



# FACT

FOUNDATION FOR  
ACCOUNTABILITY  
AND CIVIC TRUST

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 – Additional Evidence**

Dear Ms. Stevenson:

The Foundation for Accountability and Civic Trust (FACT) submitted a complaint 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 outlined in that complaint, Cal Cunningham and his campaign appear to be coordinating with an outside organization, VoteVets.Org Action Fund, thus resulting in an in-kind contribution in excess of the legal limits. Additionally, VoteVets.Org Action Fund has apparently committed a separate and distinct violation by republishing Cunningham's campaign materials in the form of television advertisements, thus making an illegal contribution to Cunningham's campaign.

For instance, the filed complaint identified two advertisements that VoteVets.Org Action Fund created and ran on television, reportedly spending \$3.3 million for air time through the end of January 2020.<sup>1</sup> The first television advertisement entitled "Stood Up," republished Cunningham campaign photographs just days after the campaign uploaded the photographs to a Flickr page.<sup>2</sup> The short time between Cunningham's campaign providing the photographs and the production and dissemination of the television commercial is clear evidence of coordination.

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<sup>1</sup> 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).

<sup>2</sup> The first advertisement was entitled "Cal Cunningham: 9/11" and "Stood Up," depending on where the advertisement was accessed.

The second television commercial entitled “Answered the Call,” used both photographs and b-roll video provided by Cunningham’s campaign though its Flickr and YouTube page.<sup>3</sup> **The campaign material made up roughly 80 percent of VoteVets.Org Action Fund’s advertisement.**<sup>4</sup>

We write to submit additional evidence of coordination and republication, together with the prior evidence is overwhelming. On February 5, 2020, Cunningham uploaded new video to his YouTube page.<sup>5</sup> That same day, the Communications Director for the Democratic Senatorial Campaign Committee (DSCC) used Twitter to request more advertisements be run for Cunningham and that those advertisements be run in a statewide media market.<sup>6</sup> The tweet also linked to Cunningham’s campaign webpage where the campaign materials could be accessed.



<sup>3</sup> 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](https://www.youtube.com/watch?v=KGB_CBn-Qf8); Cunningham For U.S. Senate, Accessed Feb. 5, 2020, available at <https://www.calformc.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 Traveling Across North Carolina, Cal Cunningham YouTube video, Dec. 20, 2019, <https://www.youtube.com/watch?v=9tuiuTKQg0>).

<sup>4</sup> Exhibit A of FACT’s Feb. 10, 2020 complaint; *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*.”)

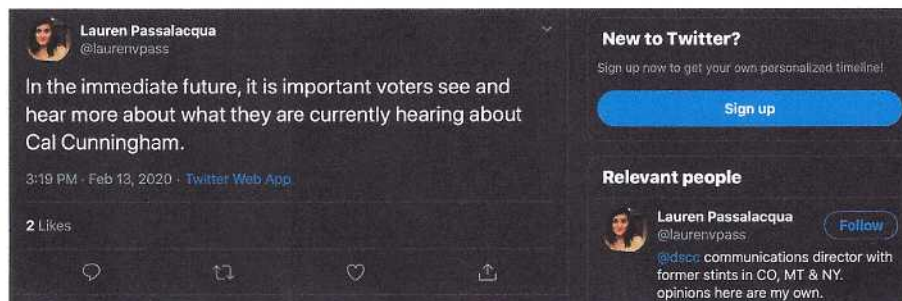
<sup>5</sup> [https://www.youtube.com/watch?v=nCgG29-3h\\_Y](https://www.youtube.com/watch?v=nCgG29-3h_Y).

<sup>6</sup> <https://twitter.com/laurenvpass/status/1225236095727734784>

The only reasonable interpretation of the video upload along with the tweet is that Cunningham with the DSCC requested or suggested VoteVets.Org Action Fund broadcast advertisements on behalf of Cunningham statewide in North Carolina. The inclusion of the link to Cunningham’s webpage indicated the Cunningham campaign provided new video for the advertisement, especially apparent when compared to a later request by tweet that omitted the link when there was no new campaign material provided.

