Committee arguably made a
16 request or suggestion to create ads with specific messaging, still images, and video footage, the
17 relevant information was conveyed on a public website; and there is no allegation of any private

⁶⁰ E&J, 68 Fed. Reg. at 432.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *E.g.*, Factual & Legal Analysis at 9-10, MUR 7124 (Katie McGinty for Senate) (finding information posted to publicly available pages of the campaign website insufficient to satisfy the request or suggestion standard of the content prong (“F&LA”); F&LA at 7-8 (same), MUR 6821 (Shaheen for Senate).

1 communications.⁶⁴ Thus, because the facts do not indicate a “request or suggestion” within the
2 meaning of the regulation, the conduct prong is not satisfied.⁶⁵

3 * * *

4 In conclusion, the available information is insufficient to support a reasonable inference
5 that all three prongs of the coordinated communication test are satisfied.⁶⁶ Accordingly, we
6 recommend that the Commission dismiss the allegations that Peters and the Committee violated
7 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind
8 contributions, and dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b) and
9 11 C.F.R. § 104.3(a) by failing to report the in-kind contributions.

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⁶⁴ Cf. First Gen. Counsel's Rpt. at 8-12, MUR 6908 (National Republican Congressional Committee) (recommending reason to believe that the NRCC impermissibly coordinated with third-parties by publicly posting encrypted polling data that the third parties allegedly were able to decipher and used to coordinate their ad campaigns, which suggested that there had been private communication).

⁶⁵ See, e.g., F&LA at 9-10, MUR 7124 (McGinty); F&LA at 7-8, MUR 6821 (Shaheen).

⁶⁶ See 11 C.F.R. § 109.21(a).

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5 **V. RECOMMENDATIONS**

- 6 1. Find reason to believe that VoteVets.org Action Fund violated 52 U.S.C.
7 § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive in-kind
8 contributions;
- 9 2. Find reason to believe that Majority Forward violated 52 U.S.C. § 30116(a)(1)(A)
10 and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution;
- 11 3. Dismiss the allegation that Gary Peters and Peters for Michigan and Geraldine
12 Buckles in her official capacity as treasurer violated 52 U.S.C. § 30116(f) and
13 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions and
14 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report in-
15 kind contributions;
- 16 4. Approve the attached Factual and Legal Analyses;
- 17 5. Enter into pre-probable cause conciliation with VoteVets.org Action Fund and
18 Majority Forward;
- 19 6. Approve the attached proposed Conciliation Agreements; and

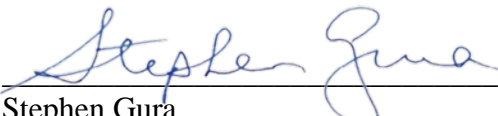
1 7. Approve the appropriate letters.

2 Lisa J. Stevenson
3 Acting General Counsel

4
5
6 Charles Kitcher
7 Acting Associate General Counsel for Enforcement

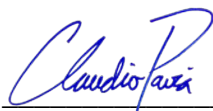
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9 05.27.20

10 _____
11 Date



Stephen Gura
Deputy Associate General Counsel for Enforcement

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16 Claudio J. Pavia
17 Acting Assistant General Counsel



Claudio J. Pavia
Acting Assistant General Counsel

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21 Ray Wolcott
22 Attorney



Ray Wolcott
Attorney

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**1
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RESPONDENT: Peters for Michigan and Geraldine Buckles MURs 7666 & 7675
in her official capacity as treasurer

I. INTRODUCTION

This matter was generated by two Complaints filed with the Federal Election Commission by the Foundation for Accountability and Civic Trust alleging that VoteVets.org Action Fund (“VoteVets”) and Majority Forward, both 501(c)(4) non-profit entities, made prohibited in-kind contributions to Peters for Michigan and Geraldine Buckles in her official capacity as treasurer (the “Committee”), the authorized committee of 2020 Senate candidate Gary Peters, by paying to distribute ads that republished campaign materials, which the Committee had previously published on a subpage of its website, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). VoteVets reportedly spent \$1.45 million to air two ads on television, and Majority Forward reportedly spent between \$25,000 and \$30,000 to run an ad on Facebook. The Complaints also allege that the Committee coordinated with VoteVets and Majority Forward in connection with the ads and thus accepted the prohibited in-kind contributions.

