



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 13, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Susan N. Willoughby

Boerne, Texas 78006

RE: MUR 7557
Center for Voter Information

Dear Ms. Willoughby:

This is in reference to the complaint you filed with the Federal Election Commission on December 12, 2018, concerning allegations that Center for Voter Information committed violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). Upon further review of the allegations contained in the complaint, and information supplied by the respondents, the Commission determined to dismiss the allegations that Center for Voter Information and US Tomorrow PAC and Nathan Ryan, in his official capacity as treasurer, (formerly Kopser for Congress and Steven M. Carroll in his official capacity as treasurer), violated 52 U.S.C. § 30118 by making and accepting a prohibited contribution and closed the file on April 22, 2021. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact me at (202) 694-1650 or cjacksonjones@fec.gov.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: *Lynn Tran*
Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Center for Voter Information MUR 7557
6 Kopser for Congress and Steven M. Carroll
7 in his official capacity as treasurer
8

9 **I. INTRODUCTION**

10 The Complaint in this matter alleges that the Center for Voter Information (“CVI”), an
11 incorporated 501(c)(4) organization, violated the Federal Election Campaign Act of 1971, as
12 amended (the “Act”), by making prohibited contributions to a federal candidate when it sent
13 mailers to the general public endorsing Joseph Kopser’s congressional candidacy in advance of
14 the November 6, 2018 general election.¹ Kopser’s authorized campaign committee, Kopser for
15 Congress and Steven M. Carroll in his official capacity as treasurer (the “Committee”), denies
16 the allegations and asserts that the mailer is not an endorsement and that it did not have any
17 contact with CVI regarding the mailer. CVI denies the allegations and asserts that the mailer
18 was a non-partisan voter information guide and not an endorsement of any candidate.

19 Because the available information is insufficient to support the allegations that
20 Respondents violated the Act, the Commission dismisses the allegations that Center for Voter
21 Information violated 52 U.S.C. § 30118 by making a prohibited contribution. The Commission
22 also dismisses the allegations that Kopser for Congress and Steven M. Carroll in his official
23 capacity as treasurer, violated 52 U.S.C. § 30118 by accepting a prohibited contribution.

¹ Compl. at 1 (Dec. 12, 2018).

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Joseph Kopser was a Democratic candidate for the 21st Congressional District in the Texas 2018 general election and Chip Roy was his Republican opponent.² Center for Voter Information is a nonprofit social welfare organization established under section 501(c)(4) of the Internal Revenue Code.³ CVI describes itself as an organization “that works to provide even-handed and unbiased information about candidates and their positions on issues.”⁴ CVI acknowledges running a mailing program that includes sending out voter registration forms and reportedly sent out mailers similar to the Kopser/Roy mailer in multiple states and districts across the country in connection with the 2018 election.⁵

In advance of the November 6, 2018 general election, the Complainant received a mailer from CVI, which read:

Dear [Voter]: The Center for Voter Information works to provide information about candidates to voters like you across the country. This year we asked voters in your congressional district what they would like to know about candidates for Congress in the general election being held on November 6th.⁶

The one-page mailer then sets forth three questions it claims voters are interested in knowing the candidates’ views about, lists positions reportedly taken by Kopser and Roy on those issues, and

² Compl. at 1.

³ CVI Resp. at 1 (Jan. 3, 2019).

⁴ Center for Voter Information, <https://www.centerforvoterinformation.org> (last visited Jan. 21, 2020).

⁵ See CVI Resp. at 1.

⁶ Compl. at Attach. 1.

- 1 provides links to the Kopser and Roy campaign committee websites as well as a March 10, 2017
2 National Review article as sources for this information:⁷

Coverage for Pre-existing Conditions: Do the candidates support requiring health insurance companies to cover individuals with pre-existing conditions?

Democrat Joseph Kopser: Yes	Republican Chip Roy: No
Source: kopserforcongress.com/my-values/health-care-for-all/	Source: National Review 3/10/2017

Medicaid Cuts: Do the candidates support cutting funding to Medicaid (the health insurance program for low-income Americans) for 14 million Americans?

