



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

July 30, 2024

**VIA EMAIL**

[ja@westglp.com](mailto:ja@westglp.com)

Jon Anderson, Esq.  
West Group  
6501 E. Belleview Ave.  
Suite 375  
Denver, CO 80111

RE: MUR 8134  
Lauren Boebert for Congress,  
*et al.*

Dear Mr. Anderson:

On May 12, 2023, the Federal Election Commission notified your clients, Representative Lauren Boebert, Lauren Boebert for Congress and Taylor Moose in her official capacity as treasurer, and We the People Leadership PAC and Taylor Moose in her official capacity as treasurer of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients the Commission, on June 27, 2024, voted to dismiss the allegations in this matter. Accordingly, the Commission voted to close the file, effective July 30, 2024. Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

MUR 8134 (Lauren Boebert for Congress *et al.*)

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If you have any questions, please contact Cheryl Hemsley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Ana J. Peña-Wallace".

Ana J. Peña-Wallace

Assistant General Counsel

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Lauren Boebert **MUR 8134**  
 Lauren Boebert for Congress and Taylor Moose in  
 her official capacity as treasurer  
 We the People Leadership PAC and Taylor Moose  
 in her official capacity as treasurer

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission.<sup>1</sup>

The Complaint alleges that We the People Leadership PAC and Taylor Moose in her official capacity as treasurer (the “Leadership PAC”) violated the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations when the Leadership PAC spent \$59,981.98 on voter contact calls and text messages that seemingly supported Lauren Boebert’s candidacy, but failed to accurately report the expenditures, either as independent expenditures or as in-kind contributions to Lauren Boebert for Congress and Taylor Moose in her official capacity as treasurer (the “Boebert Committee”). The Complaint bases these allegations on the timing of payments that each committee made to the same vendor.

The Respondents assert that the Leadership PAC’s expenditures consisted of get out the vote (“GOTV”) communications and provide copies of invoices containing details of some of the text messages to support this assertion. Respondents further contend that the expenditures made for the communications in question do not qualify as independent expenditures, nor were they in-kind contributions to the Boebert Committee; and if they were, that the cost of such contributions must be allocated among all candidates on the ballot in Colorado’s 3rd Congressional District.

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<sup>1</sup> See 52 U.S.C. § 30109(a)(1).

As discussed below, the Commission dismisses the allegation that the Leadership PAC failed to report each of the text messages as independent expenditures in violation of 52 U.S.C. § 30104(b)(4)(H), (g) and 11 C.F.R. §§ 104.3 and 104.4. The Commission also dismisses the allegations that the Leadership PAC made, and that Boebert and the Boebert Committee knowingly accepted, an excessive in-kind contribution in violation of 52 U.S.C. § 30116 in connection the text messages at issue, and that the Leadership PAC and the Boebert Committee failed to report the expenditure as an in-kind contribution in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.13.

## II. FACTUAL BACKGROUND

Lauren Boebert for Congress is the principal campaign committee for Lauren Boebert, Representative from Colorado's 3rd Congressional District. Boebert was a candidate for re-election on November 8, 2022.<sup>2</sup> We the People Leadership PAC is Lauren Boebert's leadership PAC.<sup>3</sup> Taylor Moose serves in her official capacity as treasurer for both committees.

Telephone Town Hall Meeting, Inc. (the "Vendor"), is a Colorado company that provides, among other things, mass outreach services for businesses, labor unions, school districts, municipalities, candidates and legislators.<sup>4</sup> According to its disclosure reports, the

<sup>2</sup> Lauren Boebert, Statement of Candidacy (Mar. 30, 2021), <https://docquery.fec.gov/pdf/385/202103309442615385/202103309442615385.pdf>; Lauren Boebert for Congress, Amended Statement of Organization (Apr. 14, 2022), <https://docquery.fec.gov/pdf/979/202204149496141979/202204149496141979.pdf>. In December 2023, Boebert announced that she will be running in Colorado's 4th Congressional District, rather than the 3rd, for the 2024 election. See Lauren Boebert for Congress, *My 2024 Election Plans*, FACEBOOK (Dec. 27, 2023), <https://www.facebook.com/laurenboebert/videos/922694348801746>. See also, Laurent Boebert, Amended 2024 Statement of Candidacy (Jan. 3, 2024), <https://docquery.fec.gov/pdf/855/202401039599942855/202401039599942855.pdf>.

