

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7700

DATE COMPLAINT FILED: Feb. 18, 2020

DATE OF NOTIFICATIONS: Feb. 25, 2020

DATE OF LAST RESPONSE: Mar. 30, 2020

DATE ACTIVATED: May 1, 2020

EXPIRATION OF SOL: Feb. 5 – 13, 2025

ELECTION CYCLE: 2020

COMPLAINANT:

Campaign Legal Center

RESPONDENTS:VoteVets and Rick Hegdahl in his official
capacity as treasurerWin the Era PAC (formerly Pete for America) and
Ed Jordanich in his official capacity as treasurer¹
Michael Halle**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a), (f)

52 U.S.C. § 30125(e)

11 C.F.R. § 104.3(a), (b)

11 C.F.R. § 109.21

11 C.F.R. § 110.2(b)

11 C.F.R. § 110.9

11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Pete for America and Ed Jordanich in his official capacity as treasurer (the “Committee”), the principal campaign committee of 2020 presidential candidate

¹ After submitting its Response in this matter, Pete for America amended its Statement of Organization to become a non-connected political committee called Win the Era PAC. *Compare* Pete for America, Statement of Org. (Apr. 12, 2019), <https://docquery.fec.gov/pdf/229/201904129146089229/201904129146089229.pdf>, with Win the Era PAC, Statement of Org. (Apr. 3, 2020), <https://docquery.fec.gov/pdf/179/202004039216583179/202004039216583179.pdf>.

1 Pete Buttigieg, through its agent Michael Halle, requested or suggested that VoteVets and Rick
2 Hegdahl in his official capacity as treasurer (“VoteVets”), a multicandidate, hybrid political
3 committee, create and air pro-Buttigieg television advertisements in Nevada. Halle made the
4 alleged request or suggestion in a tweet, stating: “Pete’s military experience and closing
5 message from Iowa work everywhere especially in Nevada where it’s critical they see this on the
6 air through the caucus.”² A Committee spokesperson then told *Politico*, in an article about the
7 tweet, that “[i]f the largest progressive veterans group wants to help spread the word about
8 [Buttigieg’s] service, we welcome it.”³ The Complaint alleges that VoteVets responded by
9 spending \$639,000 to produce and air the advertisements, which it reported as independent
10 expenditures. The Complaint argues that the advertisements satisfy the three-part coordinated
11 communication test at 11 C.F.R. § 109.21, because they were paid for by VoteVets, were public
12 communications that expressly advocated for electing Buttigieg, and came about at the request or
13 suggestion of the Committee, resulting in an excessive in-kind contribution that VoteVets made,
14 and the Committee knowingly accepted, in violation of 52 U.S.C. § 30116(a), (f) of the Federal
15 Election Campaign Act of 1971, as amended (the “Act”).

16 Respondents deny the allegations. VoteVets acknowledges running a pro-Buttigieg
17 television advertisement in Nevada after the tweet, entitled “Sunrise,” but asserts that the tweet
18 did not influence its decision-making. Respondents all contend that, in any case, the tweet fails
19 the conduct standard of the coordinated communication test because it does not satisfy the

² Michael Halle (@mhalle), TWITTER (Feb. 5, 2020), <https://twitter.com/mhalle/status/1225150172893630464> (cited at Compl. ¶ 10 (Feb. 18, 2020)) (“Halle Tweet”).

³ Elena Schneider, *Buttigieg Camp Invites More Super PAC Help*, POLITICO, Feb. 5, 2020, <https://www.politico.com/news/2020/02/05/buttigieg-super-pac-111217> (cited at Compl. ¶ 11 n.12).

1 meaning of “request or suggestion.”⁴ Specifically, Respondents argue that the tweet was made
2 available to the public generally and therefore is not a request or suggestion under the
3 Commission’s regulations and precedent.

4 As discussed below, the available information raises a reasonable inference that
5 VoteVets’s Nevada advertisement was a coordinated communication. There is no dispute that
6 the payment and content prongs of the test were satisfied. The issue is whether the conduct
7 prong was satisfied, namely whether there was a “request or suggestion.” The tweet, along with
8 the Committee’s statement in the *Politico* article, contained detailed information suggesting that
9 the message was not intended for the general public but instead for a specific audience —
10 VoteVets. Such a targeted statement to a select audience appears to constitute a request or
11 suggestion under the Commission’s regulations given the circumstances presented here.
12 Accordingly, we recommend that the Commission find reason to believe that VoteVets made,
13 and the Committee knowingly accepted, excessive in-kind contributions, in violation of
14 52 U.S.C. § 30116(a), (f), and 11 C.F.R. §§ 110.2(b), 110.9, and that they failed to report such
15 contributions in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a), (b). We also
16 recommend that the Commission authorize the use of compulsory process as described below.

17 At this time, it is unclear whether Halle faces personal liability, either under 52 U.S.C.
18 § 30116(f) and 11 C.F.R. § 110.9 for knowingly accepting excessive contributions, or under the
19 soft money provisions at 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61, for soliciting VoteVets to
20 spend non-federal funds on the advertisement. Therefore, we recommend that the Commission

⁴ See 11 C.F.R. § 109.21(d)(1).

1 take no action at this time with respect to Halle in anticipation of obtaining additional
2 information during the proposed investigation.

3 **II. FACTUAL BACKGROUND**

4 Pete Buttigieg, formerly the mayor of South Bend, Indiana, was a candidate for president
5 in the 2020 Democratic primary election. Pete for America was his principal campaign
6 committee.⁵ According to the Complaint, Michael Halle was a “senior official” and “senior
7 strategist” for the Committee,⁶ characterizations supported by a news report as well as Halle’s
8 LinkedIn page, which describes him as a “senior adviser” to Pete for America.⁷ The Joint
9 Response submitted by the Committee and Halle identifies him as a “consultant.”⁸ The
10 Committee’s disclosure reports show monthly disbursements of nearly \$18,000 for “strategic
11 consulting” to a company apparently run by Halle.⁹ Prior to his work for the Committee, Halle
12 appears to have held senior positions with a number of campaigns, including Campaign Manager
13 for the 2018 Democratic gubernatorial candidate in Ohio, and Director of Battleground Analytics
14 and Strategy for Hillary Clinton’s 2016 presidential campaign.¹⁰

⁵ Pete for America, Statement of Org. at 2 (Mar. 3, 2020), <https://docquery.fec.gov/pdf/688/202003039203740688/202003039203740688.pdf>.

⁶ Compl. ¶¶ 2, 10.

⁷ *Michael Halle* (2020) LinkedIn Profile, <https://www.linkedin.com/in/michael-halle-b2b1ab9> (last visited August 24, 2020) (“Halle LinkedIn Profile”); Alayna Treene, *Scoop: Buttigieg Hires McAuliffe Adviser Michael Halle to Senior Staff*, AXIOS, July 29, 2019, <https://www.axios.com/pete-buttigieg-michael-halle-senior-staff-36f664e9-0099-4eb1-a01b-1f07cc488709.html> (cited at Compl. ¶ 10 n.9).

⁸ Pete for America and Halle Resp. at 1 (Mar. 16, 2020) (“Committee and Halle Resp.”).