The Committee denies coordinating with either group. Further, the Committee argues that even if there had been republication, the Committee would not have accepted an in-kind contribution because it did not coordinate with VoteVets or Majority Forward.

As discussed below, because the facts are insufficient to support a reasonable inference that the Committee coordinated with either VoteVets or Majority Forward, the Commission finds no reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by

1 knowingly accepting excessive in-kind contributions, or that the Committee violated 52 U.S.C.
2 § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report the contributions.

3 **II. FACTUAL BACKGROUND**

4 Gary Peters was a 2020 candidate for the U.S. Senate from Michigan, and Peters for
5 Michigan is his authorized committee.¹ VoteVets.org and Majority Forward are 501(c)(4) social
6 welfare organizations. On November 1, 2019, Peters for Michigan posted material to a subpage
7 of its website titled “What Michiganders Need to Know.” This included: (1) a link to download
8 a “B-roll” video comprised of clips of Peters appearing to interact with constituents in various
9 settings; (2) seven still images of Peters; and (3) a PDF document (“Peters Talking Points”) listing
10 talking points about Peters’s accomplishments related to national security with links to
11 news articles relating to each claim.²

12 On November 6, 2019, VoteVets posted a video to its YouTube page entitled “Sen. Gary
13 Peters Has Always Been There for Veterans.”³ VoteVets paid \$750,000 to distribute the video,
14 entitled “Secure,” on television, according to a report by *The Detroit News* which references a

¹ Gary Peters Amended Statement of Candidacy (Mar. 4, 2020); Peters for Michigan Amended Statement of Org. (Mar. 4, 2020).

² <https://web.archive.org/web/20191108102221/https://petersformichigan.com/what-michiganders-need-to-know> (archived from Nov. 8, 2019) (providing link to download the Peters B-roll, [https://www.dropbox.com/s/1jsx00li9qtxrjg/Trailer mp4?dl=1](https://www.dropbox.com/s/1jsx00li9qtxrjg/Trailer%20mp4?dl=1)) (showing Peters in a number of typical settings, such as talking to constituents and touring businesses and government facilities) (“Peters Website Archive”); MUR 7666 Compl. at 3; *id.*, Ex. B (“Peters Talking Points”) (describing Peters’s military service; legislative record related to border security; efforts to pass legislation authorizing defense contracts for Michigan businesses; and reputation as “one of the most effective and bipartisan members of Congress”). The Peters Talking Points document is still available on the “What Michiganders Need to Know” page of the Committee’s website, but the photos and link to the B-roll video have since been removed from the website. Compare <https://web.archive.org/web/20191108102221/https://petersformichigan.com/what-michiganders-need-to-know> (archived from Nov. 8, 2019), with <https://petersformichigan.com/what-michiganders-need-to-know> (last accessed Mar. 25, 2020).

³ VoteVets, *Sen. Gary Peters Has Always Been There for Veterans*, YOUTUBE (Nov. 6, 2019), <https://www.youtube.com/watch?v=a17K-i31q-c> (Nov. 1, 2019) (“Secure”). Although the name of the video does not contain “secure” in the title, this document refers to the ad by the title used in the VoteVets Response for the sake of clarity.

1 press release by VoteVets.⁴ On Dec. 4, 2019, VoteVets posted a second video to its YouTube
 2 page entitled “Raise.”⁵ VoteVets spent \$700,000 to distribute the ad on television, according to
 3 a report by *Politico* which also references a press release from VoteVets.⁶
 4 “Secure” is 30 seconds long. Seven seconds of the ad consists of two still images of
 5 Peters performing military duties and eight seconds consists of portions of the Peters B-roll, all
 6 of which were taken from the Committee webpage.⁷ The ad includes text and spoken audio
 7 touting Peters’s military service and voting record on national security-related issues. The
 8 messaging in “Secure” appears to be thematically similar to the Peters Talking Points.⁸
 9 “Raise” is also 30 seconds long. It includes approximately 22 seconds of video from the
 10 Peters B-Roll taken from the Committee webpage, as well as two photos of Peters which are
 11 overlaid on portions of the B-roll.⁹ “Raise” contains text and spoken audio touting Peters’s

⁴ MUR 7666 Compl. at 4 (citing Beth LeBlanc & Craig Mauger, *Insider: Dark Money Veterans Group Backs Peters With Ads*, THE DETROIT NEWS, Nov. 7, 2019) (attached to MUR 7666 Complaint as Exhibit C). The Commission could not locate this press release, or the press release mentioned below, on the VoteVets.org website.