<sup>3</sup> See We the People Leadership PAC, Amended Statement of Organization (Apr. 14, 2022), <https://docquery.fec.gov/pdf/306/202204149496141306/202204149496141306.pdf>. A "leadership PAC" is defined as a political committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for federal office or an individual holding federal office. A leadership PAC is not an authorized committee of the candidate and is not affiliated with the candidate's authorized committees. "Leadership PAC" does not include a political party of a political committee. See 52 U.S.C. § 30104(i)(8)(B); see also 11 C.F.R. § 100.5(e)(6).

<sup>4</sup> See TELEPHONE TOWN HALL MEETING, <https://tthm.com/> (last visited May 6, 2024).

Boebert Committee has reported 11 disbursements to the Vendor since 2020.<sup>5</sup> During the 2022 election cycle, the Boebert Committee made one payment of \$4,623 for “text message advertising.”<sup>6</sup> The Leadership PAC used the Vendor’s services twice since it registered with the Commission, both times in the 2022 election cycle, paying a total of \$59,981.98 for “Voter Contact — GOTV calls/Texts.”<sup>7</sup>

The Complaint alleges that the Leadership PAC failed to accurately report the two disbursements made to the Vendor for “Voter Contact — GOTV Calls/Texts.”<sup>8</sup> The Complaint bases its allegation on the fact that both committees reported making disbursements to the Vendor on the same day,<sup>9</sup> and posits that “the proximity of the communications to the election, the cost of the disbursement, and the purpose of the disbursement for “Voter Contact – Rally

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<sup>5</sup> See *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00728238&recipient\\_name=telephone+town+hall+meeting&two\\_year\\_transaction\\_period=2020&two\\_year\\_transaction\\_period=2022&two\\_year\\_transaction\\_period=2024](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00728238&recipient_name=telephone+town+hall+meeting&two_year_transaction_period=2020&two_year_transaction_period=2022&two_year_transaction_period=2024) (last visited May 6, 2024) (showing all payments from the Boebert Committee to the Vendor including six payments in 2020, one payment in 2022, and four payments in 2023); Lauren Boebert for Congress, 2022 Post-General Election Report, Sched. B at 901 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/656/202212089550161656/202212089550161656.pdf>.

<sup>6</sup> Lauren Boebert for Congress, 2022 Post-General Election Report, Sched. B at 901 (Dec. 8, 2022) <https://docquery.fec.gov/pdf/656/202212089550161656/202212089550161656.pdf>.

<sup>7</sup> See *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00764795&recipient\\_name=telephone+town+hall+meeting&recipient\\_name=telephone+townhall&two\\_year\\_transaction\\_period=2024&two\\_year\\_transaction\\_period=2022&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00764795&recipient_name=telephone+town+hall+meeting&recipient_name=telephone+townhall&two_year_transaction_period=2024&two_year_transaction_period=2022&two_year_transaction_period=2020) (last visited May 6, 2024) (showing payments made by the Leadership PAC to the Vendor on October 28, 2022 and November 18, 2022); We the People Leadership PAC, 2022 Post-General Election Report, Sched. B at 11-12 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/715/202212089547554715/202212089547554715.pdf>. “

<sup>8</sup> Compl. at 1-2 (May 4, 2022).