Just two days later, VoteVets.Org Action Fund answered the request. On February 7, 2020, VoteVets.Org Action Fund began distributing an advertisement for Cunningham entitled “Won’t Let That Happen.”<sup>7</sup> Again, this advertisement republished both campaign photographs and video—including the campaign video Cunningham uploaded just two days earlier.<sup>8</sup> VoteVets.Org Action Fund reportedly spent an additional \$2.5 million for this third television advertisement campaign to run for two weeks.<sup>9</sup>

Again, on February 13, 2020, the DSCC’s Communication Director requested additional television advertisements for Cunningham<sup>10</sup>:



On February 18, 2020, the request was answered by VoteVets.Org Action Fund, which began running a fourth television advertisement entitled “Fought,” also containing Cunningham

<sup>7</sup> Exhibit 3. Television advertisement available at: <https://www.youtube.com/watch?v=Jv7L-6bN7yU>.

<sup>8</sup> *Id.* Cal For NC Flickr Photostream, available at: <https://www.flickr.com/photos/186140610@N06/>; “Putting the people of NC first,” Cal For NC Youtube, Uploaded Feb. 5, 2020, available at: [https://www.youtube.com/watch?v=nCgG29-3h\\_Y](https://www.youtube.com/watch?v=nCgG29-3h_Y).

<sup>9</sup> “The VoteVets super PAC is going in big for Cunningham, ahead of next month’s primary. ‘VoteVets, which has endorsed Cunningham, is spending \$2.5 million on a new ad campaign launching Friday and running for two weeks, according to information shared first’ with Campaign Pro’s James Arkin.” Politico, Feb. 7, 2020, available at: <https://www.politico.com/newsletters/morning-score/2020/02/07/chaos-in-iowa-looms-over-new-hampshire-debate-785161>.

<sup>10</sup> <https://twitter.com/laurenvpas/status/1228066247901880320>.

campaign materials.<sup>11</sup> VoteVets.Org Action Fund reportedly spent \$1.5 million on this fourth television advertisement campaign.<sup>12</sup>

A communication is coordinated with a candidate, an authorized committee, or a political party committee when (1) it is paid for by an outside entity; (2) it satisfies a “content standard,” i.e. expressly advocates for the election or defeat of a clearly identified candidate for Federal office or republishing campaign materials; and (3) satisfies a “conduct standard,” i.e. the communication is created, produced, or distributed at the “request or suggestion” of a candidate.<sup>13</sup> The “request or suggestion” conduct standard does not have a “safe harbor” for information obtained from a publicly available source.<sup>14</sup>

The evidence clearly demonstrates VoteVets.Org Action Fund’s advertisements are coordinated communications. The first two prongs are shown by the advertisements themselves, which both (1) include disclaimers that they were paid for by VoteVets.Org Action Fund and (2) advocate for the election of Cunningham and reproduce Cunningham’s campaign materials. The facts also show Cunningham, his campaign, and the DSCC made a request or suggestion and the request or suggestion was acted upon. On February 5, Cunningham uploaded new campaign video and the DSCC stated there was a need for additional television advertisements be run for Cunningham in a statewide media market, linking to Cunningham’s campaign website where the video could be accessed. As requested, VoteVets.Org Action Fund responded and just days later distributed a new television advertisement and with the new campaign video. Then it occurred again with a February 13 request and the February 18 response. This new evidence also needs to be viewed along with the prior advertisements, which together demonstrate the coordination.

Moreover, in all of these television advertisements VoteVets.Org Action Fund is republishing campaign materials. Any republication of photographs or video prepared by a campaign is a contribution, even if the campaign materials are only a small part of a larger advertisement.<sup>15</sup>

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<sup>11</sup> Exhibit 4. Television advertisement available at: <https://www.youtube.com/watch?v=qpZLIgPXiWU>; Cal For NC Flickr Photostream, available at: <https://www.flickr.com/photos/186140610@N06/>; “Cal traveling across North Carolina,” Cal For NC Youtube, Uploaded Dec. 20, 2019, available at: <https://www.youtube.com/watch?v=9tuigjTKQg0&feature=youtu.be>.

