



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

February 10, 2020

Ms. Lisa J. Stevenson
Acting General Counsel
Office of the General Counsel
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

RE: MUR 7681

Dear Ms. Stevenson:

The Foundation for Accountability and Civic Trust (FACT) submitted a complaint dated January 14, 2020, seeking an immediate investigation into VoteVets.Org Action Fund (a 501(c)(4) non-profit organization), Cal Cunningham, and his campaign committee, Cal for NC.

As that complaint outlines, Cal Cunningham and his campaign appear to be coordinating with an outside organization, VoteVets.Org Action Fund. For instance, Cunningham's campaign created a Flickr page and just days after uploading campaign photos, VoteVets.Org Action Fund began running a television advertisement entitled "Stood Up," which contained those photographs.¹ The incredibly short time between Cunningham's campaign providing the photographs and the production and dissemination of the television commercial is clear evidence of coordination. Moreover, VoteVets.Org Action Fund also republished Cunningham's campaign materials in the form of television advertisements, thus making an illegal contribution to the Cunningham campaign.

As FACT filed the January 14 complaint, VoteVets.Org Action Fund began running a second television commercial entitled "Answered the Call," using photographs and b-roll video provided by Cunningham's campaign.² The "Answered the Call" commercial was

¹ The first advertisement was entitled "Cal Cunningham: 9/11" and "Stood Up," depending on where the advertisement was accessed.

² James Arkin, *Cunningham Gets Outside Boost in North Carolina Senate Primary*, Politico, Jan. 21, 2020; VoteVets.Org Action Fund, *Cal Cunningham Answered the Call*, Jan. 14, 2020, available at https://www.youtube.com/watch?v=KGB_CBn-Qf8; Cunningham For U.S. Senate, Accessed Feb. 5, 2020, available at <https://www.calfornc.com/meet-cal/> (Cunningham's campaign website links to Flickr photos and a YouTube b-roll video, stating, "Check out photos and videos of Cal traveling the state.") (linking to Cal for NC, Flickr, <https://www.flickr.com/photos/186140610@N06/>; Cal

uploaded on January 14, 2020, and by the end of the month VoteVets.Org Action Fund was set to spend \$3.3 million for the two advertisements to run on television.³

The “Answered the Call” advertisement clearly republishes Cunningham campaign materials, i.e. photograph and videos.⁴ Under federal law, the “republishing of any graphic campaign material prepared by the candidate’s authorized committee” is a contribution, even if the campaign materials only constitute a small part of a larger advertisement.⁵ Any use of campaign materials by an outside group is republication.⁶

In this case, **the campaign material makes up roughly 80 percent of VoteVets.Org Action Fund’s advertisement.**⁷ Specifically, the campaign material consists of five photographs and one b-roll video montage Cunningham uploaded to his campaign’s Flickr

Traveling Across North Carolina, Cal Cunningham YouTube video, Dec. 20, 2019, <https://www.youtube.com/watch?v=9tuigjTKQg0>.

³ James Arkin, *Cunningham Gets Outside Boost in North Carolina Senate Primary*, Politico, Jan. 21, 2020. This amount presumably does not include the cost of production. *See* Federal Election Commission, General Counsel’s Report No. 2, MUR 5879, at 8 (determining the value of the in-kind contribution for republishing campaign materials and including the cost of production and the cost of the media buy).

⁴ “[T]he financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure . . .” 52 U.S.C. § 30116(a)(7)(B).

⁵ 11 C.F.R. § 109.23; *See, e.g.*, First General Counsel’s Report, Federal Election Commission, MUR 6357, at 5-11 (finding an outside group republished campaign materials and made an in-kind contribution to the campaign when it obtained campaign video footage from the campaign’s YouTube page and used it in an advertisement); Federal Election Commission, General Counsel’s Report No. 2, MUR 5879, at 1-2 (explaining an outside group republished campaign materials by using a campaign’s video clips that constituted about one-half of a thirty second advertisement); First General Counsel’s Report, Federal Election Commission, MUR 5743, at 7 (Nov. 2, 2006).

⁶ Any use of any graphic materials prepared by a campaign is republication, but in cases where republished materials were a trivial portion of an advertisement, the Commission either admonished committees or dismissed matters. First General Counsel’s Report, Federal Election Commission, MUR 6357, at 9 (“[T]he Commission has either admonished committees or dismissed matters where the republished materials represented an incidental part of the advertisement, or the value of the materials was likely *de minimis*.”).

⁷ Exhibit A; *See, e.g.*, First General Counsel’s Report, Federal Election Commission, MUR 6357, at 5-11 (republication occurred where the campaign video footage comprised ten to fifteen seconds of an advertisement). Any use of any graphic materials prepared by a campaign is republication, but in cases where republished materials were a trivial portion of an advertisement, the Commission either admonished committees or dismissed matters. First General Counsel’s Report, Federal Election Commission, MUR 6357, at 9 (“[T]he Commission has either admonished committees or dismissed matters where the republished materials represented an incidental part of the advertisement, or the value of the materials was likely *de minimis*.”)

Cunningham Campaign Photos/B-Roll



Flickr

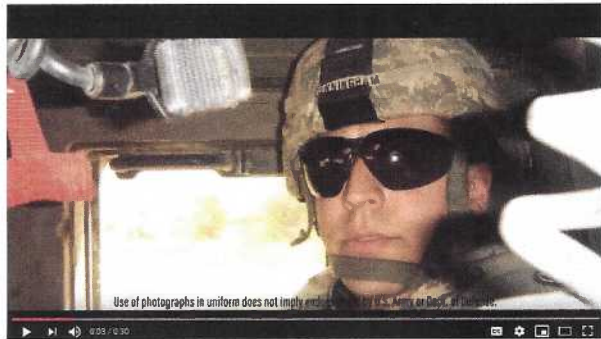


Flickr



Youtube

VoteVets Ad

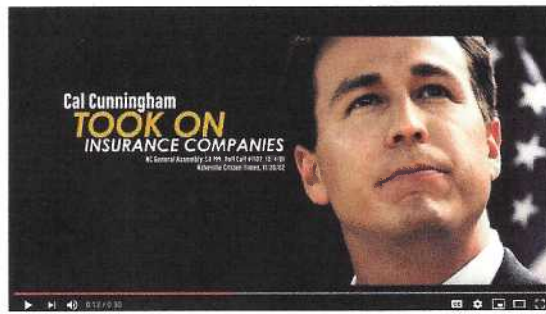




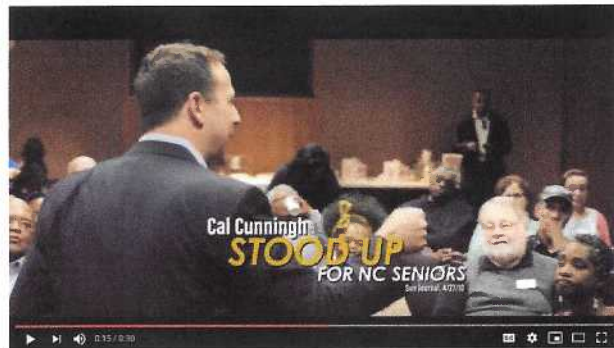
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