

BEFORE THE FEDERAL ELECTION COMMISSION

Foundation for Accountability and Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

v.

MUR No. _____

VoteVets
P.O. Box 11293
Portland, OR 97211

and

MJ Hegar
MJ for Texas
P.O. Box 7156
Round Rock, TX 78683

COMPLAINT

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good. This complaint is submitted pursuant to 52 U.S.C. § 30109(a)(1) and is based upon information and belief that VoteVets,¹ a super PAC, made an illegal contribution to MJ Hegar and her campaign committee, MJ for Texas, in violation of the Federal Election Campaign Act.

On January 27, 2020, MJ for Texas posted b-roll video on its YouTube channel. Just a week later, VoteVets used the campaign's video to create and run a television advertisement, reportedly spending \$3.3 million on air time in Texas. Its television advertisement plainly republished video created by MJ for Texas. Moreover, the short time that elapsed between the campaign making the video available and VoteVets using the video in a television commercial demonstrate the video was posted for VoteVets' use.

¹ FEC ID C00418897.

Federal candidates are prohibited from coordinating with outside organizations such as VoteVets, a super PAC, and its affiliated 501(c)(4), VoteVets.Org Action Fund.² VoteVets is also prohibited from republishing campaign materials, including photographs and videos created by a campaign committee. The source of campaign materials is irrelevant under federal law and thus, it is immaterial that VoteVets obtained the video from the campaign's YouTube channel. As a result, there is reason to believe that VoteVets made, and the Hegar campaign accepted, an illegal in-kind contribution in the form of a television advertisement. We request the Federal Election Commission investigate and take appropriate enforcement actions to address these apparent violations.

I. Law

Under federal law, candidates for federal office are subject to regulations that limit or prohibit contributions from and interactions with individuals, groups, and organizations. Among these regulations, federal candidates are prohibited from soliciting or accepting contributions from an individual or a non-multicandidate PAC in excess of \$2,800, from a multicandidate PAC in excess of \$5,000, or from any corporation or labor organization in any amount.³ Federal candidates are also prohibited from accepting contributions from entities that accept contributions from corporations or labor organizations.⁴ On the other hand, individuals, groups, and organizations are also prohibited from making any illegal contribution.⁵ Contributions are broadly defined to include cash donations, but also "anything of value . . . for the purpose of influencing any election for Federal office."⁶

² Several federal candidates have used their campaign websites or social media accounts to request VoteVets.Org Action Fund run advertisements on their behalf, an outside organization with which the campaign is prohibited from coordinating. *See, e.g.,* Ryan Lovelace, 'Dark Money' Ad Raises Questions Over Peters Campaign for Senate, Washington Times, Nov. 18, 2019, available at: <https://www.washingtontimes.com/news/2019/nov/18/dark-money-ad-raises-questions-over-gary-peters-ca/>.

³ 52 U.S.C. §§ 30116, 30118.

⁴ 52 U.S.C. §§ 30101, 30118.

⁵ *See, e.g.,* 52 U.S.C. § 30116(a)(7)(B).

⁶ 52 U.S.C. § 30101(8)(A).

Additionally, federal law sets forth three specific expenditures that are defined as contributions:

(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the 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 for the purpose of this paragraph[.]⁷

Under subsection (i), to determine whether a communication was made in cooperation with a candidate, a three-part test applies: (1) the communication is paid for by a third-party; (2) the communication satisfies a “content” standard of 11 C.F.R. § 109.21(c); and (3) the communication satisfies one of the “conduct” standards of 11 C.F.R. § 109.21(d).⁸

Under subsection (iii), to determine whether a communication was a dissemination, distribution, or republication of campaign materials, the general rule applies:

a. General Rule. The financing 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, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.⁹

⁷ 52 U.S.C. § 30116(a)(7)(B).

⁸ 11 C.F.R. § 109.21.

⁹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.23(a).

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.¹⁰ 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.”¹¹

The contributions specified in subsections (i) and (iii) are separate and distinct ways to make an illegal contribution.

II. Cause of Action

A. Illegal Contribution of Dissemination, Distribution, or Republication of Campaign Materials (52 U.S.C. § 30116(a)(7)(B)(iii))

VoteVets has made illegal contributions by financing “the dissemination, distribution, or republication, in whole or part” of MJ for Texas campaign materials in the amount of \$3.3 million.¹² MJ Hegar is a candidate for the U.S. Senate, and her authorized campaign committee is MJ for Texas.¹³ VoteVets, which previously endorsed MJ Hegar, is a super PAC and is prohibited from contributing to MJ for Texas.¹⁴

¹⁰ See, e.g., Federal Election Commission, *First General Counsel’s Report*, 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).

¹¹ Federal Election Commission, Ellen L. Weintraub, Cynthia L. Bauerly, and Steven T. Walther, *Statement of Reasons*, MUR 6357, at 3, Feb. 27, 2012 (available at <https://www.fec.gov/files/legal/murs/6357/12044312290.pdf>).

¹² 11 C.F.R. § 109.23; James Arkin, Politico, available at: <https://twitter.com/JamesArkin/status/1224438068762906624>.



¹³ MJ For Texas (FEC ID 1382424), Federal Election Commission, available at: <https://www.fec.gov/data/committee/C00649350/>.

¹⁴ Patrick Svitek, *VoteVets Endorses MJ Hegar For U.S. Senate Against John Cornyn*, The Texas Tribune, Apr. 24, 2019, available at: <https://www.texastribune.org/theblast/2019/04/24/>.

