

General Counsel
Washington, DC 20420

November 4, 2021

Mr. Jon Soltz
Chairman
VoteVets.org

Re: *VoteVets Action Fund v. U.S. Department of Veterans Affairs*

Dear Mr. Soltz,

The Department of Veterans Affairs provides this letter in order to resolve *VoteVets Action Fund v. U.S. Department of Veterans Affairs*, No. 18-cv-1925 (D.D.C.).

In March 2021, the D.C. Circuit reversed the District Court's order dismissing VoteVets' complaint. The District Court had held that the complaint failed to allege sufficient facts which, if true, could plausibly establish that the putative Council possessed the structure necessary to be considered an "advisory committee" within the meaning of the Federal Advisory Committee Act (FACA) and also failed to allege facts which, if true, could plausibly establish that the government either "established or utilized" the putative Council within the meaning of FACA.

The D.C. Circuit reversed the District Court's order dismissing the case. It concluded that the complaint alleged sufficient facts which, if true, could establish a plausible case (1) that the putative Council was a de facto advisory committee "established" by government and (2) that the Department had violated the Federal Advisory Committee Act during the last administration. The D.C. Circuit did not reach VoteVets' alternative theory that the putative Council was "utilized" by the Department, nor did it opine on the underlying merits of the case beyond the sufficiency of the complaint at the pleading stage.

It is neither unusual nor improper for Government officials to seek advice from private citizens, and FACA is not violated each time Government officials seek the advice of private citizens regardless of the level of access private citizens have to government officials. The Department acknowledges, however, that, at certain points during the last Administration, Ike Perlmutter, Bruce Moskowitz, and Marc Sherman had what appears to be unusually pervasive access to certain senior political officials in the Department, and these private citizens apparently sought to exert influence with respect to certain Government initiatives. Although the Department maintains that FACA was not applicable to the facts alleged in this case and that Department officials ultimately made decisions independently of the involvement of these private citizens, it acknowledges that even the appearance of these individuals' access to the VA during the previous Administration may have been concerning to VoteVets and to the public.

The issues of appropriate engagement and influence are important to the Department. The Department thus appreciates VoteVets raising its concern, as well as its continued work on behalf of veterans and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "M. R. Hogan", with a stylized flourish at the end.

Michael R. Hogan
Deputy General Counsel