<sup>9</sup> The Complaint cites the committees’ disclosure report entries as support for its allegations: (1) an October 28, 2022 payment from the Boebert Committee to the Vendor in the amount of \$4,623 for “text message advertising”; (2) an October 28, 2022 payment from the Leadership PAC to the Vendor in the amount of \$6,221.73 for “Voter Contact — GOTV Calls/Texts”; and (3) a November 18, 2022 payment from the Leadership PAC to the Vendor in the amount of \$53,760.25 for “Voter Contact — GOTV Calls/Texts.” See Lauren Boebert for Congress, 2022 Post-General Election Report, Sched. B at 901 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/656/202212089550161656/202212089550161656.pdf>; see also We the People Leadership PAC, 2022 Post-General Election Report, Sched. B at 11-12 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/715/202212089547554715/202212089547554715.pdf>; Resp., Ex. A. (July 31, 2023) [hereinafter GOTV Invoices](reflecting paid invoices from the Vendor to the Leadership PAC for GOTV text messages). The \$53,760.25 disbursed on October 28, 2022, is the sum of three invoices in the amounts of \$12,100.50, \$11,106.00, and \$30,553.75.

1 Messages/Texts” make it seem likely that “the text messages and voter contact phone calls  
 2 mentioned candidates or political parties and may have run in Boebert’s congressional district.”<sup>10</sup>  
 3 The Complaint does not provide copies or details of the text messages to support its ultimate  
 4 conclusion that the text messages and phone calls at issue were either independent expenditures  
 5 or in-kind contributions.

6 Respondents submitted a joint response to the Complaint.<sup>11</sup> The Response argues that the  
 7 Leadership PAC’s expenditures for the communications in question are not independent  
 8 expenditures because “they do not ‘unambiguously advocate’ for the election or defeat of a  
 9 clearly identified federal candidate;” and are not in-kind contributions because “they do not  
 10 include any content or material designed to influence a voter’s choice in the upcoming  
 11 election.”<sup>12</sup> The Response further states that all of the text messages were “GOTV  
 12 communications.”<sup>13</sup> Finally, the Response notes that the text messages were sent to registered  
 13 Republicans, Democrats, and Independents and were reported accurately.<sup>14</sup>

14 The Response also includes the content of six unique text messages. Three text  
 15 messages, paid for on November 18, 2022 (the “GOTV Messages”),<sup>15</sup> each reminded the  
 16 recipient to turn in their ballots in a timely manner, directing the recipients to “vote.gop”<sup>16</sup> and to

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<sup>10</sup> See Compl. at 4.

<sup>11</sup> Resp.

<sup>12</sup> *Id.* at 3

<sup>13</sup> *Id.*

<sup>14</sup> See *id.* at 5.

<sup>15</sup> See *id.* at 4.

<sup>16</sup> VOTEGOP, <https://vote.GOP> (last visited May 6, 2024) (reflecting website paid for by the Republican National Committee requiring the user to input a mailing address, email address, and telephone number to move beyond the homepage and find the information regarding ballot drop and polling station locations).

1 “find your nearest drop off location” or “closest polling station.”<sup>17</sup> The Response states that  
 2 these messages were made for the purpose of reminding “citizens to cast their ballots in local,  
 3 state, and federal races for the November 8, 2022[] election.”<sup>18</sup> Based on details provided in the  
 4 invoices attached to the Response, it appears that these text messages were sent between  
 5 October 31 and November 8, 2022.<sup>19</sup>

6 Three others text messages (the “Rally Messages”) were each entitled “Rally with  
 7 Boebert” and contained the dates, location and time of rallies held on October 3, 4, and 5,  
 8 2022.<sup>20</sup> The Leadership PAC reported spending \$6,221.73 in connection with these messages.<sup>21</sup>  
 9 The Response states these text messages were for the purposes of encouraging “voters to attend  
 10 GOTV rallies held in specific towns and honoring specific voter segments such as veteran,

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<sup>17</sup> Resp. at 4-5. Two of these three messages started with “Every vote matters!” and were otherwise similar. The third began “Support your vets, get out and vote for the conservative ticket[.] Show your support and remind your friends to Get Out and VOTE!” and then proceeded similarly to the other two messages. These three messages appear to have been sent only to individuals residing within Colorado’s 3rd Congressional District. See GOTV Invoices (specifying counties targeted for the text messages); see also *Final Approved Congressional Plan*, COLO. INDEP. REDISTRICTING COMM’NS, <https://redistricting.colorado.gov/content/congressional-final-approved> (last visited May 6, 2024) [hereinafter Redistricted Colorado 3rd Map] (scroll down to “District Maps and Data” and select “download CD3\_Final\_Approved\_Plan.pdf”).