⁵ VoteVets, *Gary Peters MI Ad – “Raise”* | *VoteVets*, <https://www.youtube.com/watch?v=oz1jZqkX85E> (Dec. 4, 2019).

⁶ MUR 7666 Compl. at 4 (citing Zach Montellaro, *Court allows North Carolina congressional map to stand*, POLITICO, Dec. 3, 2019, <https://www.politico.com/newsletters/morning-score/2019/12/03/court-allows-north-carolina-congressional-map-to-stand-783269>) (attached to MUR 7666 Complaint as Exhibit A).

⁷ Compare “Secure” at 0:07-0:13, 0:18-0:22, 0:26-0:30, with Peters Website Archive (still images of Peters in his Navy uniform), Peters B-roll at 0:18-0:46 (visiting what appears to be a security operations office at a federal facility), 2:34-2:45 (mingling with people at a gathering in a residential backyard).

⁸ Compare “Secure” at 0:06-0:13 (“Standing up for Michigan and helping secure America; that’s how Gary Peters has spent his life. After serving as a lieutenant commander in the Navy Reserve, Gary Peters volunteered again after the September 11th attacks. In the Senate, Peters has made keeping Michigan safe a priority, working with Republicans to pass stricter inspections at ports of entry and leading the effort to grow Michigan jobs in the defense industry.”), with Peters Talking Points at 1-8 (beginning with five headings that read “Gary served as a lieutenant commander in the U.S. Navy Reserve,” “Soon after the September 11th attacks, Gary volunteered to serve again,” “Gary was a leader on the Homeland Security Committee and a member of the Armed Services Committee,” “Gary made border security his top priority with the passage of key security bills he wrote,” and “Gary led efforts to boost Michigan’s defense industry”) (case changed from all caps in original to sentence case for readability).

⁹ Compare “Raise” at 0:03-0:07, 0:08-0:14, 0:26-0:30, with Peters Website Archive (still images of Peters in his Navy uniform), Peters B-roll at 1:50-2:01 (riding a motorcycle), 2:34-2:45 (mingling with people at a gathering

1 military service, efforts to get a pay raise for military members, and “work to keep Michigan
 2 safe.” Again, the messaging in “Secure” appears to be thematically similar to the Peters Talking
 3 Points.¹⁰

4 Majority Forward purchased a Facebook ad that appears to be a fifteen-second version of
 5 the “Secure” ad by VoteVets.¹¹ Majority Forward paid between \$25,000 and \$30,000 to run the
 6 untitled ad from November 26, 2019, to December 23, 2019.¹² It includes approximately nine
 7 seconds of footage from the Peters B-roll taken from the Committee webpage.¹³

8 III. LEGAL ANALYSIS

9 The Act prohibits any person from making, and any candidate or committee from
 10 knowingly accepting, an excessive contribution.¹⁴ For the 2020 election cycle, contributions by
 11 persons other than multicandidate committees to any candidate and his or her authorized political
 12 committees were limited to \$2,800 per election.¹⁵ Committee treasurers are required to disclose
 13 the identification of each person who makes one or more contributions to the committee

in a residential backyard), 2:09-2:17 (speaking to what appears to be a group of veterans in motorcycle riding apparel).

¹⁰ Compare “Raise” (“He’s been called one of the most effective members of the U.S. Senate. Gary Peters served in the Navy Reserve and after the September 11th attacks, volunteered to serve again.”), with Peters Talking Points at 1, 9 (including headings that read: “Gary was named one of the most effective and bipartisan members of the US senate,” “Gary served as a lieutenant commander in the U.S. Navy Reserve,” “Soon after the September 11th attacks, Gary volunteered to serve again”) (case changed from all caps in original to sentence case for readability).

¹¹ MUR 7675 Compl. at 4; Facebook Ad Library, <https://www.facebook.com/ads/library/?id=1246348528907738> (accessible version of Majority Forward Ad).

¹² Facebook Ad Library, <https://www.facebook.com/ads/library/?id=1246348528907738> (last accessed May 6, 2020).

¹³ Compare Majority Forward Ad at 0:02-0:04, 0:06-0:09, 0:12-0:15, with Peters B-roll at 2:46-2:55 (talking to people in an office building), 0:18-0:46 (visiting what appears to be a security operations office at a federal facility), 2:34-2:45 (mingling with people at a gathering in a residential backyard).

