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**WEST GROUP**  
LAW + POLICY

July 28, 2023

Federal Election Commission  
Office of Complaints Examination & Legal Administration  
Attn: Trace Keey  
1050 First Street, NE  
Washington, DC 20463  
*Sent via email: cela@fec.gov*

**RE: MUR 8134 Response on Behalf of Respondents**

Ms. Keeys:

This letter is submitted on behalf of Congresswoman Lauren Boebert, Lauren Boebert for Congress (“Committee”), We The People Leadership PAC (“Leadership PAC”), and Leadership PAC Treasurer Taylor Moose (“Respondents”) in response to the complaint filed by End Citizens United (“Complaint”) in Matter Under Review (“MUR”) 8134.

As a preliminary matter, it is important to note that the Complainant, End Citizens United, presents itself as a public interest watchdog focused on “getting big money out of politics and protecting the right to vote” but is in fact one of the largest political spenders in the country. End Citizens United has spent over \$131 million on Democrat political candidates and causes since it was formed in 2016 and this Complaint is an extension of the entity’s partisan-based political advocacy activities.

The Complaint acknowledges at the outset that it does not include any evidence of a campaign violation but instead speculates that “circumstances indicate” that some combination of named parties “might have” violated a federal campaign finance regulation. The remainder of the Complaint is based on a false assumption that the Leadership PAC made expenditures

advocating for a federal candidate. In reality, and as substantiated by a factual record, the targeted activities were generic GOTV effort designed to encourage citizens to exercise their constitutional right to vote in federal, state and local elections and in no way advocated for or urged a vote for a federal candidate. Therefore, the targeted expenditures were not independent expenditures or in-kind contributions and, instead, were properly reported as GOTV expenditures by the Leadership PAC.

## **I. SUMMARY OF ARGUMENT**

The Complaint targets two Leadership PAC expenditures that paid for text communications sent to Republican, Democrat, and Independent voters encouraging citizens to exercise their constitutional right to vote in upcoming local, state, and federal elections. These communications provided information about government deadlines for casting a ballot and dates for GOTV rallies.

None of these communications urge a vote for or against any candidate. In fact, approximately 90% of the GOTV expenditures targeted in the Complaint do not even include the name of any candidate. The only communication that references a candidate name is requesting voters join that person at a GOTV rally and does not support or advocate for that candidate.

None of the expenditures targeted in the Complaint urge voters to cast a vote for or against any candidate. These GOTV messages, which were sent to registered Republicans, Democrats, and Independents, were properly reported by the Leadership PAC in accordance with the Federal Election Campaign Act as amended by the Bipartisan Campaign Reform Act (“Act”).

As demonstrated in this response: a) the targeted expenditures are not independent expenditures based on the fact that they do not “unambiguously advocate” for the election or



defeat of a clearly identified federal candidate; and b) the targeted expenditures are not in-kind contributions based on the fact that they do not include any content or material designed to influence a voter's choice in the upcoming election.

The Complaint is centered on a series of vague allegations against multiple alternative parties. As demonstrated below, facts demonstrate the targeted activities are in compliance with Federal Election Commission ("Commission" or "FEC") regulations and the Respondents respectfully request the Commission dismiss the Complaint.

## **II. SUMMARY OF ALLEGATIONS**

End Citizens United filed the Complaint on May 4, 2023. Respondents received a notification letter from the Commission regarding the Complaint on May 12, 2023. On May 31, 2023, the Commission granted Respondents' request for additional time to prepare and submit their response, extending the response deadline to July 29, 2023.

Rep. Boebert serves Colorado's Third Congressional District. The Committee is Rep. Boebert's authorized candidate committee.<sup>1</sup> Rep. Boebert is the Leadership PAC's sponsor.<sup>2</sup> Taylor Moose is the Leadership PAC's Treasurer.<sup>3</sup>

The Complaint alleges that the Leadership PAC "spent close to \$60,000 on voter contact calls and texts that the circumstances indicate were likely made in support of Boebert's congressional race or to support the elections of other federal candidates."<sup>4</sup> The Complaint

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<sup>1</sup> Lauren Boebert for Congress, FEC Form 1, Statement of Organization (amended January 31, 2023), available at: <https://docquery.fec.gov/cgi-bin/forms/C00728238/1685865/>.

<sup>2</sup> We The People Leadership PAC, FEC Form 1, Statement of Organization (amended Jan. 31, 2023), available at: <https://docquery.fec.gov/cgi-bin/forms/C00764795/1685875/>.