⁹ *See* Win the Era PAC, Disbursements, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00697441&recipient_name=Sakonnet&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (filtered by recipient); The Sakonnet Company, Rhode Island Corporate Registry, http://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001675121&SEARCH_TYPE=4 (showing Halle as president, treasurer, and secretary, with a principal office in Portsmouth, RI); Halle LinkedIn Profile (identifying Halle’s location as Portsmouth, RI).

¹⁰ Halle LinkedIn Profile.

1 VoteVets is a multicandidate, hybrid political committee.¹¹ As a hybrid PAC, it
2 maintains a non-contribution account, from which it can deposit and withdraw funds raised in
3 unlimited amounts from individuals, corporations, labor organizations, and other political
4 committees.¹² VoteVets has represented to the Commission that funds in this account “will not
5 be used to make contributions, whether direct, in-kind, or via coordinated communications, or
6 coordinated expenditures, to federal candidates or committees.”¹³ As of August 28, 2020,
7 VoteVets had reported making approximately \$13.3 million in independent expenditures during
8 the 2020 election cycle in support of multiple candidates, including Buttigieg.¹⁴

9 **A. VoteVets’s Support for Buttigieg before the Tweet**

10 VoteVets endorsed Buttigieg’s presidential bid in December 2019.¹⁵ The group
11 identified itself in the endorsement as the “largest progressive group of veterans in America” and
12 stated that it intended to “immediately cut[] a maximum donation check to Pete2020, and would

¹¹ Compl. ¶ 7; VoteVets, Statement of Org. at 2 (Dec. 6, 2019), <https://docquery.fec.gov/pdf/525/201912069166160525/201912069166160525.pdf>.

¹² VoteVets Resp. at 1 (Mar. 30, 2020); VoteVets, Misc. Text (Form 99) (July 5, 2016), <https://docquery.fec.gov/pdf/244/201607059020114244/201607059020114244.pdf> (informing the Commission of VoteVets’s intent to establish a non-contribution account) (“VoteVets Form 99”). The Commission issued guidance on the formation and operation of hybrid political action committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. *See* Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), available at <https://www.fec.gov/updates/fec-statement-on-carey-fec/> (“*Carey* Press Release”).

¹³ VoteVets Form 99.

¹⁴ VoteVets, Independent Expenditures 24- and 48-Hour Reports, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00418897&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=08%2F28%2F2020.

¹⁵ Reid J. Epstein, *Liberal Veterans’ Group Endorses Pete Buttigieg in 2020 Race*, N.Y. TIMES, Dec. 4, 2019, <https://www.nytimes.com/2019/12/04/us/politics/pete-buttigieg-votevets-endorsement.html> (cited at Compl. ¶ 8 n.5).

1 utilize its social media networks and email list to support his campaign's message."¹⁶ VoteVets
2 then made a \$5,000 contribution to the Committee.¹⁷

3 In addition to this contribution, VoteVets also made pro-Buttigieg independent
4 expenditures of approximately \$3.6 million during the 2020 election cycle.¹⁸ At the time of the
5 tweet at issue in this matter, VoteVets had reported approximately \$610,000 in independent
6 expenditures supporting Buttigieg, for the purposes of "TV Advertising Production" and a "TV
7 Advertising Buy" (and had spent, but not yet reported, an additional \$809,000 in pro-Buttigieg
8 independent expenditures for the same two purposes).¹⁹ As noted below, at the time of the tweet,
9 VoteVets was the only outside group making significant pro-Buttigieg independent expenditures,
10 and the only one making such independent expenditures for television.

11 Two examples of pro-Buttigieg television advertisements that VoteVets ran on or before
12 the day of the tweet include "Together" and "Divided America." The first ad, which ran twelve
13 days prior to the Iowa caucuses, highlights Buttigieg's military service and states that he will

¹⁶ *VoteVets Endorses Mayor Pete Buttigieg for President, in Its First Presidential Endorsement Ever*, VoteVets (Dec. 4, 2019), <https://www.votevets.org/press/votevets-endorses-mayor-pete-buttigieg-for-president-in-its-first-presidential-endorsement-ever> (cited at Compl. ¶ 8 n.5).

¹⁷ VoteVets, 2019 Year-End Report at 217 (Jan. 21, 2020), <https://docquery.fec.gov/pdf/022/202001219167287022/202001219167287022.pdf> (\$5,000 contribution from VoteVets on Dec. 4, 2019).

¹⁸ VoteVets, Independent Expenditure 24- and 48-Hour Reports (filtered by candidate), https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00418897&is_notice=true&most_recent=true&candidate_id=P00010298.

¹⁹ The Committee reported \$610,441 in pro-Buttigieg independent expenditures on January 25, 2020, and \$809,404 in pro-Buttigieg independent expenditures on February 5, 2020, the latter of which appears to have been reported several hours after the tweet. VoteVets, 24-Hour Report (Jan. 25, 2020), <https://docquery.fec.gov/pdf/440/202001259167367440/202001259167367440.pdf>; VoteVets 24-Hour Report (Feb. 5, 2020), <https://docquery.fec.gov/pdf/791/202002059186470791/202002059186470791.pdf>. VoteVets's monthly reporting indicated that all of these disbursements related to the New Hampshire primary. VoteVets, Form 3X at 69 (Feb. 19, 2020), <https://docquery.fec.gov/pdf/081/202002199186542081/202002199186542081.pdf>; VoteVets, Form 3X at 128, 140 (Mar. 20, 2020), <https://docquery.fec.gov/pdf/654/202003209204669654/202003209204669654.pdf>.

1 “turn the page on our divisive politics to a new era, where everyone belongs.”²⁰ The second ad,
2 which aired two days after the Iowa caucuses and six days before the New Hampshire primary,
3 the day on which Halle issued his tweet, features New Hampshire-based veterans who state that
4 the country is “more divided than I’ve ever seen it,” praise Buttigieg’s military experience, and
5 state that he “reminds us of what we can be as a country, if we just work together.”²¹

6 **B. The Tweet and Subsequent VoteVets Nevada Advertisements**

7 On February 5, 2020, Michael Halle tweeted: “Pete’s military experience and closing
8 message from Iowa work everywhere especially in Nevada where it’s critical they see this on the
9 air through the caucus.”²²

10 The tweet was publicized that same day by an article in *Politico*, entitled “Buttigieg
11 Camp Invites More Super PAC Help.”²³ The article described the tweet as “a signal for help to
12 super PAC supporters,” and stated that “Buttigieg’s campaign did not deny that the tweet was a
13 hint to his backers.”²⁴ It quoted Committee Spokesperson Chris Meagher who said in a
14 statement that, “Pete is the only candidate who isn’t a millionaire or billionaire. And if the
15 largest progressive veterans group wants to help spread the word about his service, we welcome

²⁰ VoteVets Resp. at 5 n.12 (citing VoteVets, “*Together*” 2020, YOUTUBE (Apr. 6, 2020), <https://www.youtube.com/watch?v=YBm9o0dl0hg>).

²¹ *Id.* at 5 n.12 (citing VoteVets, *Divided America 2020*, YOUTUBE (Apr. 6, 2020), <https://www.youtube.com/watch?v=poYRx77IaOs>).

²² Halle Tweet; Compl. ¶ 2.

²³ Schneider, *POLITICO*, Feb. 5, 2020 (cited at Compl. ¶ 11 n.12).

