



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

November 1, 2023

Via Electronic Mail

bmorgan@capdale.com

Bryson B. Morgan, Esq.
Caplin & Drysdale
One Thomas Circle NW, Suite 1100
Washington, DC 20005

RE: MUR 7982
LUPE Votes

Dear Mr. Morgan:

On April 5, 2022, the Federal Election Commission (the "Commission") notified your client LUPE Votes of a complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

After reviewing the allegations contained in the complaint and publicly available information, the Commission on October 17, 2023, found reason to believe that LUPE Votes violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b) and (c) by failing to timely file 24- and 48-Hour Reports of Independent Expenditures, and 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include sufficient disclaimers on communications. The Commission found no reason to believe that LUPE Votes violated 52 U.S.C. § 30118(a) by making prohibited in-kind contributions in the form of coordinated communications. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

Please note that LUPE Votes has a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that LUPE Votes violated the law. Enclosed is a proposed conciliation agreement for your consideration, [REDACTED]

[REDACTED]

[REDACTED]

If LUPE Votes is interested in engaging in pre-probable cause conciliation, please contact Wanda Brown, the attorney assigned to this matter, at (202) 694-1513 or at wbrown@fec.gov within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for

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Complainants and Respondents on the FEC Enforcement Process,” which is available on the Commission’s website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read 'Dara Lindenbaum', written over a horizontal line.

Dara Lindenbaum
Chair

Enclosures
Factual and Legal Analysis


FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** LUPE Votes**MUR 7982****I. INTRODUCTION**

The Complaint alleges that LUPE Votes, a 501(c)(4) organization, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), when it made expenditures in support of Michelle Vallejo, a candidate in the 15th Congressional District of Texas in 2022, but failed to file 24- and 48-Hour Reports of independent expenditures disclosing the cost of producing and distributing mailers and door hangers supporting Vallejo. The Complaint also alleges that LUPE Votes failed to include complete disclaimers on the mailers and door hangers. More broadly, the complaint alleges that LUPE Votes and Michelle Vallejo for Congress (“Vallejo Committee”) illegally coordinated their spending.

LUPE Votes concedes in its response that it sent mailers and distributed door hangers but did not timely file 24- or 48-Hour Reports of independent expenditures regarding the costs of producing and distributing these communications in advance of the primary election on March 1, 2022; it asserts that its failure to file these reports was unintentional, and, in response to the Complaint, filed the missing reports on August 30, 2022. LUPE Votes also acknowledges that neither communication included complete disclaimers but asserts that both prominently disclosed that they were paid for by LUPE Votes. LUPE Votes requests that the Commission exercise its prosecutorial discretion to dismiss these allegations. In addition, LUPE Votes denies that it impermissibly coordinated communications with Michelle Vallejo, the Vallejo Committee, or any of its agents.

As set forth below, the Commission finds reason to believe that LUPE Votes violated 52 U.S.C. §§ 30104(g) and 30120(a) and 11 C.F.R. §§ 104.4(b) and (c) and 110.11 by failing to timely file 24- and 48-Hour Reports of independent expenditures and by failing to include proper disclaimers on public communications. However, the Commission finds no reason to believe that LUPE Votes coordinated its communications with the Vallejo Committee in violation of 52 U.S.C. § 30118(a).

II. FACTUAL BACKGROUND

LUPE Votes (La Unión Del Pueblo Entero Votes) states that it is a nonprofit 501(c)(4) group organized and incorporated in Texas in October 2021 and is an affiliate of La Unión Del Pueblo Entero (“LUPE”), a 501(c)(3) organization,¹ founded by labor rights activists César Chávez and Dolores Huerta.² Daniel Diaz is a staff member of LUPE Votes³ and described in the Complaint as LUPE Votes’ primary spokesperson and Director of Organizing.⁴ LUPE Votes states it is a “community-based non-profit that is dedicated to winning justice for working-class South Texans through issue advocacy and a certain amount of electoral activity.”⁵ To that end,

¹ La Unión Del Pueblo Entero, Form 990, 2019 Return of Organization Exempt from Income Tax (Nov. 16, 2020), https://apps.irs.gov/pub/epostcard/cor/931029197_201912_990_2021040217864422.pdf. The Internal Revenue Service (“IRS”) notes on its website that it is experiencing delays in updating tax exempt information, and that it is just starting to process paper filings sent in 2021. The organization’s 2019 form 990 is the latest available on the IRS site. There is no filing available for LUPE Votes, which was formed in 2021.