<sup>3</sup> *Id.*

<sup>4</sup> Complaint pages 1-2.



broadly concludes that these expenditures should have been reported as independent expenditures or in-kind contributions to a candidate committee without providing any facts, evidence, or legal analysis specifying what part or parts of the paid activities qualified as either independent expenditures or in-kind contributions.<sup>5</sup>

### **III. TARGETED EXPENDITURES**

The Complaint generally alleges that two Leadership PAC expenditures violate some provision of federal law.<sup>6</sup> The primary activity that is the focus of the Complaint is a \$53,760.25 payment to Telephone Townhall Meeting, Inc., for “Voter Contact- GOTV Calls/Texts.” These Leadership PAC payments funded the following text messages (“GOTV Messages”), which were sent to registered Republicans, Democrats, and Independents, encouraging voters to cast their ballots for local, state, and federal elections taking place on November 8, 2022:

Every vote matters!  
Don’t forget to drop off your ballot by Tuesday, November 8th! To find your closest drop off location visit  
Vote.GOP  
Text Stop to Opt Out

Every vote matters!  
Don’t forget to drop off your ballot by 7PM TODAY- Tuesday, November 8th!  
To find your closest drop off location visit  
Vote.GOP  
Text Stop to Opt Out

Support your vets, get out and vote for the conservative ticket  
Show your support and remind your friends to Get Out and VOTE!  
Return your ballot IN PERSON, TODAY! IT IS TOO LATE TO DROP IT IN  
THE  
MAIL. Visit vote.gop to find your closest polling location.

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<sup>5</sup> Complaint page 2.

<sup>6</sup> We The People Leadership PAC, 2022 Post General Report (Dec. 8, 2022), available at: <https://docquery.fec.gov/cgi-bin/forms/C00764795/1668306/>



Reply STOP to Opt Out<sup>7</sup>

None of these expenditures urged voters to support or oppose a candidate in a federal election, or even include a candidate's name, and the text messages were sent to registered Republicans, Democrats, and Independents. The smaller expenditure targeted in the Complaint was a payment to Telephone Townhall Meeting, Inc., for "Voter Contact- GOTV Calls/Texts" in the amount of \$6,221.73, which was for text messages sent to registered Republicans, Democrats, and Independents, encouraging voters to attend GOTV rallies being held in specific towns and honoring specific voter segments such as veteran, Christian, women and sportsmen voters. Each of the three GOTV text messages urge voters to attend a GOTV rally encouraging citizens to cast their ballots in local, state, and federal races for the November 8, 2022, election:

Rally With Boebert  
Wednesday, October 5<sup>th</sup>  
Alamosa  
9-10:30am  
Calville's Mexican Restaurant  
400 Main Street  
La Veta  
12-1pm  
7<sup>th</sup> & Main St  
Otero  
3-4pm  
Woodruff Memorial Library  
522 Colorado Ave, La Junta CO  
Trinidad  
5-7:00pm  
Fort Wooten Veterans Square  
204 S Chestnut St

Rally With Boebert  
Wednesday, October 3<sup>rd</sup>

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<sup>7</sup> Leadership PAC's Invoices attached as Exhibit A.



Mesa County Republican Women  
11:30-1:00pm  
The Venue at Fisher's 625 24 ½ Rd, Grand Junction, CO  
For tickets, call Carla at 970-773-4702  
Grand Junction Sign Wave  
1:30-3pm  
Jerry's Outdoor Sports  
2999 North Ave, Grand Junction, CO  
Nucla Eat & Greet  
5:3—7:00pm  
Fort Wooten Veterans Square  
204 Chestnut St

Rally with Boebert  
Tuesday October 4<sup>th</sup>  
Gunnison  
9-10:30am  
The W Café, 114 N Main St  
Lake City  
12-1:30pm  
Baptist Fellowship Hall, 401 Bluff St Creede  
3-4pm  
Wild Beaver Mountain Man Emporium  
243 South Main Street  
Del Norte  
5-6:30pm  
Masonic Lodge, 598 Spruce St<sup>8</sup>

These expenditures do not urge voters to support or oppose a candidate in a federal election and the text messages were sent to registered Republicans, Democrats, and Independents encouraging them to attend a GOTV rally.