¹⁴ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

¹⁵ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. See 52 U.S.C. § 30116(a)(2).

1 aggregating in excess of \$200 within the calendar year (or election cycle, in the case of an
2 authorized committee), together with the date and amount of any such contribution.¹⁶

3 Under the Act, “expenditures made by any person in cooperation, consultation, or
4 concert, with, or at the request or suggestion of, a candidate, his authorized political committees,
5 or their agents, shall be considered to be a contribution to such candidate.”¹⁷ Commission
6 regulations further provide that “[a] payment for a coordinated communication is made for the
7 purpose of influencing a Federal election, and is an in-kind contribution ... to the candidate,
8 authorized committee, or political party committee with whom or which it is coordinated,” and
9 must be reported as an expenditure by the candidate, authorized committee, or political party
10 committee.”¹⁸

11 Commission regulations provide a three-part test for determining when a communication
12 is a “coordinated communication.”¹⁹ The communication must: (1) be paid for by a third party;
13 (2) satisfy one of the enumerated “content” standards; and (3) satisfy one of the enumerated
14 “conduct” standards.²⁰ All three prongs must be satisfied for a communication to be considered
15 a coordinated communication.²¹ Here, because the Complaints and available information do not
16 indicate that the Committee satisfied any of the enumerated conduct standards required for a
17 coordinated communication, it is unnecessary for the Commission’s analysis to proceed beyond
18 the conduct prong of the three-part test.

¹⁶ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

¹⁷ 52 U.S.C. § 30116(a)(7)(B)(i).

¹⁸ 11 C.F.R. § 109.21(b)(1).

¹⁹ *Id.* § 109.21(a).

²⁰ *Id.* (referencing content and conduct standards at 11 C.F.R. § 109.21(c) and (d), respectively)).

²¹ *Id.*

1

2 The Complaints allege that the conduct prong was satisfied with respect to all three ads

3 because the Committee’s actions amounted to a “request or suggestion” to republish materials

4 hosted on the subpage of its website.²² The argument rests on assertions that: (a) the Committee

5 used “code words” on the subpage; (b) it is unusual to post video footage using a link to

6 download the video rather than streaming the video; and (c) the short time between the date the

7 campaign subpage went live and dates the ads ran on television and Facebook. In addition, the

8 Complaints allege that Respondents carried out the Committee’s request or suggestion, based on

9 the thematic similarities and the use of campaign materials (Peters B-roll and still images).²³

10 According to the Complaints, the alleged “request or suggestion” is evidenced by “the campaign

11 using ‘code words’ to identify the provided materials for the ad and identify the market in which

12 to run the ad;” by Respondents “reproducing the campaign materials specially identified and

13 provided by the campaign;” and by “the close proximity in time between the campaign providing

14 the materials and [Respondents] running [their ads].”²⁴ The Complaint in MUR 7675 also notes

15 that “the campaign provided materials to be republished by posting messaging in a PDF

16 document and a video that could only be downloaded,” and argues that this “establish[es] it was

17 not for public purposes but provided to be republished by outside groups.”²⁵

18 Both Complaints assert that “[t]he ‘What Michiganders Need to Know’ subpage [of the

19 Committee website] is only designed to provide content and distribution directions to entities

²² MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

²³ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

²⁴ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

²⁵ MUR 7675 Compl. at 8.

1 with which coordination is prohibited,” and that “[t]here is no other reasonable explanation for
2 why the candidate formatted the information in this manner other than to directly coordinate with
3 outside organizations.”²⁶ Yet, there is no record of any direct request by the Committee to these
4 specific groups or any other contacts related to the ads at issue, which is required for
5 coordination.

6 The relevant Commission Explanation and Justification on coordination explains that “[a]
7 request or suggestion encompasses the most direct form of coordination, given that the candidate
8 or political party committee communicates desires to another person who effectuates them.”²⁷
9 The Commission went on to clarify that the “request or suggestion” definition “is intended to
10 cover requests or suggestions made to a select audience but not those offered to the public
11 generally.”²⁸ The E&J juxtaposes two scenarios: (1) a request that is posted on a web page that
12 is available to the general public, which does not trigger the conduct standard; and (2) a request
13 posted through an intranet service or sent via electronic mail directly to a discrete group of
14 recipients, which constitutes a request to a select audience and thereby satisfies the conduct
15 standard.²⁹ The Commission has analyzed previous cases alleging “request or suggestion” based
16 on similar facts using this framework, concluding that information on public websites does not
17 satisfy the meaning of “request or suggest” under the conduct standard.³⁰

²⁶ MUR 7666 Compl. at 9; MUR 7675 Compl. at 9.