²⁴ *Id.*

1 it.”²⁵ The article also quoted VoteVets Chairman Jon Soltz who stated that VoteVets “cannot
 2 and do[es] not coordinate our ads with the campaign in any way.”²⁶

3 One week after the tweet, VoteVets made two pro-Buttigieg independent expenditures
 4 related to television advertising. First, it reported a February 12, 2020, payment or obligation to
 5 Kate Nelson Media, LLC, of \$600,000 for a “TV Advertising Buy”; second, it reported a
 6 February 13, 2020, payment or obligation to 76 Words of \$39,652.90 for “TV Advertising
 7 Production.”²⁷ VoteVets reported that both independent expenditures were directed at
 8 supporting Buttigieg’s candidacy in Nevada.²⁸ The Complaint contends that these funds were
 9 used, at least in part, to air an advertisement that VoteVets’s Response identifies as “Sunrise.”²⁹

10 The ad features a Nevada veteran, who states:

11 “I was a combat marine veteran in Vietnam. We knew we were in it together. We had
 12 each other’s back. Our country now is way more divided than when I first come home
 13 from Vietnam. That’s why I’m for Pete Buttigieg for president. He’s served in
 14 Afghanistan. He’s good for the working men and women of this country. He’ll turn the
 15 page on all this division and hate. One team, one America. Pete’s the one who can do
 16 it.”³⁰

²⁵ *Id.*

²⁶ *Id.* Beyond the February 5 tweet, the Complaint does not identify or allege that Halle had direct communications with VoteVets, although Halle’s twitter account shows that he retweeted VoteVets and Soltz multiple times prior to February 5, 2020. *E.g.*, VoteVets (@votevets), TWITTER (Jan. 14, 2020), <https://twitter.com/votevets/status/1217275202649960448>; Jon Soltz (jonsoltz), TWITTER (Dec. 19, 2019), <https://twitter.com/jonsoltz/status/1207855986117140481>. These retweets do not have unique web addresses but can be found by scrolling through Halle’s Twitter page to January 14, 2020, and December 19, 2019.

²⁷ VoteVets, Amended 24-Hour Report at 1 (Feb. 20, 2020), <https://docquery.fec.gov/pdf/323/202002209186573323/202002209186573323.pdf>.

²⁸ *Id.*

²⁹ Compl. ¶¶ 12-13. The Complaint reproduces the narration of an advertisement it believes VoteVets ran in Nevada. *Id.* ¶ 12. VoteVets identifies an advertisement matching that narration as “Sunrise.” VoteVets Resp. at 2 n.3 (citing VoteVets, Sunrise 2020 Anamorphic, YOUTUBE (Apr. 6, 2020)), <https://www.youtube.com/watch?v=x4Rjf47Ssig>.

³⁰ VoteVets Resp. at 2 n.3 (citing VoteVets, Sunrise 2020 Anamorphic, YOUTUBE (Apr. 6, 2020), <https://www.youtube.com/watch?v=x4Rjf47Ssig>).

1 VoteVets acknowledges that it aired “Sunrise” at some point after the tweet and that the
2 ad was created for Nevada, although VoteVets does not indicate precisely when the ad ran or
3 how much the group spent to air it.³¹ Information on the public record, however, indicates that
4 VoteVets aired “Sunrise” in Nevada beginning the week after the tweet.

5 Public records filed with the Federal Communications Commission (“FCC”) show that
6 VoteVets placed ad buys with Nevada television stations for the period February 13-21, 2020.³²
7 Example filings submitted with the Complaint reflect \$272,230 in ad buys at four stations, all
8 ordered by Kate Nelson Media on behalf of VoteVets (the same vendor identified in VoteVets’s
9 independent expenditure reporting as receiving \$600,000), with an “original date,” which may
10 refer to an order date, of February 12 (the same date listed on VoteVets’s independent
11 expenditure reporting).³³ Filings for three of the four stations identify the relevant candidate as
12 Buttigieg (one does not name a candidate),³⁴ and the file for one station contains a unique
13 advertisement review form identifying the advertisement as “Sunrise.”³⁵ In addition, FCC
14 records not provided by the Complaint, obtained by this Office through a public records search,
15 show that Kate Nelson Media spent approximately \$298,070 on advertising on VoteVets’s behalf

³¹ *Id.* at 2, 5.

³² Compl. ¶ 13 & n.16-23.

³³ *Id.* ¶ 13; *id.*, Ex. A at 1 (KTVN order), Ex. C at 1 (KOLO order), Ex. F at 1 (KRNK order), and Ex. H at 1 (KLAS order).

³⁴ Compl., Ex. B at 1 (KTVN file), Ex. E at 1 (KOLO file), Ex. G at 2 (KRNK file) (identifying Buttigieg); *id.*, Ex. I at 1 (KLAS file) (not listing candidate). Exhibit E does not identify the station name but appears to match a form available in KOLO’s public FCC files. *Compare* Ex. E, with Review Form Sunrise, KOLO-TV, <https://publicfiles.fcc.gov/tv-profile/kolo-tv/political-files/2020/federal/president/vote-vets-nv/04b79652-8310-4e32-82fe-ed4a494b5368/>. Similarly, Exhibit I does not identify the station name but appears to match a form available in KLAS’s public FCC files. *Compare* Ex. I, with VV-0213-0221-2379723 NAB, KLAS-TV, <https://publicfiles.fcc.gov/tv-profile/klas-tv/political-files/2020/non-candidate-issue-ads/vv-vote-vets/nab-forms/3229ba51-cb42-9d9a-4813-2bbe5993fb46/>.

³⁵ *Id.*, Ex. E at 2 (KOLO file).

1 at six additional Nevada television stations, all for the period February 13-21, 2020.³⁶ Files for
 2 five of the six stations identify the supported candidate and name Buttigieg.³⁷ In total, the
 3 available FCC records show an expenditure by VoteVets in Nevada of approximately \$570,300
 4 for ad buys.

5 C. Allegations and Responses

6 The Complaint alleges that the tweet was a request or suggestion by the Committee for a
 7 television advertisement because it clearly identified how the advertisement should be distributed
 8 (“see this on the air”), where it should be distributed (“Nevada”), when it should be aired

³⁶ KSNV FCC File, Contract #4241734 at 1, <https://publicfiles.fcc.gov/api/manager/download/de756b2f-832f-cbe0-1436-03ca07816328/34d7d632-a99f-4d45-aae9-9cbe8bc92f5e.pdf> (purchase of \$99,850); KVVU FCC File, Order at 1, <https://publicfiles.fcc.gov/api/manager/download/5aae1093-afe5-eda4-723f-18d85ff0007f/ce743847-a34a-4640-ad87-bddb30c2acb1.pdf> (purchase of \$98,125); KVCW FCC File, Contract #4241691 at 1, <https://publicfiles.fcc.gov/api/manager/download/3c992a1e-aa38-a63d-bb0c-f0deb44cb06f/01ffb25c-0a25-4c95-bb77-cf589ee2defe.pdf> (purchase of \$7,905); KBLR FCC File, Contract at 1, 3, <https://publicfiles.fcc.gov/api/manager/download/e3726d8d-1e61-55b5-a66f-9454aee6789f/f702cb48-0770-4050-bc99-7272675a3c36.pdf> (purchase of \$24,400); KTNV FCC File, Order at 1, <https://publicfiles.fcc.gov/api/manager/download/c97f8b8e-da2b-500d-7b17-5120e572c97d/492d25f0-60da-46e5-9ad9-21ac748241ee.pdf> (purchase of \$65,900); KRXI FCC File, Order at 1, <https://publicfiles.fcc.gov/api/manager/download/9e7305cb-065d-74f6-f74a-be885349f49d/0e61cef4-2c97-4f1d-b497-3981fe03bdf4.pdf> (purchase of \$1,890). In some instances, the FCC files for these stations show later contract revisions or discounts based on method of payment. As a result, the precise final amount of payment is unclear.