The expenditures targeted in the Complaint are Leadership PAC GOTV text messages urging citizens to cast a ballot in the November 8, 2022, general election which included multiple races for local, state and federal political offices. None of these communication urge

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<sup>8</sup> Leadership PAC's Invoice attached as Exhibit B.



voters, directly or indirectly, to vote for or against any federal candidate and approximately 90% of these expenditures did not even include any candidate's name.

The Leadership PAC properly reported these as itemized disbursements for "get out the vote" efforts in its regular reporting to the FEC.

#### **IV. LEGAL ANALYSIS**

##### **A. The Payments are not Independent Expenditures**

The payments set forth in Exhibit A and Exhibit B were not independent expenditures because the communications did not unambiguously advocate the election or defeat of a clearly identified federal candidate.<sup>9</sup> There is no part these communications that could be interpreted as *unambiguously advocating* for voters to cast their vote for a specific candidate. The vast majority of the expenditures, those set forth in Exhibit A, do not even reference a candidate. The secondary expenditure, set forth in Exhibit B, only reference a candidate's name in the context of encouraging voters to join in attendance at a GOTV rally. The payments were properly reported as "get out the vote" efforts by the Leadership PAC.

##### **B. The Payments are not In-Kind Contributions**

The payments set forth in Exhibit A and Exhibit B are not in-kind contributions from the Leadership PAC to the Committee because they did not have the have the purpose of influencing a vote for a particular federal candidate. Federal regulations and FEC rulings make clear that, for the payment to qualify as an in-kind contribution, it must include specific content that is "designed to influence the [voter's] choices in an election." The expenditures targeted in by the

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<sup>9</sup> See 11 CFR 100.22.



Complaint do not include any content or material designed to influence a voter’s choice in the upcoming election.

Under federal law, a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office.*”<sup>10</sup> Not every expense made by a political committee during or near an election is a contribution, and the Commission has previously explained that the purpose of influencing a federal election is a necessary element in defining whether a payment is a contribution.<sup>11</sup> The Act does not define the term “for the purpose of influencing a federal election.” In analyzing whether a payment made by a third party is a contribution, the question is whether the donation, payment, or service was “provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”<sup>12</sup>

Communications that provide a benefit to a campaign but do not have the purpose of influencing a vote for a particular candidate are not contributions. For example, newsletters distributed by a candidate would be considered expenditures for the purpose of influencing the candidate’s election to Congress “if they had ‘campaign related content’ or were otherwise used as campaign communications.”<sup>13</sup> In another example, the Commission determined that messages financed by a PAC that featured images of a candidate and repeatedly mentioned the candidate’s name and identified the federal office he held were “designed to influence the [voter’s] choices

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<sup>10</sup>52 U.S.C. § 30101(8)(A)(i) (emphasis added); *see also* 11 C.F.R. § 100.52(a).

<sup>11</sup> Notification with Factual and Legal Analysis to A360 Media, LLC, formerly American Media, Inc. and David J. Pecker, FEC MUR 7324, at 12.

<sup>12</sup> FEC Factual and Legal Analysis, MUR 7324, at 12; and see MUR 7024, at 6 (Van Hollen for Senate, *et al.*).

<sup>13</sup> MUR 7024 at 7 (Van Hollen for Senate, *et al.*) and FEC Advisory Opinion 1990-05 (Mueller).



in an election” and were considered to be for the purpose of influencing a Federal election.<sup>14</sup> In the instance addressed in MUR 8134, the communications did not have the purpose of influencing a vote for a particular federal candidate.

Furthermore, a leadership PAC “is not an authorized committee of the candidate or individual and...is not affiliated with an authorized committee of the candidate or individual.”<sup>15</sup> The Leadership PAC does not presumptively support its sponsor’s election efforts, in fact, the opposite is true. A leadership PAC is “established by an elected official to support other candidates and party committees and to fund other political pursuits of the officeholder apart from his own re-elections.”<sup>16</sup> Many members of Congress establish a leadership PAC that “they can use to help other like-minded politicians across the country get elected” including GOTV activities encouraging citizens to vote in an upcoming election.<sup>17</sup>

The Leadership PAC itself made direct monetary political contributions to 53 candidate committees in federal and state races during the 2021-2022 election cycle.<sup>18</sup> Although the Complaint alleges that the GOTV Messages were “likely made in support of Boebert’s congressional race,” the facts demonstrate that the GOTV Messages did not urge voters to support any candidate.