<sup>18</sup> Resp. at 5.

<sup>19</sup> GOTV Invoices.

<sup>20</sup> Resp. at 5-6.

<sup>21</sup> See *id.*, Ex. B [hereinafter Rally Invoices] (reflecting invoices from the Vendor to the Leadership PAC for the Rally Messages); see also We the People Leadership PAC, 2022 Post-General Election Report, Sched. B at 11-12 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/715/202212089547554715/202212089547554715.pdf>.

Christian, women[,] and sportsmen voters.”<sup>22</sup> Information about the rallies held on those dates was also posted on the Boebert Committee’s Facebook page.<sup>23</sup>

The Response includes invoices from the Vendor to the Leadership PAC. The invoice for the GOTV Messages specifies when and to what geographical area those text messages were sent, while the invoice for the Rally Messages does not contain that information.<sup>24</sup> The Response did not include an invoice for, or any information about, the Boebert Committee’s expenditures for “text message advertising” paid for on October 28, 2022.

The Response argues that, even if the Leadership PAC’s expenditures are found to qualify as in-kind contributions, “only a portion of the payment can be attributed to a single candidate”<sup>25</sup> since 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>26</sup> Specifically, the Response states that the ballot for the November 8, 2022 general election

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<sup>22</sup> Resp. at 5.

<sup>23</sup> Boebert’s Facebook page showed posts for the rallies and a photo of one of the rallies on October 1, 4, and 5, 2022. See Lauren Boebert for Congress, FACEBOOK (Oct. 1, 2022), <https://www.facebook.com/photo/?fbid=666204288437667&set=pb.100051443048003.-2207520000> (including image advertising three events under the heading “Rally with Boebert”); Lauren Boebert for Congress, FACEBOOK (Oct. 4, 2022), <https://www.facebook.com/laurenboebert/posts/pfbid0U6hyLURvgA2eXCYmne9vKyzJMbvpRM66u5A1cksiwCVE2a7suVXstWZWY5yWDCF9l> (posting photos with the caption “Lots of patriotic energy in Mesa County”); Lauren Boebert for Congress, FACEBOOK (Oct. 5, 2022), <https://www.facebook.com/photo.php?fbid=667844838273612&set=pb.100051443048003.-2207520000&type=3> (including an image advertising events with the caption “More rally stops today!”). Boebert’s X (formerly known as Twitter) and Instagram postings from around the time at issue reflect no further relevant information.

<sup>24</sup> GOTV Invoices; Rally Invoices. It appears that the GOTV Messages were all sent to recipients in counties within Colorado’s 3rd Congressional District. See GOTV Invoices (noting “texting” Delta, Ouray, Archuleta, Las Animas, Otero, Pueblo, Eagle, and Montrose”); see also Redistricted Colorado 3rd Map (showing the following counties as part of Colorado’s 3rd Congressional District in 2022: Alamosa, Archuleta, Conejos, Costilla, Delta, Dolores, Garfield, Gunnison, Hinsdale, Huerfano, La Plata, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Ouray, Pitkin, Pueblo, Rio Blanca, Rio Grande, Saguache, Sanjuan, San Miguel, and part of Eagle).

<sup>25</sup> Resp. at 10-11.

<sup>26</sup> *Id.* at 10 (quoting 11 C.F.R. § 106.1(a)).



included candidates for multiple elections, including two federal elections and approximately 14 races at the state and local level, depending on location.<sup>27</sup>

### III. LEGAL ANALYSIS

#### A. The Commission Dismisses the Allegations That the Leadership PAC Made and Failed to Properly Report Independent Expenditures

The Act and Commission regulations define “independent expenditure” as “an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate . . . that is not made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or their agents.”<sup>28</sup> A communication contains express advocacy when, among other things, it uses campaign slogans or individual words that in context can have no other reasonable meaning than to urge the election or defeat of a clearly identified federal candidate.<sup>29</sup> Further, “communications discussing or commenting on a candidate’s character, qualifications or accomplishments are considered express advocacy under section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question.”<sup>30</sup>

Under the Act and Commission regulations, political committees other than authorized committees must report their independent expenditures.<sup>31</sup> Every political committee that makes

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<sup>27</sup> *See id.* at 11.