² LUPE Votes Resp. at 1 (Aug. 30, 2022); *see also About LUPE*, <https://lupenet.org> and *About LUPE Votes*, <https://lupevotes.org/about-lupe-votes/> (both last visited Mar. 21, 2023).

³ LUPE Votes Resp. at 8.

⁴ Compl. at 2-3 (Apr. 20, 2022).

⁵ LUPE Votes Resp. at 1; *see About LUPE Votes*, <https://lupenet.org/about-lupe-votes/>. (Last visited Mar. 21, 2023).

LUPE Votes asked its followers on social media to nominate community leaders to run for Congress in Texas's 15th Congressional District and interviewed potential candidates.⁶

Michelle Vallejo filed her Statement of Candidacy for Congress in the 15th Congressional District of Texas and named Michelle Vallejo for Congress as her authorized Committee on December 12, 2021, after LUPE Votes candidate recruitment efforts in November 2021.⁷

After Vallejo declared her candidacy, LUPE Votes endorsed her.⁸ LUPE Votes subsequently made independent expenditures in the form of mailers, door hangers, and canvassing to distribute the door hangers in support of Vallejo's candidacy.⁹ The door hangers, pictured below, included Vallejo's photo, along with the statement "Michelle Vallejo for U.S. Congress" and the dates for early voting and the date of the election.¹⁰ The statement "Paid for by LUPE Votes," printed in a box, appears at the bottom of the door hanger.

⁶ LUPE Votes Resp. at 7; *see* Facebook, LUPE Votes (Nov. 1, 2021) (post includes "#WeThePueblo are taking our district back! Nominate leaders in our community who are ready to fight in Congress for working-class South Texans at wethepueblo.org").

⁷ Michelle Vallejo, Statement of Candidacy (Dec. 12, 2021); Michelle Vallejo for Congress, Amended Statement of Organization (Oct. 15, 2022). Vallejo came in second place in the Democratic primary election on March 1, 2022, won the runoff primary election on May 24, 2022, and lost the general election on November 8, 2022.

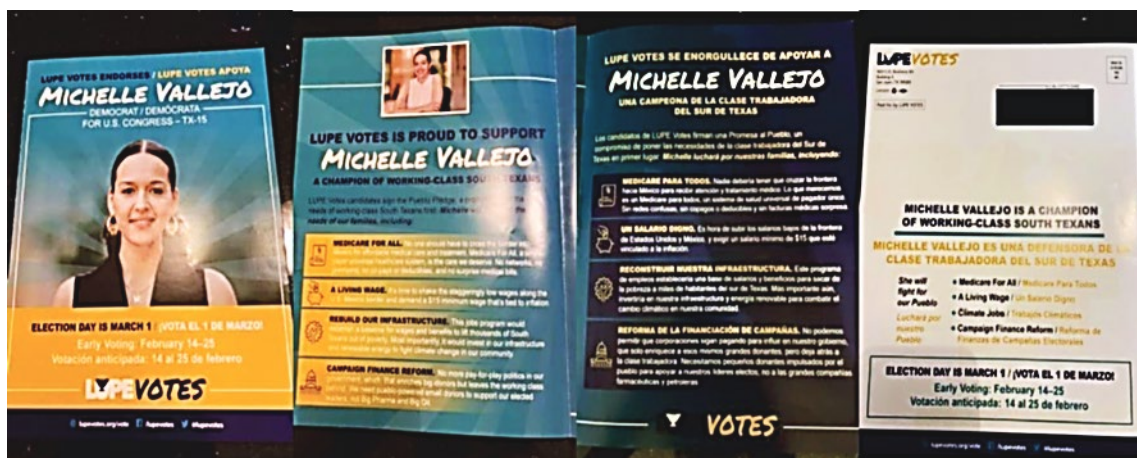
⁸ LUPE Votes Resp. at 7.

⁹ LUPE Votes, 2022 April Quarterly Report at 2 (Aug. 30, 2022), <https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>; LUPE Votes, 24- and 48-Hour Reports of Independent Expenditures (Aug. 30, 2022), <https://docquery.fec.gov/pdf/134/202208309528298134/202208309528298134.pdf>; <https://docquery.fec.gov/pdf/142/202208309528298142/202208309528298142.pdf>.