²⁷ E&J, 68 Fed. Reg. at 432.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *E.g.*, Factual & Legal Analysis at 9-10, MUR 7124 (Katie McGinty for Senate) (finding information posted to publicly available pages of the campaign website insufficient to satisfy the “request or suggestion” standard of the conduct prong (“F&LA”); F&LA at 7-8 (same), MUR 6821 (Shaheen for Senate).

1 Here, the materials posted to the Committee’s website — including the B-roll of Peters
2 interacting with constituents, still images of Peters in various settings, and the Peters Talking
3 Points PDF document, which lists various talking points about Peters’s accomplishments related
4 with links to supporting news articles (with the exhortation that “Michiganders from all parts of
5 the state need to know”) — fit into the first category. The relevant information was conveyed on
6 a public website, and there is no allegation of any private communications. Thus, because the
7 facts do not indicate a “request or suggestion” within the meaning of the regulation, the conduct
8 prong is not satisfied, and the Commission need not proceed to the payment or content prong of
9 the coordinated communication test.³¹

10 * * *

11 In conclusion, the available information is insufficient to support a reasonable inference
12 that all three prongs of the coordinated communication test are satisfied.³² Accordingly, the
13 Commission finds no reason to believe that the Committee violated 52 U.S.C. § 30116(f) and
14 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions, or that the Committee
15 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report the in-kind
16 contributions.

³¹ *See, e.g.,* F&LA at 9-10, MUR 7124 (McGinty); F&LA at 7-8, MUR 6821 (Shaheen).

³² *See* 11 C.F.R. § 109.21(a).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**1
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RESPONDENT: Gary Peters

MURs 7666 & 7675

I. INTRODUCTION

This matter was generated by two Complaints filed with the Federal Election Commission by the Foundation for Accountability and Civic Trust alleging that VoteVets.org Action Fund (“VoteVets”) and Majority Forward, both 501(c)(4) non-profit entities, made prohibited in-kind contributions to Peters for Michigan and Geraldine Buckles in her official capacity as treasurer (the “Committee”), the authorized committee of 2020 Senate candidate Gary Peters, by paying to distribute ads that republished campaign materials, which the Committee had previously published on a subpage of its website, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). VoteVets reportedly spent \$1.45 million to air two ads on television, and Majority Forward reportedly spent between \$25,000 and \$30,000 to run an ad on Facebook. The Complaints also allege that Peters and the Committee coordinated with VoteVets and Majority Forward in connection with the ads and thus accepted the prohibited in-kind contributions.

As discussed below, because the facts are insufficient to support a reasonable inference that Peters coordinated with either VoteVets or Majority Forward, the Commission finds no reason to believe that Gary Peters violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions.

1 II. FACTUAL BACKGROUND

2 Gary Peters was a 2020 candidate for the U.S. Senate from Michigan, and Peters for
3 Michigan is his authorized committee.¹ VoteVets.org and Majority Forward are 501(c)(4) social
4 welfare organizations. On November 1, 2019, Peters for Michigan posted material to a subpage
5 of its website titled “What Michiganders Need to Know.” This included: (1) a link to download
6 a “B-roll” video comprised of clips of Peters appearing to interact with constituents in various
7 settings; (2) seven still images of Peters; and (3) a PDF document (“Peters Talking Points”)
8 listing talking points about Peters’s accomplishments related to national security with links to
9 news articles relating to each claim.²

10 On November 6, 2019, VoteVets posted a video to its YouTube page entitled “Sen. Gary
11 Peters Has Always Been There for Veterans.”³ VoteVets paid \$750,000 to distribute the video,
12 entitled “Secure,” on television, according to a report by *The Detroit News* which references a
13 press release by VoteVets.⁴ On Dec. 4, 2019, VoteVets posted a second video to its YouTube

¹ Gary Peters Amended Statement of Candidacy (Mar. 4, 2020); Peters for Michigan Amended Statement of Org. (Mar. 4, 2020).