<sup>28</sup> *See* 11 C.F.R. § 100.16(a); *see also* 52 U.S.C. § 30101(17).

<sup>29</sup> *See* 11 C.F.R. § 100.22(a) (providing examples such as “vote for the President,” “re-elect your Congressman,” “‘vote Pro-Life’ or ‘vote Pro-Choice’ accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice”).

<sup>30</sup> *Id.*, § 100.22(b); *see also* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,295 (July 6, 1995).

<sup>31</sup> 52 U.S.C. § 30104(b)(4)(H)(iii); *see also* 11 C.F.R. § 104.3(b)(1)(vii).

independent expenditures must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).<sup>32</sup> Depending on the aggregate dollar amounts and timing of the independent expenditures, a political committee that makes or contracts to make independent expenditures must also report the independent expenditures within 24 or 48 hours.<sup>33</sup>

None of the text messages identified in the Response contain express advocacy. The messages concerning rallies clearly refer to Boebert, but do not advocate for her election or defeat. Each message begins with “Rally with Boebert” followed by the date of the rally and the times and locations of the rallies for that day.<sup>34</sup> Two of the three GOTV Messages appear to have been sent just prior to the November 8, 2022 election day. These messages state, “Every Vote Matters! Don’t forget to drop off your ballot by [election day]! To find your closest drop off location visit [vote.gop](https://www.vote.gop).”<sup>35</sup> The final GOTV message appears to have been sent on election day. It begins with “Support your vets, get out and vote for the conservative ticket[.] Show your support and remind your friends to Get Out and VOTE!”<sup>36</sup> This is followed by the exhortation to return the ballot in person and the invitation to visit the [vote.GOP](https://www.vote.GOP) website “to find the closest polling station.”<sup>37</sup>

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<sup>32</sup> 11 C.F.R. § 104.4(a).

<sup>33</sup> A political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report these expenditures within 48 hours. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election must report the expenditures within 24 hours. 52 U.S.C. § 30104(g)(1); 11 C.F.R. §§ 104.4(c), 109.10(d).

<sup>34</sup> Resp. at 5.

<sup>35</sup> *Id.* at 4.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

While the GOTV Messages could be read to contain an exhortation to vote for clearly identified candidates by including the website name “vote.GOP” and a reference to the “conservative ticket,” the overall focus of these messages appears to be to remind voters to turn in their ballots in time to be counted for the election. The language “vote the conservative ticket” in the third message appears to be similar to the example in 11 C.F.R. § 100.22(a) in which referencing a candidate by their platform or beliefs should be “accompanied by a listing of candidates described as “conservative.”<sup>38</sup> Here, there is no such listing of candidates supporting veterans who are part of the “conservative ticket.” Taken in context, the overall meaning of the GOTV Messages reasonably may be seen as more in keeping with a typical get-out-the-vote message rather than advocating for the election or defeat of a clearly identified candidate.

Accordingly, the Commission dismisses the allegations that the Leadership PAC violated 52 U.S.C. § 30104(b)(4)(H), (g) and 11 C.F.R. § 104.3 and 104.4 by failing to report the payments for the GOTV and Rally Messages as independent expenditures.

**B. The Commission Dismisses the Allegations That the Leadership PAC Made, and That Boebert and the Boebert Committee Accepted, Excessive In-Kind Contributions in Connection with the Text Messages, and that Both Committees Failed to Properly Report Those In-Kind Contributions**

The Complaint alleges, in the alternative, that the Leadership PAC coordinated with Boebert and her committee by sending the text messages, which resulted in excessive in-kind contributions to the Boebert Committee.<sup>39</sup> The Complaint points to the fact that each committee made payments to the same vendor, as well as to the timing of the payments, as support for the allegations.