¹⁰ Compl. at 4, 7.



The mailers, pictured below, included the same information, and a boxed “paid for” statement printed below the return address.¹¹



LUPE Votes disclosed on its 2022 Form 5 April Quarterly Report disbursements made on January 25, 2022, in the amount of \$34,241.61 and on February 15, 2022, in the amount of \$14,431.67, prior to the March 1, 2022, primary election.¹² On August 30, 2022, LUPE Votes

¹¹ *Id.* at 7.

¹² LUPE Votes, 2022 April Quarterly Report at 2 (Aug. 30, 2022), <https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>.

filed a 24-Hour and a 48-Hour Report of Independent Expenditures in support of Vallejo disclosing the January 25 and February 15 expenditures.¹³ After the Complaint in this matter was filed, LUPE Votes filed these independent expenditure reports on August 30, 2022.

III. LEGAL ANALYSIS

A. The Commission Finds Reason to Believe that LUPE Votes Failed to Properly Disclose Independent Expenditures

Committees and other persons that make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election, must file a 24-Hour Report to disclose such independent expenditures by the day following the date on which a communication is publicly distributed or otherwise publicly disseminated.¹⁴ The Act and Commission regulations include a separate requirement to file 48-Hour Reports for Independent Expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election.¹⁵

LUPE Votes acknowledges that it did not timely disclose its independent expenditures in 24- and 48-Hour Reports.¹⁶ Specifically, LUPE Votes reported \$34,241.61 in expenditures on January 25, 2022, that should have been disclosed in a 48-Hour Report of Independent Expenditures, and \$14,431.97 in expenditures on February 15, 2022, prior to Texas's primary

¹³ LUPE Votes, 24- and 48-Hour Reports of Independent Expenditures (Aug. 30, 2022), <https://www.fec.gov/data/committee/C90021304/?tab=filings>. LUPE Votes filed another 24-Hour Report of Independent Expenditure on August 30, 2022, related to activity that is not part of this matter, a \$24,629.36 disbursement for "mail" on May 10, 2022, in support of Vallejo. LUPE Votes had previously disclosed this independent expenditure by 24-hour report on May 11, 2022, and on its 2022 Form 5 July Quarterly Report. LUPE Votes, 24-Hour Report of Independent Expenditure at 2 (May 11, 2022), <https://docquery.fec.gov/pdf/742/202205119502721742/202205119502721742.pdf>; LUPE Votes, 2022 July Quarterly Report at 3 (Aug. 30, 2022), <https://docquery.fec.gov/pdf/126/202208309528298126/202208309528298126.pdf>.

¹⁴ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

¹⁵ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

¹⁶ LUPE Votes Resp. at 5.

election that should have been disclosed in a 24-Hour Report of Independent Expenditures. After the Complaint in this matter was filed, LUPE Votes filed these independent expenditure reports on August 30, 2022. Accordingly, the Commission finds reason to believe that LUPE Votes violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b) and (c) by failing to timely file 24- and 48-Hour Reports of Independent Expenditures.

B. The Commission Finds Reason to Believe that LUPE Votes Failed to Include Sufficient Disclaimers on Public Communications

The Act and Commission regulations require a disclaimer on certain types of communications identifying who paid for the communication and, where applicable, whether a communication was authorized by a candidate.¹⁷ Disclaimers are required on all “public communications” made by any person that expressly advocate the election or defeat of a clearly identified federal candidate.¹⁸ “Public communications” include mass mailings, which are mailings of more than 500 pieces of mail of an identical or substantially similar nature within any 30-day period, and “communication[s] by means of any . . . outdoor advertising facility . . . or any other form of general public political advertising.”¹⁹

If a communication is paid for by a person or entity other than a candidate’s authorized committee, but authorized by a candidate, the candidate’s authorized committee, or an agent of either, the communication must clearly state that it has been paid for by such other persons and authorized by the candidate’s authorized political committee.²⁰ If a communication is not

¹⁷ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)-(c).

¹⁸ 11 C.F.R. § 110.11(a)(2).

¹⁹ 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26. On December 1, 2022, the Commission approved a Final Rule and Explanation and Justification revising its disclaimer requirements at 11 C.F.R. § 100.26 for certain public communications placed for a fee on the internet. 87 Fed. Reg. 77467-77480 (Dec. 19, 2022). The analysis in this matter is not affected by the revisions.