³⁷ KSNV FCC File, Agreement Form for Non-Candidate/Issue Advertisements at 2, <https://publicfiles.fcc.gov/api/manager/download/de756b2f-832f-cbe0-1436-03ca07816328/8a2055a6-af34-4eec-a5ad-fb972e2daae4.pdf>; KVVU FCC File, Agreement Form for Non-Candidate/Issue Advertisements at 1, <https://publicfiles.fcc.gov/api/manager/download/5aae1093-afe5-eda4-723f-18d85ff0007f/6dd7e746-321c-4952-8baa-9b4b10d91ab6.pdf>; KVCW FCC File, Agreement Form for Non-Candidate/Issue Advertisement at 2, <https://publicfiles.fcc.gov/api/manager/download/3c992a1e-aa38-a63d-bb0c-f0deb44cb06f/f657ee83-cff6-4dc3-b713-334bf7dffedc.pdf>; KTNV FCC File, Political File Disclosure Form for Non-Candidate Time Purchase Request Relating to Political Matter of National Importance or Non-National Importance at 1, <https://publicfiles.fcc.gov/api/manager/download/c97f8b8e-da2b-500d-7b17-5120e572c97d/e36ce4ee-4f1f-42c1-b332-3f0c661b3537.pdf>; KRXI FCC File, Agreement Form for Non-Candidate/Issue Advertisements at 2, <https://publicfiles.fcc.gov/api/manager/download/9e7305cb-065d-74f6-f74a-be885349f49d/861df39e-c2ab-4108-a6db-433931d69f8b.pdf>. The file for one station, KBLR, does not identify a candidate for the advertisements. KBLR FCC File, Agreement Form for Non-Candidate/Issue Advertisement, <https://publicfiles.fcc.gov/api/manager/download/e3726d8d-1e61-55b5-a66f-9454aee6789f/f702cb48-0770-4050-bc99-7272675a3c36.pdf>.

1 (“through the [Feb. 22, 2020] caucus”), and the messages it should use (“Pete’s military
2 experience and closing message from Iowa”).³⁸

3 The Complaint further alleges that the tweet was specifically directed to VoteVets
4 because it was “the only super PAC or other outside group making significant independent
5 expenditures supporting Buttigieg at the time, and therefore the only group that could reasonably
6 be expected to follow through on the request or suggestion.”³⁹ Indeed, at the time, no other
7 individual or group supporting Buttigieg had made aggregate independent expenditures that
8 exceeded \$1,400 and none were for the purpose of producing or airing television advertising.⁴⁰
9 The Complaint also argues that the Committee “effectively acknowledged” that the tweet
10 targeted VoteVets through its spokesperson’s statement in *Politico*.⁴¹

11 Finally, the Complaint contends that VoteVets responded to the tweet by spending
12 \$639,000 on television ads in Nevada, to be run through the caucus, and using the themes
13 described in the tweet.⁴² The Complaint argues that this conduct satisfies the definition of a

³⁸ Compl. ¶ 27. The Complaint argues that the tweet’s reference to Buttigieg’s “closing message” is meant to signal a message of unity, which it says was “widely reported” as the campaign’s final theme in Iowa. *Id.* ¶ 10 & n.11 (describing reporting on Buttigieg’s unity-focused theme in Iowa).

³⁹ *Id.* ¶¶ 9, 27.

⁴⁰ Independent Expenditures Regularly Scheduled Reports, https://www.fec.gov/data/independent-expenditures/?data_type=processed&is_notice=false&most_recent=true&candidate_id=P00010298&support_opposite_indicator=S&min_date=01%2F01%2F2019&max_date=02%2F05%2F2020 (filtered by candidate and date). Placer County Democratic Central Committee reported independent expenditures of \$1,030 for buttons and bumper stickers; Eastern Washington Voters reported an independent expenditure of \$16 for “coordinating vols to distribute material”; Alan Edward Mislove reported independent expenditures totaling \$1,370 for research; Red White and Definitely Blue reported an independent expenditure of \$138 for digital ads; Millennials for Progress reported independent expenditures totaling \$533 largely for digital advertising, and Democratic Central Committee of Marin reported an independent expenditure of \$279 for campaign buttons. *Id.*

⁴¹ Compl. ¶ 27.

⁴² *Id.* ¶ 28.

1 coordinated communication under the Commission's regulations, and that VoteVets's related
2 expenditures were therefore an excessive, in-kind contribution to the Committee.⁴³

3 In their Joint Response, the Committee and Halle do not explain the purpose of the tweet
4 but assert that it was not a coordinated communication. Specifically, they argue that it cannot
5 meet the "request or suggestion" standard set out in the Commission's regulations, because that
6 standard does not cover statements made on public websites, such as Twitter.⁴⁴ They also
7 contend that the Complaint as a whole is based on speculation.⁴⁵ They note that the tweet does
8 not mention any individuals or organizations, and that "Sunrise" was a continuation of the same
9 pro-Buttigieg themes that VoteVets had embraced throughout the election.⁴⁶ Finally, they argue
10 that the Committee spokesperson's quote in *Politico* did not reference Halle's tweet, but instead
11 "functioned to draw contrast between Pete Buttigieg and his opponents, noting at the outset 'Pete
12 is the only candidate who isn't a millionaire or billionaire' and then referencing the Committee's
13 welcoming of support from the veterans group."⁴⁷

14 VoteVets, in its Response, similarly argues that a public request or suggestion cannot
15 meet the conduct standard set out in the Commission's regulations.⁴⁸ The group argues that it
16 was already running ads prior to the tweet that "highlighted Buttigieg's military service and a
17 message of unity"⁴⁹ and did not need instructions to know that it should begin running ads in

⁴³ *Id.* ¶¶ 29-30.

⁴⁴ Committee and Halle Resp. at 3-4.

⁴⁵ *Id.* at 4-5.

⁴⁶ *Id.* at 1-2.

⁴⁷ *Id.* at 5.

⁴⁸ VoteVets Resp. at 2.

⁴⁹ *Id.* at 2, 5-6.

1 Nevada after New Hampshire, as Nevada was then the next state to vote in the presidential
2 primary.⁵⁰ VoteVets also contends that, in any case, mere similarities in “theme, promotion, and
3 messaging” between candidates and third parties are not sufficient to establish coordination.⁵¹
4 VoteVets maintains that it “found out about the tweet the way that others did — by seeing it
5 publicly on Twitter,” and that the tweet did not influence its decision to run “Sunrise,” or the
6 “timing, content or targeting” of that ad.⁵²

7 **III. LEGAL ANALYSIS**

8 A communication is coordinated with a candidate, an authorized committee, a political
9 party committee, or their agent, if it: (1) is paid for, in whole or in part, by a person other than
10 the candidate or committee (the “payment prong”); (2) satisfies at least one of the content
11 standards set out at 11 C.F.R. § 109.21(c) (the “content prong”); and (3) satisfies at least one of
12 the conduct standards set out at 11 C.F.R. § 109.21(d) (the “conduct prong”).⁵³ All three prongs
13 are required for a communication to be considered a coordinated communication.⁵⁴ Payments
14 made for coordinated communications are in-kind contributions to the candidate or committee
15 with which the communication was coordinated.⁵⁵

⁵⁰ *Id.* at 6.