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<sup>38</sup> See *supra* n.29.

<sup>39</sup> See Compl. at 4; see also 52 U.S.C. § 30116(a), (f) (prohibiting the making and acceptance of contributions exceeding \$5,000 per election from political committees to candidate committees).

Commission regulations provide a three-part test for determining when a communication is a “coordinated communication.”<sup>40</sup> Under Commission regulations, the communication must: (1) be paid for, in whole or in part, by a person other than the candidate or authorized committee; (2) satisfy one of the content standards at 11 C.F.R. § 109.21(c);<sup>41</sup> and (3) satisfy the “conduct” standards at 11 C.F.R § 109.21(d). All three prongs must be satisfied for a communication to be considered coordinated under the Commission’s regulations.<sup>42</sup> Expenditures made for coordinated communications are treated as in-kind contributions from the person making the expenditure to the candidate.<sup>43</sup>

#### 1. The GOTV Messages

Here, the GOTV Messages do not appear to satisfy the conduct prong. The six types of conduct between the payor and the candidate’s committee, whether or not there is formal agreement or collaboration, which can satisfy the conduct prong, are: (1) a request or suggestion; (2) material involvement; (3) substantial discussion; (4) use of a common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution or republication of campaign material.<sup>44</sup>

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<sup>40</sup> See 11 C.F.R. § 109.21.

<sup>41</sup> The content prong is satisfied if the communication is (1) an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in that candidate’s jurisdiction 90 days or fewer before the election in which that candidate is participating; and (5) a public communication that references a political party, does not refer to a clearly identified federal candidate, and is publicly distributed or disseminated in that candidate’s jurisdiction within 90 days of the election in which the candidate is participating.

<sup>42</sup> 11 C.F.R. § 109.21; *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

<sup>43</sup> See 11 C.F.R. § 109.21(b).

<sup>44</sup> *Id.* § 109.21(d)(1)-(6).

1           While the Complaint asserts that the Leadership PAC made, and the Boebert Committee  
 2           knowingly accepted, in-kind contributions that were not reported as such by either committee,<sup>45</sup>  
 3           aside from the temporal proximity of payments made by the Leadership PAC and the Boebert  
 4           Committee and their use of a common vendor, it contains no specific allegations or facts  
 5           indicating that the text messages were made or sent at the “request or suggestion” of Boebert or  
 6           the Boebert Committee, that Boebert or the Boebert Committee were materially involved in the  
 7           creation or dissemination of the messages, or that the Leadership PAC had substantial discussion  
 8           with Boebert or the Boebert Committee about the messages.<sup>46</sup> The Response provides invoices  
 9           from the Vendor to the Leadership PAC for the text messages but does not include an invoice  
 10          from the Vendor to the Boebert Committee or any other information about the “text message  
 11          advertising” for which the Boebert Committee paid on October 28, 2022.

12          Regarding the use of common vendors, Commission regulations state that the conduct  
 13          standard is met if all of the following are true: (1) “The person paying for the communication, or  
 14          agent of such person, contracts with or employs a commercial vendor<sup>47</sup> . . . to create, produce, or  
 15          distribute the communication”;<sup>48</sup> (2) the commercial vendor has, during the previous 120 days,  
 16          worked on the development of media strategy, selection of audiences, polling, fundraising,  
 17          developing the content or producing a public communication, or other similar activities for the

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<sup>45</sup>       *See* Compl. at 2. The Complaint does not assert, and we have no information indicating, that types 5 (former employee or independent contractor) and 6 (dissemination, distribution or republication of campaign material) are relevant in this case.

<sup>46</sup>       *See supra* note 9 (stating that the Boebert Committee reported making a disbursement in the amount of \$4,623.22 to the Vendor on October 28, 2022, for “text message advertising” on the same day that the Leadership PAC reported making a disbursement to the Vendor for the Rally Messages, and that there was the common use of the Vendor).

<sup>47</sup>       “Commercial vendor” means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. *See* 11 C.F.R. § 116.1(c).