²⁰ 11 C.F.R. § 110.11(b)(2).

authorized by candidate's authorized committee, it must clearly state the name and permanent address, telephone number or website address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.²¹ The disclaimer must be "presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for, and where required, that authorized the communication."²² For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication.²³

LUPE Votes states that it paid a vendor \$14,431.97 for the mailers, which were distributed to "households in Texas' 15th congressional district" and, therefore, appears to be a mass mailing and thus a public communication.²⁴ LUPE Votes also states that it paid \$2,574.95 for the printing of the door hangers that were "distributed throughout the district by volunteers and paid canvassers."²⁵ LUPE Votes paid canvassers \$21,080 to distribute the door hangers.²⁶ The Commission has previously determined that campaign literature distributed to the public at their place of residence constitutes general public advertising and is therefore a public

²¹ *Id.* § 110.11(b)(3).

²² *Id.* § 110.11(c).

²³ *Id.* § 110.11(c)(2).

²⁴ LUPE Votes Resp. at 3.

²⁵ *Id.*

²⁶ LUPE Votes, 2022 April Quarterly Report at 3-10 (Aug. 30, 2022), <https://docquery.fec.gov/pdf/116/202208309528298116/202208309528298116.pdf>. On January 25, 2022, the same day that LUPE Votes paid for the door hangers, it paid 15 individuals for "canvassing." In its response, LUPE Votes states that "paid and volunteer canvassers" distributed the door hangers. *See* LUPE Votes Resp. at 2.

communication.²⁷ Further, the mailers and the door hangers expressly advocate for the election of Vallejo by stating “Michelle Vallejo Democrat For U.S. Congress.”²⁸

Because the door hangers and mailers are public communications that expressly advocate the election of Vallejo, they required disclaimers. Both communications’ disclaimers stated “Paid for by LUPE Votes” but did not state whether the communications were authorized by any candidate or candidate committee.²⁹ LUPE Votes acknowledges that the disclaimers lacked this required candidate authorization statement.³⁰ The Commission previously found reason to believe in MURs 7190/7208 (Alaska Republican Party) that a committee violated the disclaimer requirements on a communication on which the disclaimer stated that it was paid for by the committee but failed to include any candidate authorization statement.³¹

LUPE Votes acknowledges the incomplete disclaimers on its communications, but asks the Commission to dismiss the allegation, citing previous matters dismissed by the Commission where a communication lacked a sufficient disclaimer. Those matters, however, are distinguishable from the matter at hand, as they involved low amounts in violation and all but

²⁷ See Factual and Legal Analysis (“F&LA”) at 6, MUR 6138 (Democrats for Good Government and David Knox) (Commission determined that campaign literature distributed to the public at their place of residence constitutes general public advertising and therefore a public communication); F&LA at 5-7, MUR 4741 (Mary Bono Committee) (same).

²⁸ See 11 C.F.R. § 100.22(a) (a communication contains express advocacy when, among other things, it uses campaign slogans or individual words such as “*Smith for Congress*,” and “*Bill McKay in '94*,” which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate); see also LUPE Votes Resp. at 7 (“the door hanger and direct mail piece contained express advocacy encouraging recipients to vote for Michelle Vallejo in the March 1, 2022 primary election.”).

²⁹ See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(b).

³⁰ LUPE Votes Resp. at 3.

³¹ See F&LA at 5-6, MURs 7190/7208 (Alaska Republican Party). See also MUR 5833 (Ohio Democratic Party) (reason to believe finding where disclaimer stated only “Paid for by the Ohio Democratic Party” and lacked a candidate authorization statement).

one were addressed as EPS dismissals.³² And the other matters cited by LUPE Votes, MURs 7460, 7536, and 7551 (Fair People for Fair Government, Coalition for a Safe Secure America, *et al.*), were addressed by six Commissioners in a Statement of Reasons setting forth the basis of the dismissal as the lack of available information regarding the funding organization and that an investigation would be a poor use of Commission resources.³³ In the instant matter, LUPE Votes makes clear that it paid for the communications and paid canvassers to distribute the door hangers, but admits that the candidate authorization statement was missing from the disclaimer. Finally, the cited matters contained no other allegations, and the Commission made no other determinations.

Accordingly, the Commission finds reason to believe that LUPE Votes violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include complete disclaimers on the mailer and the door hanger.