The GOTV Messages were generic appeals to voters engaging in local, state, and federal races to cast a vote or attend a GOTV rally. These messages did not have the purpose of

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<sup>14</sup> See FEC Advisory Opinion 1983-12 (National Conservative PAC).

<sup>15</sup> 11 C.F.R. § 100.5(f)(1).

<sup>16</sup> *All. for Democracy v. FEC*, 362 F. Supp. 2d 138, 139 n.2 (D.D.C. 2005) (citations omitted).

<sup>17</sup> *Delay v. State*, 465 S.W.3d 232, 236 n.8 (Tex. Crim. App. 2014); and see e.g. FEC Advisory Opinion 2011-21 (Constitutional Conservatives Fund PAC).

<sup>18</sup> We The People Leadership PAC, Disbursements from January 01, 2021 to December 31, 2022. , available at: <https://www.fec.gov/data/committee/C00764795/?tab=spending>.



influencing a federal election or specifically influencing Rep. Boebert's congressional election. The expenditures were not designed to and did not have the purpose of influencing a vote for a particular federal candidate. The payments were properly reported as a GOTV expenditure by the Leadership PAC. Therefore, the expenditures serving as the basis for the Complaint are not in-kind contributions to the Committee.

### **C. In-Kind Contributions Must be Allocated According to Benefit**

While there appears to be no basis for such a finding in this matter, even if the Commission determines that a GOTV expenditure qualifies as an in-kind contribution to a federal candidate, only a portion of the payment can be attributed to a single candidate.

The GOTV Messages did not support any single candidate and urged voters to cast a ballot in an election that involved multiple candidates, including federal, state and local candidates.<sup>19</sup> In-kind contributions made on behalf of more than one candidate are allocated among the candidates "according to the benefit reasonably expected to be derived."<sup>20</sup> For instance, any political party based GOTV that qualifies as in-kind contribution would be allocated among all of party candidates on the ballot in the GOTV targeted district(s).

In this case, there appears to be no factual or legal basis to conclude that the GOTV Messages set forth in Exhibit A or Exhibit B are in-kind contributions based on the fact they do not have any content designed to influence a vote for a particular federal candidate. Even if a part of the GOTV Messages were somehow deemed an in-kind contribution, the amount attributed to any one candidate would have to be allocated among all of party candidates on the ballot since

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<sup>19</sup> *Cao v. FEC*, 688 F. Supp. 2d 498, 528 (E.D. La. 2010) (citations omitted).

<sup>20</sup> 11 CFR § 106.1(a).



the GOTV activity subject to the Complaint encouraged voters to participate in an election that included multiple candidates on the ballot, including two federal candidate races and, depending upon the location of the recipient, approximately fourteen candidate races at the state and local levels.<sup>21</sup> The value of the messages should be allocated accordingly, with only a portion possibly allocable as an in-kind contribution to any one candidate.

## **V. CONCLUSION**

Based on the facts set forth above, Respondents request that the Commission dismiss the Complaint. Thank you for considering these facts and materials in reviewing the validity of the Complaint. Please contact me if we can provide additional information at this time.

Sincerely,



Jonathan Anderson  
Counsel to Respondents

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<sup>21</sup> See e.g. November 8, 2022 General Election Official Results for Mesa County, Colorado, available at: <https://results.enr.clarityelections.com/CO/Mesa/115943/web.307039/#/summary>.



**EXHIBIT A**



TTHM  
958 Coneflower Dr  
Golden, CO 80401  
303.813.0800

# Invoice

Date	Invoice #
11/2/2022	10482
Due Date	TTHM Date
12/2/2022	11/1/2022

## Bill To

WE THE PEOPLE  
1334 Conifer Trail  
Elizabeth, CO 80107

11/28/2022

Project	P.O. No.	
10482 - 4 Double MMS Texting		
Description	Qty	Amount
Setup and reply to texts	4	1,800.00
Peer to peer Double MMS texting GOTV Rally 10/31/22	29,187	7,296.75
Peer to peer Double MMS texting Delta 11/1/22	7,440	1,860.00
Peer to peer Double MMS texting Ouray 11/1/22	1,108	277.00
Peer to peer Double MMS texting Archuleta 11/1/22	3,467	866.75
Support your vets, get out and vote for the conservative ticket Show your support and remind your friends to Get Out and VOTE! Return your ballot IN PERSON, TODAY! IT IS TOO LATE TO DROP IT IN THE MAIL. Visit <a href="http://vote.gop">vote.gop</a> to find your closest polling location. Reply STOP to OptOut Out-of-state sale, exempt from sales tax		0.00
Thank you for your business.		
	<b>Total</b>	\$12,100.50
Telephone Townhall Meeting, Inc	Curt Cerveny	Email: <a href="mailto:Curt@tthm.us">Curt@tthm.us</a>
		c. 720.273.1381
		Website: <a href="http://TTHM.com">TTHM.com</a>