⁵¹ *Id.* at 6-7.

⁵² *Id.* at 5.

⁵³ 11 C.F.R. § 109.21(a).

⁵⁴ *Id.* § 109.21(a).

⁵⁵ *Id.* § 109.21(b)(1).

1 The Act prohibits any person from making, and any candidate or committee from
 2 knowingly accepting, an excessive contribution.⁵⁶ Multicandidate committees, such as
 3 VoteVets, may contribute to a candidate and his or her authorized committee up to \$5,000 per
 4 election.⁵⁷ Committee treasurers are required to disclose the identification of each political
 5 committee that makes a contribution to the reporting committee during the reporting period,
 6 along with the date and amount of any such contribution.⁵⁸ If a committee makes a contribution,
 7 it shall disclose the name and address of the recipient.⁵⁹

8 **A. The Commission Should Find Reason to Believe that the Committee and**
 9 **VoteVets Violated the Act with Respect to VoteVets's "Sunrise"**
 10 **Advertisement**

11 It is undisputed that the first two prongs of the coordinated communication analysis are
 12 met. VoteVets acknowledges that it paid for "Sunrise," thus satisfying the payment prong.⁶⁰
 13 VoteVets also acknowledges that "Sunrise" is a public communication expressly advocating for
 14 Buttigieg's election,⁶¹ thus satisfying the content prong.⁶² Whether the advertisement was a
 15 coordinated communication therefore turns on whether the conduct prong was met, and here the
 16 available information indicates that it was.

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

⁵⁷ 52 U.S.C. § 30116(a)(2).

⁵⁸ *Id.* § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

⁵⁹ 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

⁶⁰ VoteVets Resp. at 2-3.

⁶¹ *Id.*

⁶² 11 C.F.R. § 109.21(c)(3) (providing that the content standard is met by "a public communication . . . that expressly advocates . . . the election or defeat of a clearly identified candidate for Federal office").

1 1. Conduct Prong

2 The Complaint contends that the tweet and VoteVets's subsequent Nevada advertising
3 meet the "request or suggestion" conduct standard, which applies when a communication is
4 "created, produced, or distributed, at the request or suggestion of a candidate, authorized
5 committee, or political party committee," or their agent.⁶³

6 a. Agency

7 A threshold issue, in order for Halle's tweet to qualify as a request or suggestion, is
8 whether Halle was acting as an agent of the Committee or candidate. Under the coordination
9 regulations, an individual is an agent of a federal candidate when he or she has actual authority,
10 whether express or implied, to engage in certain activities on behalf of the candidate, including
11 authority to "request or suggest that a communication be created, produced, or distributed," to
12 "make or authorize a communication that meets one or more of the content standards set forth in
13 11 C.F.R. § 109.21(c)," or "request or suggest that any other person create, produce, or distribute
14 any communication."⁶⁴ The Commission has explained that "a person may be an agent as a
15 result of actual authority based on his or her *position or title* within a campaign organization."⁶⁵
16 Here, the Complaint contends that Halle's position as a "senior strategist" gave him actual
17 authority to make a request or suggestion on behalf of the Committee, bolstered by the fact that

⁶³ *Id.* § 109.21(d)(1); *id.* § 109.20(a) (providing that any reference within the coordination regulations to a candidate, their authorized committee, or a political party committee also includes agents thereof).

⁶⁴ *Id.* § 109.3(b) (listing qualifying activities).

⁶⁵ Definition of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4978 (Jan. 31, 2006) (emphasis added).

1 “his [Twitter] account is used almost exclusively to tweet about Buttigieg’s campaign” and
2 identifies him as a “strategist” for the Committee.⁶⁶

3 The Committee and Halle did not respond to or dispute the contention that he was the
4 Committee’s agent, and the campaign spokesperson quoted in *Politico* did not dispute that Halle
5 was empowered to communicate for the Committee.⁶⁷ Instead, the spokesperson amplified
6 Halle’s tweet, and underscored Halle’s authority to speak for the campaign, by stating that the
7 Committee welcomed support from “the largest progressive veterans group.”⁶⁸ In addition, the
8 Complaint appears to be correct in its assessment that Halle used his Twitter account for
9 campaign purposes. For example, in the week following the tweet, February 6-13, 2020, all but
10 one of Halle’s tweets and retweets clearly relate to Buttigieg or other presidential candidates.⁶⁹
11 Finally, Halle’s own description of his position as a “senior adviser,” his recent history of senior
12 positions with other political campaigns, and the significant disbursements from the Committee
13 to his company during the relevant period all imply decision-making authority. Moreover, his
14 focus on strategy could reasonably encompass tasks such as determining messages that should be
15 conveyed about the candidate. Indeed, contemporary news reporting on Buttigieg’s campaign
16 suggests that Halle had direct involvement with the Committee’s advertising strategy and a role

⁶⁶ Compl. ¶ 27 n.27; Alayna Treene, *Scoop: Buttigieg Hires McAuliffe Adviser Michael Halle to Senior Staff*, AXIOS, July 29, 2019, <https://www.axios.com/pete-buttigieg-michael-halle-senior-staff-36f664e9-0099-4eb1-a01b-1f07cc488709.html> (cited at Compl. ¶ 10 n.9) (listing Halle’s “extensive experience working on major campaigns,” including running battleground-state strategy for Hillary Clinton’s 2016 presidential campaign).

⁶⁷ See Factual & Legal Analysis at 6, MUR 7048 (Cruz for President, *et al.*) (“F&LA”) (finding that a volunteer was a committee’s agent when, among other factors, no available information indicated the committee had disclaimed the volunteer’s references to contributions at the relevant event)

⁶⁸ Schneider, *POLITICO*, Feb. 5, 2020 (cited at Compl. ¶ 11 n.12).

⁶⁹ See Michael Halle (@mhalle), TWITTER, <https://twitter.com/mhalle?lang=en> (last visited July 2, 2020). The one tweet that does not clearly relate to Buttigieg or other candidates is a retweet of a post that has been deleted, so it is not possible to assess the subject. Michael Halle (@mhalle), TWITTER (Feb. 8, 2020), <https://twitter.com/mhalle/status/1226218509702586368>.

1 in communicating the Committee's messaging.⁷⁰ Accordingly, the available information raises a
2 reasonable inference that Halle was an agent of the Committee.

3 b. Request or Suggestion

4 The Commission has explained that a request or suggestion is the "most direct form of
5 coordination" whereby "the candidate or political party committee communicates desires to
6 another person who effectuates them," and that the determination of whether a third party acted
7 in response to a request or suggestion must be "based on specific facts, rather than presumed."⁷¹
8 Additionally, the Commission has explained that the standard "is intended to cover requests or
9 suggestions made to a select audience, but not those offered to the public generally."⁷² As a way
10 of explaining when a request or suggestion is aimed at a particular audience, the Commission
11 offered the example that "a request that is posted on a web page that is available to the general
12 public is a request to the general public and does not trigger the [request or suggestion] conduct
13 standard," but an email to a discrete group of recipients would meet the standard.⁷³ The
14 Commission has previously looked to these examples and found no reason to believe with
15 respect to coordination allegations arising from general requests or suggestions posted on
16 committee websites that were followed by ostensibly related third-party advertisements.