C. The Commission Finds No Reason to Believe that LUPE Votes Coordinated its Communications with the Vallejo Committee

The Complaint broadly alleges that LUPE Votes and Michelle Vallejo for Congress coordinated their efforts to advocate for Vallejo's election. As support for the allegation, the Complaint alleges that Vallejo and Daniel Diaz, director and treasurer of LUPE Votes, attended the same events and communicated at those events and alleges that Diaz co-hosted a fundraiser

³² LUPE Votes Resp. n.10. *See, e.g.*, MUR 7069 (Ron Hedlund) (alleged disclaimer violation dismissed, with EPS Dismissal Report citing "the fact that it is unlikely the general public would have been misled as to who was responsible for the letter" and the amount in violation was \$900); and MUR 7906 (Charles W. Herbster, *et al.*) (EPS Dismissal Report regarding allegation of failure to include disclaimer on a \$9,000 magazine advertisement).

³³ Statement of Reasons, Comm'rs Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub, MURs 7460, 7536, and 7551 (Fair People for Fair Government, Coalition for a Safe Secure America, *et al.*) (explaining dismissal of alleged disclaimer and reporting violations pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985)). Three Commissioners issued a separate Statement of Reasons. Statement of Reasons, Comm'rs Cooksey, Dickerson, and Trainor, MURs 7460, 7536, and 7551 (Fair People for Fair Government, Coalition for a Safe Secure America, *et al.*).

1 event for Vallejo.³⁴ LUPE Votes does not deny attendance at those events but asserts that the
2 events were widely attended and open to the public such as educational round-tables, voting
3 drives and vaccine clinics, and an awards dinner, and that Diaz and Vallejo did not coordinate at
4 those events.³⁵ LUPE Votes acknowledges that two staff members, including Diaz, hosted a
5 fundraiser for Vallejo, but state that the individuals did so on their own time and not on behalf of
6 LUPE Votes, and that the event was held after the communications at issue were produced and
7 disseminated.³⁶

8 To the extent the Complaint alleges that LUPE Votes' communications were coordinated
9 with the Vallejo Committee, a communication is "coordinated" with a candidate, an authorized
10 committee, or agent thereof, and is treated as an in-kind contribution, if the communication
11 meets a three-part test under the Commission's regulations: (1) payment for the communication
12 by a third party; (2) satisfaction of one of five "content" standards of 11 C.F.R. § 109.21(c); and
13 (3) satisfaction of one of six "conduct" standards of 11 C.F.R. § 109.21(d).³⁷ All three prongs
14 are required for a communication to be considered a coordinated communication.³⁸ As a
15 corporation, LUPE Votes is prohibited from making contributions to federal candidates and their
16 committees, and candidate committees are prohibited from knowingly accepting corporate
17 contributions.³⁹

³⁴ Compl. at 5.

³⁵ LUPE Votes Resp. at 6, 8.

³⁶ *Id.* at 6.

³⁷ 11 C.F.R. § 109.21.

³⁸ *Id.* § 109.21(a).

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

1 LUPE Votes concedes that the communications at issue in the Complaint, the mailer and
2 the door hanger, satisfy the “payment prong” and the “content prong” of the Commission’s
3 coordination test — LUPE Votes paid for the mailer and door hanger that expressly advocate the
4 election of Michelle Vallejo. LUPE Votes denies, however, conduct that would result in
5 coordinated communications.⁴⁰ LUPE Votes asserts that the Complaint fails to assert any
6 specific evidence of impermissible coordination satisfying any conduct standard and argues that
7 the events occurred after the communications were produced and disseminated.⁴¹ While the
8 response does not provide any sworn denials, neither does the record contain any specific
9 allegations of conduct constituting coordination of LUPE Votes’ communications, and we are
10 not otherwise aware of any.⁴² Accordingly, the Commission finds no reason to believe that
11 LUPE Votes coordinated its communications with the Vallejo Committee in violation of
12 52 U.S.C. § 30118(a).

⁴⁰ *Id.* § 109.21(d); LUPE Votes Resp. at 6 and 8.

⁴¹ LUPE Votes Resp. at 7.

⁴² *See* F&LA at 6, MUR 7166 (Nelson for Wisconsin, *et al.*) (dismissing coordination allegation where complaint failed to allege specific facts regarding the conduct standard and finding timing of advertisement was insufficient support for the coordination allegation).