<sup>12</sup> “The nonprofit arm of VoteVets is dumping another \$1.5 million backing Cunningham in the state. The [ad they’re running calls Cunningham](#) a ‘progressive legislator’ who fought on education and health care.” Politico, available at: <https://www.politico.com/newsletters/morning-score/2020/02/19/trumps-counterprogramming-democrats-with-campaign-blitz-785528>.

<sup>13</sup> 11 C.F.R. § 109.21.

<sup>14</sup> See Complaint filed by FACT on January 14, 2020 and additional information filed by FACT on February 10, 2020 in this Matter Under Review.

<sup>15</sup> “[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); 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

Whether the photographs and video were obtained from a publicly available source is “not relevant to the analysis of whether it was republished under 11 C.F.R. § 109.23.”<sup>16</sup> Both the television advertisements contained photographs and video created and provided by the Cunningham campaign.

We request the Commission act upon these apparent violations, conduct an immediate investigation, and impose any appropriate penalties the Commission finds.

Respectfully submitted,

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Kendra Arnold, Executive Director  
Foundation for Accountability & Civic Trust  
1717 K Street NW, Suite 900  
Washington, D.C. 20006

STATE OF IOWA )  
 ) ss.  
COUNTY OF POLK )

Subscribed and sworn to before me on February \_\_\_\_\_, 2020.

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Notary Public in and for the State of Iowa

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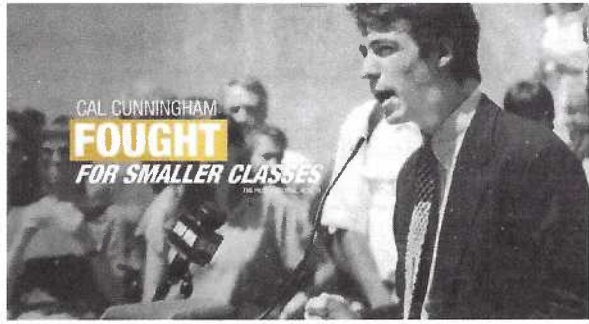


and used it in an advertisement). Any use of any graphic materials prepared by a campaign is republication, but in cases where republished materials were a trivial portion of an advertisement, the Commission has either admonished committees or dismissed matters. First General Counsel’s Report, Federal 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*.”).

<sup>16</sup> Ellen L. Weintraub, Cynthia L. Bauerly, and Steven T. Walther, Statement of Reasons, Federal Election Commission, MUR 6357, Feb. 27, 2012, at 3 (available at <https://www.fec.gov/files/legal/murs/6357/12044312290.pdf>).

Exhibit 3

Cunningham Campaign Photos/B-Roll	VoteVets Ad
 <p>Youtube</p>	 <p>0:10 / 0:29</p>
 <p>Youtube</p>	 <p>0:22 / 0:28</p>
 <p>Flickr</p>	 <p>0:23 / 0:29</p>
 <p>Flickr</p>	 <p>0:25 / 0:29</p> <p>PAID FOR BY VOTEVETS, VOTEVETS.ORG, NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE. VOTEVETS IS RESPONSIBLE FOR THE CONTENT OF THIS ADVERTISING.</p>

Exhibit 4

Cunningham Campaign Photos/B-Roll	VoteVets Ad
 <p>Flickr</p>	 <p>CAL CUNNINGHAM <b>FOUGHT</b> FOR SMALLER CLASSES</p>
 <p>Youtube</p>	 <p>Cal Cunningham Democrat for</p> <p><small>PHOTOGRAPH BY JEFFREY M. HARRIS FOR VOTEVETS.COM CAL CUNNINGHAM IS A MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES. HE SERVED AS A MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES FROM 2011 TO 2015. HE SERVED AS A MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES FROM 2011 TO 2015. HE SERVED AS A MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES FROM 2011 TO 2015.</small></p>