² <https://web.archive.org/web/20191108102221/https://petersformichigan.com/what-michiganders-need-to-know> (archived from Nov. 8, 2019) (providing link to download the Peters B-roll, [https://www.dropbox.com/s/ljsx00li9qtxrjg/Trailer mp4?dl=1](https://www.dropbox.com/s/ljsx00li9qtxrjg/Trailer%20mp4?dl=1)) (showing Peters in a number of typical settings, such as talking to constituents and touring businesses and government facilities) (“Peters Website Archive”); MUR 7666 Compl. at 3; *id.*, Ex. B (“Peters Talking Points”) (describing Peters’s military service; legislative record related to border security; efforts to pass legislation authorizing defense contracts for Michigan businesses; and reputation as “one of the most effective and bipartisan members of Congress”). The Peters Talking Points document is still available on the “What Michiganders Need to Know” page of the Committee’s website, but the photos and link to the B-roll video have since been removed from the website. Compare <https://web.archive.org/web/20191108102221/https://petersformichigan.com/what-michiganders-need-to-know> (archived from Nov. 8, 2019), with <https://petersformichigan.com/what-michiganders-need-to-know> (last accessed Mar. 25, 2020).

³ VoteVets, *Sen. Gary Peters Has Always Been There for Veterans*, YOUTUBE (Nov. 6, 2019), <https://www.youtube.com/watch?v=a17K-i31q-c> (Nov. 1, 2019) (“Secure”). Although the name of the video does not contain “secure” in the title, this document refers to the ad by the title used in the VoteVets Response for the sake of clarity.

⁴ MUR 7666 Compl. at 4 (citing Beth LeBlanc & Craig Mauger, *Insider: Dark Money Veterans Group Backs Peters With Ads*, THE DETROIT NEWS, Nov. 7, 2019) (attached to MUR 7666 Complaint as Exhibit C). The Commission could not locate this press release, or the press release mentioned below, on the VoteVets.org website.

1 page entitled “Raise.”⁵ VoteVets spent \$700,000 to distribute the ad on television, according to
2 a report by *Politico* which also references a press release from VoteVets.⁶

3 “Secure” is 30 seconds long. Seven seconds of the ad consists of two still images of
4 Peters performing military duties and eight seconds consists of portions of the Peters B-roll, all
5 of which were taken from the Committee webpage.⁷ The ad includes text and spoken audio
6 touting Peters’s military service and voting record on national security-related issues. The
7 messaging in “Secure” appears to be thematically similar to the Peters Talking Points.⁸

8 “Raise” is also 30 seconds long. It includes approximately 22 seconds of video from the
9 Peters B-Roll taken from the Committee webpage, as well as two photos of Peters which are
10 overlaid on portions of the B-roll.⁹ “Raise” contains text and spoken audio touting Peters’s
11 military service, efforts to get a pay raise for military members, and “work to keep Michigan

⁵ VoteVets, *Gary Peters MI Ad – “Raise”* | *VoteVets*, <https://www.youtube.com/watch?v=oz1jZqkX85E> (Dec. 4, 2019).

⁶ MUR 7666 Compl. at 4 (citing Zach Montellaro, *Court allows North Carolina congressional map to stand*, *POLITICO*, Dec. 3, 2019, <https://www.politico.com/newsletters/morning-score/2019/12/03/court-allows-north-carolina-congressional-map-to-stand-783269>) (attached to MUR 7666 Complaint as Exhibit A).

⁷ Compare “Secure” at 0:07-0:13, 0:18-0:22, 0:26-0:30, with Peters Website Archive (still images of Peters in his Navy uniform), Peters B-roll at 0:18-0:46 (visiting what appears to be a security operations office at a federal facility), 2:34-2:45 (mingling with people at a gathering in a residential backyard).

⁸ Compare “Secure” at 0:06-0:13 (“Standing up for Michigan and helping secure America; that’s how Gary Peters has spent his life. After serving as a lieutenant commander in the Navy Reserve, Gary Peters volunteered again after the September 11th attacks. In the Senate, Peters has made keeping Michigan safe a priority, working with Republicans to pass stricter inspections at ports of entry and leading the effort to grow Michigan jobs in the defense industry.”), with Peters Talking Points at 1-8 (beginning with five headings that read “Gary served as a lieutenant commander in the U.S. Navy Reserve,” “Soon after the September 11th attacks, Gary volunteered to serve again,” “Gary was a leader on the Homeland Security Committee and a member of the Armed Services Committee,” “Gary made border security his top priority with the passage of key security bills he wrote,” and “Gary led efforts to boost Michigan’s defense industry”) (case changed from all caps in original to sentence case for readability).