TTHM  
958 Coneflower Dr  
Golden, CO 80401  
303.813.0800

# Invoice

Date	Invoice #
11/4/2022	10496
Due Date	TTHM Date
12/4/2022	11/4/2022

**Bill To**

WE THE PEOPLE  
1334 Conifer Trail  
Elizabeth, CO 80107

11/28/2022

Project	P.O. No.	
10496 - 5 Double MMS Texting		
Description	Qty	Amount
Setup and reply to texts	5	2,250.00
Peer to peer Double MMS texting Las Animas 11/3/2022	2,602	650.50
Peer to peer Double MMS texting Otero 11/3/22	2,604	651.00
Peer to peer Double MMS texting Pueblo 11/3/22	24,212	6,053.00
Peer to peer Double MMS texting Eagle 11/3/22	1,434	358.50
Peer to peer Double MMS texting Montrose 11/4/22	6,350	1,143.00
Support your vets, get out and vote for the conservative ticket Show your support and remind your friends to Get Out and VOTE! Return your ballot IN PERSON, TODAY! IT IS TOO LATE TO DROP IT IN THE MAIL. Visit <a href="http://vote.gop">vote.gop</a> to find your closest polling location. Reply STOP to OptOut Out-of-state sale, exempt from sales tax		0.00
Thank you for your business.		
	<b>Total</b>	\$11,106.00
Telephone Townhall Meeting, Inc	Curt Cerveny	Email: <a href="mailto:Curt@tthm.us">Curt@tthm.us</a>
		c. 720.273.1381
		Website: <a href="http://TTHM.com">TTHM.com</a>



TTHM  
958 Coneflower Dr  
Golden, CO 80401  
303.813.0800

# Invoice

Date	Invoice #
11/8/2022	10516
Due Date	TTHM Date
12/8/2022	11/7/2022

## Bill To

WE THE PEOPLE  
1334 Conifer Trail  
Elizabeth, CO 80107

11/28/2022

Project	P.O. No.	
10516 - Two GOTV Double MMS Texts		
Description	Qty	Amount
Setup and reply to texts Peer to peer Double MMS texting GOTV 11/7/2022 Every vote matters! Don't forget to drop off your ballot by Tuesday, November 8th! To find your closest drop off location visit Vote.GOP Text Stop to Opt Out Peer to peer Double MMS texting GOTV 11/8/2022 Every vote matters! Don't forget to drop off your ballot by 7PM TODAY- Tuesday, November 8th! To find your closest drop off location visit Vote.GOP Text Stop to Opt Out Out-of-state sale, exempt from sales tax	2 61,492 57,123	900.00 15,373.00 14,280.75 0.00
Thank you for your business.		
	<b>Total</b>	\$30,553.75
Telephone Townhall Meeting, Inc	Curt Cerveny	Email: Curt@tthm.us
		c. 720.273.1381
		Website: TTHM.com

**EXHIBIT B**



TTHM  
958 Coneflower Dr  
Golden, CO 80401  
303.813.0800

# Invoice

Date	Invoice #
10/6/2022	10370
Due Date	TTHM Date
11/5/2022	10/4/2022

Bill To
We The People PAC 1334 Conifer Trail Elizabeth, CO 80107

Project	Description	Qty	Amount	P.O. No.
	10370 - Oct 2022 Texting & Robocall			
Setup		1	100.00	
Precall		11,118	444.72	
Setup and reply to texts		3	1,350.00	
Peer to peer SMS+MMS texting for 10/03 Rally		17,572	2,987.24	
Peer to peer SMS+MMS texting for 10/4 Rally		3,428	582.76	
Peer to peer SMS+MMS texting for 10/5 Rally		4,453	757.01	

Thank you for your business.

**Total**

\$6,221.73

Telephone Townhall Meeting, Inc	Curt Cerveny	Email: Curt@tthm.us	c. 720.273.1381	Website: TTHM.com
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