<sup>48</sup>       *Id.* § 109.21(d)(4)(i).

1 candidate who is clearly identified in the communication, or her authorized committee;<sup>49</sup> and  
 2 (3) the information material to creating, producing, or distributing the communication is not  
 3 publicly available.<sup>50</sup>

4 In regard to the GOTV messages, although there is information indicating that both the  
 5 Leadership PAC and the Boebert Committee paid the same vendor for text messaging  
 6 communications around the same time in October 2022, the GOTV Messages did not clearly  
 7 identify a candidate, *i.e.*, Boebert. Nor does it appear that any of the remaining conduct  
 8 standards enumerated under Commission regulations are met.<sup>51</sup> On their face and absent further  
 9 information to the contrary, the GOTV Messages do not appear to have a connection to any  
 10 candidate, and there is no information available in the record indicating that Boebert, her  
 11 committee, or any other agent was materially involved in, or had substantial discussions about,  
 12 their creation or dissemination.

## 13 2. The Rally Messages

14 Similarly, the available information does not support a conclusion that the Leadership  
 15 PAC's Rally Messages satisfy the conduct prong.

16 While the Rally Messages clearly referred to Boebert, the Complaint does not provide  
 17 any information, and we are aware of none, suggesting that Boebert or the Boebert Committee  
 18 made a suggestion or request for, had substantial discussions about, or were materially involved

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<sup>49</sup> *Id.* § 109.21(d)(4)(ii).

<sup>50</sup> *Id.* § 109.21(d)(4)(iii).

<sup>51</sup> *See id.* § 109.20(d). Generally, the remaining conduct standards may be met when a communication is created (1) at the request or suggestion of a candidate or authorized committee; (2) with material involvement from a candidate or authorized committee; and (3) after one or more substantial discussions about the communication between the person paying for the communication and the candidate who is clearly identified or the candidate's authorized committee. We do not have any information from which to draw an inference that any of these types of conduct occurred in connection with the GOTV Messages.

1 in the creation or dissemination of the Leadership PAC's Rally Messages.<sup>52</sup> Accordingly, our  
 2 analysis focuses on whether the use of a common vendor satisfies the conduct prong under  
 3 Commission regulations.

4 While it appears that the committees' payments to the Vendor indicate that they used the  
 5 same vendor at the same time, and the Rally Messages clearly identify Boebert, there is no  
 6 information that the Vendor would have needed to use non-public information to create and  
 7 disseminate the Rally Messages. Indeed, it appears that the Boebert Committee posted  
 8 information about the specific rallies scheduled for October 3, 4, and 5, 2022, on its public  
 9 Facebook page.<sup>53</sup> Although it is possible that the Boebert Committee could have provided the  
 10 Vendor with information about the rallies in advance, which would indicate a request or  
 11 suggestion, material involvement, or substantial discussion, the Complaint does not include, and  
 12 we are not aware of, any such information. Without any facts to support the assertion that such  
 13 conduct took place, the allegation is speculative and does not provide sufficient grounds on  
 14 which to find reason to believe the alleged violation occurred.<sup>54</sup>

15 Accordingly, the Commission dismisses the allegations that the Leadership PAC violated  
 16 52 U.S.C. § 30116(a) by making, and that Boebert and the Boebert Committee violated 52  
 17 U.S.C. § 30116(f) by knowingly accepting, excessive in-kind contributions in connection with the

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<sup>52</sup> See *supra* Part III.B.1.

<sup>53</sup> See *supra* note 23.

<sup>54</sup> See *Common Cause Ga. v. FEC*, 2023 WL 6388883 at \*6 (D.D.C. 2023) (stating that “speculation is not enough” to find reason to believe); see also Statement of Reasons, Comm’rs Mason, Sandstrom, Smith & Thomas at 1-2, MUR 4960 (Hillary Rodham Clinton for US Senate Expl. Comm., Inc., *et al.*) (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of the [Act]. . . . [M]ere speculation . . . will not be accepted as true.”).

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- 1 text messages, and that both committees violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.13
- 2 by failing to report the in-kind contributions.
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