On February 4, 2020, VoteVets began running television advertisements on broadcast stations across Texas supporting MJ Hegar, which consisted of a narrator speaking over video clips.¹⁵ Just a week earlier, on January 27, the Hegar campaign uploaded video to YouTube, of which VoteVets used several clips.¹⁶ For example, the image of the left is from MJ Hegar's campaign video and the image on the right is from VoteVets' advertisement¹⁷:



Texas Tough | MJ for Texas

328 views · Jan 27, 2020

👍 11 🗨️ 5 ➦ SHARE 📌 SAVE ...



Fight Of Her Life - MJ Hegar | VoteVets Texas Ad

1,159 views · Feb 3, 2020

👍 15 🗨️ 3 ➦ SHARE 📌 SAVE ...

Approximately forty-three percent of the advertisement was republication of campaign video.¹⁸

VoteVets is prohibited from reproducing any graphic materials prepared by a candidate's authorized committee.¹⁹ There are no exceptions applicable in this case.²⁰ Moreover, VoteVets is

¹⁵ VoteVets uploaded the advertisement to YouTube on February 3, 2020, and began running it on television the following day. VoteVets, *Fight for Her Life – MJ Hegar*, available at: <https://www.youtube.com/watch?v=Teh-UhQtn-s&feature=youtu.be>; Patrick Svitek, *Hegar Gets Heavy Outside Support in Crowded Democratic Primary to Challenge Cornyn*, The Texas Tribune, Feb. 3, 2020, available at: <https://www.texastribune.org/2020/02/03/mj-hegar-backed-votevets-texas-2020-us-senate-democratic-primary/>.

¹⁶ Exhibit A; MJ for Texas, YouTube, available at: <https://www.youtube.com/watch?v=4xvfWx1Mj00>.

¹⁷ Exhibit A; MJ for Texas, YouTube, available at: <https://www.youtube.com/watch?v=4xvfWx1Mj00>; VoteVets, *Fight for Her Life – MJ Hegar*, available at: <https://www.youtube.com/watch?v=Teh-UhQtn-s&feature=youtu.be>.

¹⁸ *Id.*

¹⁹ 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).

²⁰ Only the narrow exceptions expressly listed permit republication of campaign materials. None of the five narrow circumstances are even remotely applicable in this case. The exceptions are:

1. The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;

no allowed to reproduce the campaign's video regardless of the source and thus, it is irrelevant where VoteVets obtained the video.²¹ VoteVets' television advertisement simply republished MJ for Texas campaign materials from Hegar's YouTube account.

B. Illegal Contribution of Coordinated Communication (52 U.S.C. § 30116(a)(7)(B)(i)).

There is reason to believe MJ Hegar and MJ for Texas coordinated with VoteVets on communications valued at over \$3.3. million. 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" of 11 C.F.R. § 109.21(c), 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" of 11 C.F.R. § 109.21(d), i.e. the communication is created, produced, or distributed at the "request or suggestion" of a candidate.²² The "request or suggestion" conduct standard does not have a "safe harbor" for information obtained from a publicly available source.

The first two prongs are shown of the face of the advertisement: (1) it includes a disclaimer stating it was paid for by VoteVets and (2) it advocates for the election of Hegar and reproduces Hegar's campaign materials. The facts also show Hegar's campaign made a request of suggestion and that request or suggestion was acted upon. On January 27, the Hegar campaign made the video available to VoteVets. Within a week, VoteVets responded and created an advertisement and had it running on television. The short time that elapsed between the campaign making the video

-
2. The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;
 3. The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;
 4. The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; or
 5. A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.

11 C.F.R. § 109.23. *See also*, Federal Election Commission, First General Counsel's Report, MUR 6357 (Aug. 31, 2011) (finding the use of a video clip does not fall under the exception 11 C.F.R. § 109.23(b)(4) of consisting of a brief quote).

²¹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.23(a); *see also*, Federal Election Commission, Ellen L. Weintraub, Cynthia L. Bauerly, and Steven T. Walther, *Statement of Reasons*, MUR 6357, at 3, Feb. 27, 2012.

²² 11 C.F.R. § 109.21.

Exhibit A

MJ For Texas B-Roll



Texas Tough | MJ for Texas

130 views · Jan 27, 2020

7 14 SHARE SAVE

MJ for Texas

SUBSCRIBE



Texas Tough | MJ for Texas

130 views · Jan 27, 2020

7 14 SHARE SAVE

MJ for Texas

SUBSCRIBE



Texas Tough | MJ for Texas

130 views · Jan 27, 2020

7 14 SHARE SAVE

MJ for Texas

SUBSCRIBE

VoteVets Ad



Fight Of Her Life - MJ Hegar | VoteVets Texas Ad

556 views · Feb 3, 2020

7 0 SHARE SAVE

VoteVets
1.87K subscribers

SUBSCRIBE



Fight Of Her Life - MJ Hegar | VoteVets Texas Ad

556 views · Feb 3, 2020

7 0 SHARE SAVE

VoteVets
1.87K subscribers

SUBSCRIBE



Fight Of Her Life - MJ Hegar | VoteVets Texas Ad

556 views · Feb 3, 2020

7 0 SHARE SAVE

VoteVets
1.87K subscribers

SUBSCRIBE



Texas Tough | MJ for Texas
120 views · Jun 27, 2020

MJ for Texas

SHARE

UNSUBSCRIBE



Fight Of Her Life - MJ Hegar | VoteVets Texas Ad
156 views · Feb 3, 2020

VoteVets

SHARE

UNSUBSCRIBE