⁷⁰ See Thomas Beaumont, *Buttigieg Aides Say Path Beyond March 3 Possible but Tricky*, ASSOCIATED PRESS, Feb. 27, 2020, <https://apnews.com/6431ad4dbbeb57a369be061281d9b1ee> (noting the campaign had announced a multimillion-dollar advertising buy in 12 states and quoting Halle that "[t]here are several states in there that kind of represent an idea of places where we're seeing opportunity and also cost efficiency"); Chelsea Janes and Amy B. Wang, *Pete Buttigieg is Ending His Presidential Bid*, WASH. POST, Mar. 1, 2020, https://www.washingtonpost.com/politics/pete-buttigieg-drops-out-of-presidential-race/2020/03/01/57a3b384-5743-11ea-9000-f3cffee23036_story.html (describing call during which Halle and the Committee's Deputy Campaign Manager "made the case" to reporters for Buttigieg's continued viability in the presidential race).

⁷¹ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 431-32 (Jan. 3, 2003) ("Coordination E&J").

⁷² *Id.* at 432.

⁷³ *Id.*

1 In MUR 6821 (Shaheen for Senate, *et al.*), the Commission found no reason to believe
2 when an authorized committee posted a message and related document on its public website with
3 information on the candidate and allegations about her opponent, which the Complaint argued
4 were “requests and suggestions” for an outside group that allegedly distributed a television
5 advertisement based on the posted message.⁷⁴ The message, however, was not targeted at a
6 specific audience and did not advocate for or mention advertising or media.⁷⁵ The Commission
7 concluded that a coordinated communication does not result when a communication is made in
8 response to a “general request to the public or the use of publicly available information,
9 including information contained on a candidate’s campaign website.”⁷⁶

10 Similarly, in MUR 7124 (Kate McGinty for Senate, *et al.*), the Commission found no
11 reason to believe when an authorized committee published a “Notice” page on its public website
12 that contained a list of specific messages about the candidate and her opponents, specified who
13 needed to know them (*e.g.*, “[v]oters in Philadelphia”), and offered a general sense of timing
14 (*e.g.*, “[a]t this point of the campaign”).⁷⁷ Again, the page did not appear to target a specific
15 audience and did not advocate for or mention advertising or media.⁷⁸ The Commission
16 concluded that this was not a “request or suggestion” because the messages “appeared on a

⁷⁴ Factual & Legal Analysis at 2-3, MUR 6821 (Shaheen for Senate, *et al.*) (“Shaheen F&LA”).

⁷⁵ *See id.* at 2.

⁷⁶ *Id.* at 8.

⁷⁷ F&LA at 1-2, 4-5, MUR 7124 (Katie McGinty for Senate, *et al.*) (“McGinty F&LA”).

⁷⁸ *See id.* At most, the notices stated that voters needed to “keep hearing” a message, which could refer to a variety of potential activities. *Id.*

1 publicly available website — specifically, the candidate's campaign website — and [were]
 2 directed to the public generally instead of a select audience.”⁷⁹

3 Respondents argue for the same result here because the tweet at issue appeared on a
 4 public website, *i.e.*, Halle's publicly accessible Twitter account.⁸⁰ But that argument misses the
 5 mark for several reasons. First, it oversimplifies Shaheen and McGinty, in which the
 6 Commission did not presume that *any* statement on a public website would necessarily be a
 7 request to the general public. In Shaheen, the Commission indicated that the conduct standards
 8 were not satisfied by a “general request to the public,” thus suggesting that a targeted request
 9 could satisfy them.⁸¹ And in McGinty, the Commission considered indicia of a targeted request
 10 — not merely limiting the inquiry to whether the messages appeared on the committee's website,
 11 but whether the specific page where they appeared was obscure or readily available to the public
 12 at large.⁸² The Commission concluded in McGinty that the messages were “directed to the
 13 public generally instead of a select audience.”⁸³

⁷⁹ *Id.* at 10 (emphasis added).

⁸⁰ *See* Committee and Halle Resp. at 4; VoteVets Resp. at 5 n.11.

⁸¹ *See* Shaheen F&LA at 8.

⁸² *See* McGinty F&LA at 9-10 (noting that there was a featured message on the committee's homepage, and that users could click on it to be taken to the subpage where other messages were aggregated).

⁸³ *Id.* at 10. The Office of General Counsel (“OGC”) has recommended that the Commission find no reason to believe on coordination allegations in other matters that involve similarly general requests posted on committee websites. *See* First Gen. Counsel's Rpt. at 3-4, 9, MURs 7138 & 7229 (Friends of Patrick Murphy, *et al.*) (“FGCR”) (website subpage stated information that “voters need to know,” including voters in specific cities); FGCR at 1-2, MUR 7142 (Evan Bayh Committee, *et al.*) (website subpage provided information that “Hoosiers Needs to Know” and identified age groups and specific areas to be informed); FGCR at 1-3, MUR 7136 (Strickland for Senate, *et al.*) (website subpage provided information that “Ohioans across the state need to know”); FGCR at 1-3, 7168 (Masto, *et al.*) (website stated information about candidate's opponent; a later iteration of the site used phrases like “voters need to know” and “[r]adio listeners across Nevada should hear” but complaint identified no advertisements run after these messages) OGC has also recommended dismissal of coordination allegations in similar matters. *See* FGCR at 3-4, MURs 7666 & 7675 (Peters for Michigan, *et al.*) (B-roll, images, and talking points on the candidate posted to a “What Michiganders Need to Know” subpage)

1 Second, Respondents' argument ignores that the Commission differentiated websites
2 from targeted emails only as an example of the underlying principle that requests or suggestions
3 offered to the general public would not satisfy the conduct standard. The Commission expressly
4 declined, however, to "delineate in a rule every conceivable situation that could arise,"⁸⁴ and
5 there are plainly ways in which a request could be accessible to the public but be unmistakably
6 intended only for specific recipients. For example, if a candidate's committee posted a message
7 on its website naming a specific political committee and asking that committee to run particular
8 advertisements, the message would not plausibly be directed at the general public despite
9 appearing on a public website. To argue otherwise would undermine the distinction the
10 Commission sought to make between general and targeted requests.⁸⁵

11 Here, the available information suggests that the tweet was a targeted request that was
12 directed at VoteVets. First, the tweet set out a request for television advertising ("see this on the
13 air"), detailing where and when the advertisements should run.⁸⁶ As indicated by the
14 approximately \$570,300 in spending detailed in the available FCC reports,⁸⁷ running an ad to be
15 seen on the air can, and in this case, apparently did, require significant resources for production
16 and purchase of air time, suggesting that the communication was directed not to members of the
17 general public but to an organization with the means of advertising within the context of a
18 presidential primary. Among the outside groups supporting Buttigieg, only VoteVets had
19 demonstrated both experience in television advertising and the ability to pay for such a purchase.

⁸⁴ Coordination E&J at 432.

⁸⁵ *See id.* (explaining that the request or suggestion standard "is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally").