⁹ Compare “Raise” at 0:03-0:07, 0:08-0:14, 0:26-0:30, with Peters Website Archive (still images of Peters in his Navy uniform), Peters B-roll at 1:50-2:01 (riding a motorcycle), 2:34-2:45 (mingling with people at a gathering in a residential backyard), 2:09-2:17 (speaking to what appears to be a group of veterans in motorcycle riding apparel).

1 safe.” Again, the messaging in “Secure” appears to be thematically similar to the Peters Talking
2 Points.¹⁰

3 Majority Forward purchased a Facebook ad that appears to be a fifteen-second version of
4 the “Secure” ad by VoteVets.¹¹ Majority Forward paid between \$25,000 and \$30,000 to run the
5 untitled ad from November 26, 2019, to December 23, 2019.¹² It includes approximately nine
6 seconds of footage from the Peters B-roll taken from the Committee webpage.¹³

7 III. LEGAL ANALYSIS

8 The Act prohibits any person from making, and any candidate or committee from
9 knowingly accepting, an excessive contribution.¹⁴ For the 2020 election cycle, contributions by
10 persons other than multicandidate committees to any candidate and his or her authorized political
11 committees were limited to \$2,800 per election.¹⁵ Committee treasurers are required to disclose
12 the identification of each person who makes one or more contributions to the committee

¹⁰ Compare “Raise” (“He’s been called one of the most effective members of the U.S. Senate. Gary Peters served in the Navy Reserve and after the September 11th attacks, volunteered to serve again.”), with Peters Talking Points at 1, 9 (including headings that read: “Gary was named one of the most effective and bipartisan members of the US senate,” “Gary served as a lieutenant commander in the U.S. Navy Reserve,” “Soon after the September 11th attacks, Gary volunteered to serve again”) (case changed from all caps in original to sentence case for readability).

¹¹ MUR 7675 Compl. at 4; Facebook Ad Library, <https://www.facebook.com/ads/library/?id=1246348528907738> (accessible version of Majority Forward Ad).

¹² Facebook Ad Library, <https://www.facebook.com/ads/library/?id=1246348528907738> (last accessed May 6, 2020).

¹³ Compare Majority Forward Ad at 0:02-0:04, 0:06-0:09, 0:12-0:15, with Peters B-roll at 2:46-2:55 (talking to people in an office building), 0:18-0:46 (visiting what appears to be a security operations office at a federal facility), 2:34-2:45 (mingling with people at a gathering in a residential backyard).

¹⁴ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

¹⁵ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. See 52 U.S.C. § 30116(a)(2).

1 aggregating in excess of \$200 within the calendar year (or election cycle, in the case of an
2 authorized committee), together with the date and amount of any such contribution.¹⁶

3 Under the Act, “expenditures made by any person in cooperation, consultation, or
4 concert, with, or at the request or suggestion of, a candidate, his authorized political committees,
5 or their agents, shall be considered to be a contribution to such candidate.”¹⁷ Commission
6 regulations further provide that “[a] payment for a coordinated communication is made for the
7 purpose of influencing a Federal election, and is an in-kind contribution . . . to the candidate,
8 authorized committee, or political party committee with whom or which it is coordinated,” and
9 must be reported as an expenditure by the candidate, authorized committee, or political party
10 committee.”¹⁸

11 Commission regulations provide a three-part test for determining when a communication
12 is a “coordinated communication.”¹⁹ The communication must: (1) be paid for by a third party;
13 (2) satisfy one of the enumerated “content” standards; and (3) satisfy one of the enumerated
14 “conduct” standards.²⁰ All three prongs must be satisfied for a communication to be considered
15 a coordinated communication.²¹ Here, because the available information does not indicate that
16 the Committee satisfied any of the enumerated conduct standards required for a coordinated
17 communication, it is unnecessary for the Commission’s analysis to proceed beyond the conduct
18 prong of the three-part test.

¹⁶ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

¹⁷ 52 U.S.C. § 30116(a)(7)(B)(i).

¹⁸ 11 C.F.R. § 109.21(b)(1).

¹⁹ *Id.* § 109.21(a).

²⁰ *Id.* (referencing content and conduct standards at 11 C.F.R. § 109.21(c) and (d), respectively)).

