



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of	)	
	)	
1820 PAC, <i>et al.</i>	)	MUR 7646
	)	
Peters for Michigan, <i>et al.</i>	)	MURs 7666 & 7675
	)	
VoteVets, <i>et al.</i>	)	MURs 7681 & 7715
	)	
Theresa Greenfield for Iowa, <i>et al.</i>	)	MUR 7717
	)	
Fight for the American Dream PAC	)	MUR 7781
	)	

**STATEMENT OF REASONS OF COMMISSIONERS  
SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

The fact pattern here is familiar: Some independent expenditure-only political committees (“IEOPCs”) took publicly available media of federal candidates and incorporated them into their own unique communications. Complaints were then filed with the Commission alleging that the IEOPCs engaged in impermissible “republishing of campaign materials” and, in some cases, that they coordinated with the candidates’ campaigns to do so. The Commission, having considered many factually indistinguishable cases before, once again did not find that any violation occurred.<sup>1</sup>

We voted to find no reason to believe any Respondent IEOPCs violated 52 U.S.C. § 30116(a) in these matters for the same reasons articulated by Chair Caroline Hunter and Commissioners Donald McGahn and Matthew Petersen in MUR 6357 (American Crossroads). There, the controlling group of Commissioners wrote:

The Act’s republication provision is designed to capture situations where third parties, in essence, subsidize a candidate’s campaign by expanding the distribution of communications whose content, format, and overall message are devised by the candidate. But clearly that is not what happened here. American Crossroads did not repeat verbatim the Portman Committee’s message; rather, it created its own.

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<sup>1</sup> Certification (Feb. 17, 2022), MUR 7646 (1820 PAC, *et al.*); Certification (Feb. 15, 2022), MURs 7666 & 7675 (Peters for Mich., *et al.*); Certification (Feb. 15, 2022), MURs 7681 & 7715 (VoteVets, *et al.*); Certification (Feb. 15, 2022), MUR 7781 (Fight for the American Dream PAC); Certification (Mar. 8, 2022), MUR 7717 (Theresa Greenfield for Iowa, *et al.*).

Therefore, we concluded that the American Crossroads advertisement did not constitute “a republication of campaign materials.”<sup>2</sup>

That same reasoning has been consistently adopted by controlling blocs of Commissioners in at least a dozen matters since.<sup>3</sup> So too here. On the facts presented, we concluded that no republication occurred where the IEOPCs merely used publicly available B-roll footage, photographs, and other media to create their own unique communications. The use of outside materials as one element in larger, distinct communications brings them outside of the meaning of “republication” in the regulation.

Moreover, we maintain that 11 C.F.R. § 109.23—the Commission’s regulation governing uncoordinated republication of campaign materials—is also likely illegal. As Commissioner Cooksey explained in greater detail in an interpretive statement, the regulation impermissibly treats uncoordinated republication as a “contribution,” rather than as an “expenditure” as the statute demands.<sup>4</sup> It is therefore inconsistent with “the unambiguously expressed intent of Congress” in the statutory text.<sup>5</sup> And because it burdens political speech based on viewpoint, the regulation raises further questions about its constitutionality under the First Amendment.<sup>6</sup>

Finally, we voted to find no reason to believe that any of the Respondent candidate committees or individual candidates violated 52 U.S.C. § 30116(f) because we agreed with the Office of General Counsel that there was insufficient evidence of any coordinating conduct between the IEOPCs and the relevant campaigns under 11 C.F.R. § 109.21(d).<sup>7</sup> Without this

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<sup>2</sup> Statement of Reasons of Chair Hunter and Commissioners McGahn and Petersen at 4 (Feb. 22, 2012), MUR 6357 (American Crossroads). The reasoning of that statement is incorporated here by reference.

<sup>3</sup> See, e.g., MUR 6603 (Ben Chandler for Congress, *et al.*); MUR 6617 (Christie Vilsack for Iowa, *et al.*); MUR 6667 (House Majority PAC, *et al.*); MUR 6777 (Kirkpatrick for Ariz., *et al.*); MUR 6789 (Zinke for Congress, *et al.*); MUR 6801 (Senate Majority PAC, *et al.*); MUR 6852 (Special Operations for America, *et al.*); MUR 6870 (American Crossroads, *et al.*); MUR 6902 (Al Franken for Senate 2014, *et al.*); MUR 7139 (Maryland USA, *et al.*); MUR 7147 (Make America Number 1, *et al.*); MUR 7432 (John James for Senate, Inc., *et al.*).


<sup>4</sup> Interpretive Statement of Commissioner Sean J. Cooksey (Nov. 30, 2021), *available at* [https://www.fec.gov/resources/cms-content/documents/2021-11-30\\_Interpretive\\_Statement\\_of\\_Cmsr\\_Cooksey.pdf](https://www.fec.gov/resources/cms-content/documents/2021-11-30_Interpretive_Statement_of_Cmsr_Cooksey.pdf) (explaining the legal weaknesses of the Commission’s republication regulation at 11 C.F.R. § 109.23(a)).

<sup>5</sup> *Id.* at 3.

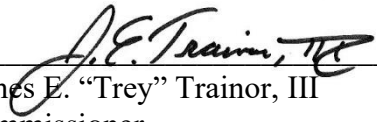
<sup>6</sup> In addition to likely imposing an impermissible burden on the content of First Amendment protected speech, the regulation further appears to discriminate against political speech on the basis of viewpoint by regulating communications in support of a candidate, but excepting those in opposition to the same candidate. See 11 C.F.R. § 109.23(a), (b)(2). Federal courts have held similar FEC regulations unconstitutional. See *Pursuing America’s Greatness v. FEC*, 363 F. Supp. 3d 94, 105 (D.D.C. 2019) (holding that 11 C.F.R. § 102.14(a) violates the First Amendment).

<sup>7</sup> Certification (Feb. 17, 2022), MUR 7646 (1820 PAC, *et al.*); Certification (Feb. 15, 2022), MURs 7666 & 7675 (Peters for Mich., *et al.*); Certification (Feb. 15, 2022), MURs 7681 & 7715 (VoteVets, *et al.*); Certification (Mar. 8, 2022), MUR 7717 (Theresa Greenfield for Iowa, *et al.*).

necessary element of a coordinated communication, there was no basis for proceeding with enforcement.<sup>8</sup>

  
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Sean J. Cooksey  
Commissioner

April 7, 2022  
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Date

  
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James E. "Trey" Trainor, III  
Commissioner

April 7, 2022  
\_\_\_\_\_  
Date

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<sup>8</sup> We do not agree, however, with OGC's analyses of the other elements of the coordinated communication regulation under 11 C.F.R. § 109.21, which are unnecessary to support its dismissal recommendations and, in places, wrong.