⁸⁶ *See* Halle Tweet.

⁸⁷ *Supra* II.B.

1 Second, the tweet specifically called for themes — military experience and unity — that
2 VoteVets was using at the time.⁸⁸ The suggested military theme coupled with the specific call
3 for television advertising underscore that the tweet was likely directed to VoteVets.⁸⁹ Third, the
4 Committee spokesperson's statement in *Politico* bolsters the connection between the tweet and
5 VoteVets, and indeed could be interpreted as reiterating and amplifying the request or suggestion
6 that VoteVets make a pro-Buttigieg television advertisement. The spokesperson referred to the
7 "largest progressive veterans group," echoing how VoteVets described itself in its endorsement
8 of Buttigieg, and welcomed the group's "help spread[ing] the word."⁹⁰

9 Based on the specificity of the tweet, VoteVets's position as the only pro-Buttigieg
10 outside group then running television advertising, and the reiteration of the request or suggestion
11 by a campaign spokesperson with specific reference to help from the "largest progressive
12 veterans group," the tweet appears to have been a message to VoteVets asking for television
13 advertising in Nevada during a specific time period and focusing on a specific theme, thus
14 satisfying the request or suggestion standard. Further, Respondents have not provided any
15 information on who the intended audience was, if not VoteVets.

⁸⁸ VoteVets Resp. at 5.

⁸⁹ This request or suggestion offered significantly more detailed direction than that considered by the Commission in a similar matter, MUR 6908 (National Republic Congressional Campaign Committee, *et al.*). In that matter, respondents were alleged to have used anonymous Twitter accounts to post strings of letters and numbers that could be interpreted to provide polling results for certain congressional races. FGCR at 1-2, 4, MUR 6908 (NRCCC, *et al.*). The tweets were then allegedly reviewed by outside groups to inform their spending decisions. *Id.* at 3. The Commission was equally divided on whether to find reason to believe and therefore closed the file. Certification ¶¶ 1-2, MUR 6908 (NRCCC, *et al.*) (Mar. 28, 2019). In a statement of reasons, one Commissioner argued that the "cryptic tweets" were "not in any way designed for public consumption despite the public nature of Twitter's platform." Statement of Reasons of Comm'r Weintraub at 4, MUR 6908 (NRCC, *et al.*) In a separate statement of reasons, two Commissioners stated that, regardless of whether the Twitter posts were publicly available, the record did not support the conclusion that the tweets provided information material to the communications made by the respondent outside groups. Statement of Reasons of Comm'rs Petersen and Hunter at 5, MUR 6908 (NRCC, *et al.*).

⁹⁰ Schneider, *POLITICO*, Feb. 5, 2020, (cited at Compl. ¶ 11 n.12).

1 The available information also appears to show that VoteVets understood and responded
2 to the request or suggestion by creating, producing, and distributing the “Sunrise”
3 advertisement.⁹¹ The tweet described specific messages (military experience and unity), timing
4 (“through the caucus”), and location (Nevada). The next week, VoteVets purchased and
5 disseminated a television advertisement that satisfied each of these components. The available
6 FCC records show that VoteVets purchased television advertising in Nevada that would run
7 February 13-21, 2020, just prior to the state’s February 22 caucuses.⁹² FCC records for one
8 station identify the specific advertisement VoteVets ran as “Sunrise,” presumably the same
9 “Sunrise” advertisement described in VoteVets’s Response, which includes the themes
10 mentioned in the tweet — Buttigieg’s military service and his ability to unify the country.⁹³
11 And, although VoteVets argues that it did not need to be told to purchase advertising in Nevada,
12 there is no available information indicating that VoteVets was planning such advertisements
13 prior to the tweet, particularly when Nevada was not the next state to vote at the time it was
14 made.⁹⁴ The available FCC records and VoteVets’s independent expenditure reporting to the
15 Commission do not show that the advertisements were purchased prior to the tweet.⁹⁵ Further,

⁹¹ See 11 C.F.R. § 109.21(d)(1) (setting out the “request or suggestion” standard).

⁹² *Supra* II.B; 2020 State Primary Election Dates, National Conference of State Legislatures (May 19, 2020), <https://www.ncsl.org/research/elections-and-campaigns/2020-state-primary-election-dates.aspx>.

⁹³ VoteVets Resp. at 2 n.3; Compl. ¶ 12; *id.*, Ex. E at 1.

⁹⁴ VoteVets Resp. at 6; 2020 State Primary Election Dates, National Conference of State Legislatures (May 19, 2020), <https://www.ncsl.org/research/elections-and-campaigns/2020-state-primary-election-dates.aspx>.

⁹⁵ The FCC records attached to the Complaint contain a number of Agreement Forms for Non-Candidate/Issue Advertisements. Compl., Exs. B, D, G, I. They appear to be standardized forms that can be filled in with information about advertisements to be run with particular television stations, and each is prepared by Kate Nelson Media and signed by Kate Nelson as of January 22, 2020. See *id.*, Exs. B, D, G, I. Additionally, nothing about the forms suggests they are used only in Nevada, nor that Kate Nelson signed the forms at the time that advertisements were purchased there, rather than using a single template form during the 2020 election cycle. See *id.*, Exs. B, D, G, I. Accordingly, the forms do not appear to suggest that VoteVets purchased advertisements in Nevada prior to the tweet.

1 VoteVets submitted no affidavits or other statements from individuals involved in developing its
2 Nevada advertising, who might have been able to confirm that the group had decided to create
3 and purchase the advertising prior to the tweet.⁹⁶

4 The available information thus raises a reasonable inference that the tweet was a request
5 or suggestion by the Committee to VoteVets and, therefore, that all three prongs of the
6 coordinated communications test are satisfied. Accordingly, the payments by VoteVets for
7 “Sunrise” and any similar TV advertising the group ran in Nevada, apparently made in response
8 to the alleged request or suggestion, should be treated as an in-kind contribution from VoteVets
9 to the Committee. As a multicandidate, hybrid PAC, VoteVets could contribute no more than
10 \$5,000 to the Committee per election,⁹⁷ and it made a contribution in that amount right after
11 endorsing Buttigieg. Therefore, any amount VoteVets spent on the advertisements would have
12 exceeded its contribution limit. Neither VoteVets nor the Committee reported that the group
13 made any contributions beyond the \$5,000.⁹⁸

⁹⁶ As noted below, one focus of the proposed investigation will be determining whether VoteVets had prior plans for the Nevada advertisements, as such information could indicate that Sunrise was not “created, produced, or distributed” based on the tweet. Part IV; *see* 11 C.F.R. § 109.21(d)(1).

⁹⁷ 52 U.S.C. § 30116(a)(2)(A).

⁹⁸ VoteVets, Disbursements, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00418897&recipient_name=pete+for+america&two_year_transaction_period=2020 (showing a single \$5,000 contribution to Win the Era PAC, formerly Pete for America); Win the Era PAC, Receipts, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00697441&contributor_name=votevets&two_year_transaction_period=2020 (showing a single \$5,000 contribution from VoteVets).

1 Therefore, we recommend that the Commission find reason to believe that VoteVets
2 made, and the Committee knowingly accepted, excessive in-kind contributions in violation of
3 52 U.S.C. § 30116(a), (f), and 11 C.F.R. §§ 110.2(b), 110.9. In addition, we recommend that the
4 Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) and
5 11 C.F.R. § 104.3(a) and VoteVets violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by
6 failing to report such contributions to the Commission.