²¹ *Id.*

1

2 The Complaints allege that the conduct prong was satisfied with respect to all three ads

3 because the Committee’s actions amounted to a “request or suggestion” to republish materials

4 hosted on the subpage of its website.²² The argument rests on assertions that: (a) the Committee

5 used “code words” on the subpage; (b) it is unusual to post video footage using a link to

6 download the video rather than streaming the video; and (c) the short time between the date the

7 campaign subpage went live and dates the ads ran on television and Facebook. In addition, the

8 Complaints allege that Respondents carried out the Committee’s request or suggestion, based on

9 the thematic similarities and the use of campaign materials (Peters B-roll and still images).²³

10 According to the Complaints, the alleged “request or suggestion” is evidenced by “the campaign

11 using ‘code words’ to identify the provided materials for the ad and identify the market in which

12 to run the ad;” by Respondents “reproducing the campaign materials specially identified and

13 provided by the campaign;” and by “the close proximity in time between the campaign providing

14 the materials and [Respondents] running [their ads].”²⁴ The Complaint in MUR 7675 also notes

15 that “the campaign provided materials to be republished by posting messaging in a PDF

16 document and a video that could only be downloaded,” and argues that this “establish[es] it was

17 not for public purposes but provided to be republished by outside groups.”²⁵

18 Both Complaints assert that “[t]he ‘What Michiganders Need to Know’ subpage [of the

19 Committee website] is only designed to provide content and distribution directions to entities

²² MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

²³ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

²⁴ MUR 7666 Compl. at 8; MUR 7675 Compl. at 8.

²⁵ MUR 7675 Compl. at 8.

1 with which coordination is prohibited,” and that “[t]here is no other reasonable explanation for
2 why the candidate formatted the information in this manner other than to directly coordinate with
3 outside organizations.”²⁶ Yet, there is no record of any direct request by the Committee to these
4 specific groups or any other contacts related to the ads at issue, which is required for
5 coordination.

6 The relevant Commission Explanation and Justification on coordination explains that “[a]
7 request or suggestion encompasses the most direct form of coordination, given that the candidate
8 or political party committee communicates desires to another person who effectuates them.”²⁷
9 The Commission went on to clarify that the “request or suggestion” definition “is intended to
10 cover requests or suggestions made to a select audience but not those offered to the public
11 generally.”²⁸ The E&J juxtaposes two scenarios: (1) a request that is posted on a web page that
12 is available to the general public, which does not trigger the conduct standard; and (2) a request
13 posted through an intranet service or sent via electronic mail directly to a discrete group of
14 recipients, which constitutes a request to a select audience and thereby satisfies the conduct
15 standard.²⁹ The Commission has analyzed previous cases alleging “request or suggestion” based
16 on similar facts using this framework, concluding that information on public website does not
17 satisfy the meaning of “request or suggest” under the conduct standard.³⁰

²⁶ MUR 7666 Compl. at 9; MUR 7675 Compl. at 9.

²⁷ E&J, 68 Fed. Reg. at 432.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *E.g.*, Factual & Legal Analysis at 9-10, MUR 7124 (Katie McGinty for Senate) (finding information posted to publicly available pages of the campaign website insufficient to satisfy the request or suggestion standard of the conduct prong (“F&LA”); F&LA at 7-8 (same), MUR 6821 (Shaheen for Senate).

1 Here, the materials posted to the Committee’s website — including the B-roll of Peters
2 interacting with constituents, still images of Peters in various settings, and the Peters Talking
3 Points PDF document which lists various talking points about Peters’s accomplishments related
4 with links to supporting news articles (with the exhortation that “Michiganders from all parts of
5 the state need to know”) — fit into the first category. The relevant information was conveyed on
6 a public website; and there is no allegation of any private communications. Thus, because the
7 facts do not indicate a “request or suggestion” within the meaning of the regulation, the conduct
8 prong is not satisfied, and the Commission need not proceed to the payment or content prong of
9 the coordinated communication test.³¹

10 * * *

11 In conclusion, the available information is insufficient to support a reasonable inference
12 that all three prongs of the coordinated communication test are satisfied.³² Accordingly, the
13 Commission finds no reason to believe that Gary Peters violated 52 U.S.C. § 30116(f) and
14 11 C.F.R. § 110.9 by knowingly accepting excessive in-kind contributions.

³¹ See, e.g., F&LA at 9-10, MUR 7124 (McGinty); F&LA at 7-8, MUR 6821 (Shaheen).

³² See 11 C.F.R. § 109.21(a).