7 **B. The Commission Should Take No Action at this Time Regarding Potential**
8 **Violations of the Act by Michael Halle**

9 It is unclear at this time whether Halle faces personal liability for accepting excessive
10 contributions. The Act provides that “[n]o officer or employee of a political committee shall
11 knowingly accept” a contribution exceeding the limits.⁹⁹ However, there is little available
12 information to determine whether Halle was, in fact, an “officer or employee” of the Committee.
13 The Joint Response represents that he was a “consultant” for the Committee, which may imply
14 that he worked on contract and was not an “employee,” and there are no reported disbursements
15 from the Committee to Halle for salary.¹⁰⁰ In any case, the Commission typically does not
16 pursue officers or employees other than the candidate under this section.¹⁰¹

17 Alternatively, Halle could face personal liability based on the soft money provisions,
18 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61, which bar candidates, individuals holding federal

⁹⁹ 52 U.S.C. § 30116(f); *see also* 11 C.F.R. § 110.9.

¹⁰⁰ Committee and Halle Resp. at 1. In some instances, the Commission has distinguished employees from independent contractors. *E.g.*, 11 C.F.R. § 109.21(d)(5) (describing a coordinated communications conduct standard that applies to a “former employee or independent contractor”). It is not clear whether a contractor is considered an employee for purposes 52 U.S.C. § 30116(f).

¹⁰¹ *See* F&LA at 6, MUR 6724 (C&M Strategies, *et al.*) (“To our knowledge, the Commission has never imposed section 30116(f) liability on an ‘officer or employee’ of a committee unless the ‘officer or employee’ was the candidate who was benefitting from the contributions.”).

1 office, agents of candidates and individuals holding federal office, and entities directly or
2 indirectly established, financed, maintained, or controlled by candidates or individuals holding
3 federal office from soliciting or receiving funds that are not subject to the limitations,
4 prohibitions, and reporting requirements of the Act.¹⁰² The Commission has found a violation of
5 these provisions when a committee received an in-kind contribution purchased with soft money,
6 rather than receiving the funds directly, and arguably Halle solicited such an in-kind contribution
7 in the form of the Nevada advertisement.¹⁰³ Again, as explained below, the available
8 information is insufficient to assess a potential violation.

9 Solicitation includes asking, requesting, or recommending, explicitly or implicitly, that
10 another person make a contribution or provide anything of value,¹⁰⁴ and as already discussed
11 there is reason to believe that Halle made, and VoteVets responded to, a request or suggestion for
12 television advertising. Three points, however, are unclear. First, it is unclear in light of the
13 available information whether Halle made the solicitation in his capacity as the Committee's
14 agent, as that term is defined in the soft money provisions, because neither the Complaint nor the
15 Responses speak to Halle's involvement with Committee fundraising.¹⁰⁵ Second, the available
16 information does not indicate whether VoteVets paid for the advertisements with soft money.

¹⁰² 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. We do not separately recommend liability for the Committee under the soft money restrictions because a committee's acceptance of excessive contributions is expressly governed by 52 U.S.C. § 30116(f).

¹⁰³ *See also* F&LA at 1-2, MUR 6267 (Jonathan Paton, *et al.*) (finding reason to believe that a candidate's federal committee received prohibited soft money in the form of surveys and polling purchased by the same candidate's non-federal committee).

¹⁰⁴ 11 C.F.R. § 300.2(m).

¹⁰⁵ In this context, an agent includes any person who has actual authority, either express or implied, to solicit, receive, direct, transfer, or spend funds on behalf of a federal candidate in connection with any election. 11 C.F.R. § 300.2(b)(3).

1 VoteVets maintains a non-contribution account for such funds,¹⁰⁶ but neither the Complaint nor
2 the Responses indicate whether funds from that account were used to produce or disseminate
3 “Sunrise.”¹⁰⁷ Finally, it is unclear whether Halle’s request or suggestion should be interpreted as
4 being aimed at VoteVets’s soft money account, in particular.

5 Because more information is needed to assess these potential violations, and given that
6 we anticipate learning more about Halle’s employment and VoteVets’s financing of “Sunrise” in
7 the course of the proposed investigation, we recommend that the Commission take no action at
8 this time with regard to Michael Halle. After reviewing any additional information, we will
9 make appropriate recommendations on potential violations of 52 U.S.C. § 30116(f) and 11
10 C.F.R. § 110.9 regarding alleged receipt of excessive contributions, and 52 U.S.C. § 30125(e)
11 and 11 C.F.R. § 300.61 regarding the alleged solicitation and receipt of soft money.

12 **IV. INVESTIGATION**

13 The investigation would seek to obtain facts regarding the scope of Halle’s employment
14 with the Committee, his considerations in making the tweet, and any instructions he received that
15 related to the tweet. We would also seek information on any steps VoteVets took to monitor
16 Halle’s Twitter account; VoteVets’s knowledge of and reaction to the tweet; whether VoteVets
17 had any relevant private communications with Halle or the Committee; and when and how
18 VoteVets decided to develop and air pro-Buttigieg advertisements in Nevada. Further, we plan
19 to seek additional information to establish the amount in violation. The FCC documents show
20 that VoteVets purchased around \$570,300 in advertising in Nevada, but VoteVets’s independent

¹⁰⁶ VoteVets Form 99; *Carey* Press Release; VoteVets Resp. at 1.

¹⁰⁷ VoteVets Resp.; VoteVets, Amended 24-Hour Report at 1 (Feb. 20, 2020), <https://docquery.fec.gov/pdf/323/202002209186573323/202002209186573323.pdf>.

1 expenditure reporting puts the amount at \$600,000. Relatedly, we plan to seek information on
2 whether VoteVets responded to the tweet by producing and airing additional advertisements in
3 Nevada besides "Sunrise," and, if so, we will obtain relevant information on any such
4 advertisement. Although we plan to begin by using informal investigative methods, we
5 recommend that the Commission authorize the use of compulsory process.

6 **V. RECOMMENDATIONS**

- 7 1. Find reason to believe that VoteVets and Rick Hegdahl in his official capacity as
8 treasurer violated 52 U.S.C. § 30116(a) and 11 C.F.R. § 110.2(b) by making an
9 excessive contribution and violated 52 U.S.C. § 30104(b) and 11 C.F.R.
10 § 104.3(b) by failing to report it;
- 11 2. Find reason to believe that Win the Era PAC (formerly Pete for America) and Ed
12 Jordanich in his official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11
13 C.F.R. § 110.9 by knowingly accepting an excessive contribution and violated
14 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report it;
- 15 3. Take no action at this time as to allegations that Michael Halle violated 52 U.S.C.
16 § 30116(f) and 11 C.F.R. § 110.9, and 52 U.S.C. § 30125(e) and 11 C.F.R.
17 § 300.61;
- 18 4. Approve the use of compulsory process;
- 19 5. Approve the attached Factual and Legal Analyses; and

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6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

08/28/20

Date

Peter Blumberg^{CJP}

Peter Blumberg
Acting Deputy Associate General Counsel for
Enforcement

Claudio Pavia

Claudio J. Pavia
Acting Assistant General Counsel

Laura Conley

Laura Conley
Attorney