Democrat Joseph Kopser: No	Republican Chip Roy: Yes
Source: kopserforcongress.com/my-values/health-care-for-all/	Source: National Review 3/10/2017

Millionaire Tax Cuts: Do the candidates support legislation recently passed by Congress that reduces taxes paid by millionaires and corporations?

Democrat Joseph Kopser: No	Republican Chip Roy: Yes
Source: kopserforcongress.com/my-values/tax-reform/	Source: chiproy.com/issues/

- 3
4 The closing paragraph of the mailer states,

5 A candidate's position is sometimes more complicated than a
6 simple "yes" or "no." We have done our best to represent each
7 candidate in a fair and reasonable way. But if you want more
8 detailed information you can visit the candidates' websites at
9 kopserforcongress.com or roychip.com where additional
10 information on these issues is available. We hope this information
11 is useful.⁸

- 12 The mailer is signed, "Sincerely, Lionel Dripps Center for Voter Information" and includes a
13 post-script that reads, "The Center for Voter Information is a nonprofit organization that is not
14 endorsing any candidate in this race."⁹ If you have comments about our information, suggestions

⁷ *Id.*

⁸ *Id.*

⁹ Lionel Dripps is Managing Director for Program and Digital at the Voter Participation Center, a 501(c)(3) organization associated with the Center for Voter Information. See <https://www.voterparticipation.org/our-team/>; see also <https://www.zoominfo.com/p/Lionel-Dripps/1791269275>.

1 or additional questions you would like answered, you can contact us at
2 centerforvoterinformation.org.”¹⁰

3 In its response to the Complaint, the Committee asserts that CVI sent out its mailers
4 without the knowledge or permission of the Committee, that CVI did not inform or contact the
5 Committee about the mailer, and that neither Kopser nor any member of the Committee’s staff
6 had any contact or engagement with CVI.¹¹ The Committee points out that the mailer does not
7 claim to endorse Kopser, and the statements of Kopser’s views on the issues discussed in the
8 mailer are publicly available.¹² The Committee further states that it is not associated with CVI in
9 any way and does not endorse or approve the mailers that CVI sent out during the election
10 cycle.¹³ Finally, the Committee states that it is in the process of shutting down and has little cash
11 on hand.¹⁴

12 The CVI Response states that the mailer was a nonpartisan voter guide and not an
13 endorsement of any candidate.¹⁵ CVI contends, however, even if the mailer were interpreted as
14 an endorsement of a candidate, the mailer would still be an allowable activity under the Act, and
15 the Complaint’s assumption that CVI could not make an endorsement because it is a 501(c)(4)
16 organization is erroneous.¹⁶

¹⁰ *Id.*

¹¹ Committee Resp. at 1 (Jan. 3, 2019).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ CVI Resp.at 1.

¹⁶ *Id.*

B. Analysis

Under the Act, a contribution is defined as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹⁷ An expenditure 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” constitutes a contribution to the candidate.”¹⁸ However, the term “expenditure” does not include “nonpartisan activity designed to encourage individuals to vote or to register to vote.”¹⁹

The Act prohibits a corporation from making contributions to federal candidates and their authorized committees.²⁰ Officers and directors of corporations may not consent to any contribution prohibited by section 30118(a).²¹ Correspondingly, federal candidates and their authorized committees may not knowingly accept a corporate contribution.²² The Commission’s regulations allow a corporation to “prepare and distribute to the general public voter guides consisting of two or more candidates’ positions on campaign issues” provided that the guide complies with certain restrictions set forth in the Commission’s regulations.²³ Disbursements for such activities are not contributions or expenditures, provided the corporation does not act in

¹⁷ 52 U.S.C. § 30101(8)(A)(i).

¹⁸ 52 U.S.C. § 30116(a)(7)(B)(i); *see also* Explanation and Justification for Regulations on Coordinated and Independent Expenditures (“Coordination E&J”), 68 Fed. Reg. 421, 426 (Jan. 3, 2003).

¹⁹ 52 U.S.C. § 30101(9)(B)(ii).

²⁰ 52 U.S.C. § 30118(a).

²¹ *Id.*

²² *Id.*

²³ 11 C.F.R. § 114.4(c)(5).

1 cooperation, consultation, or concert with or at the request or suggestion of the candidates, the
2 candidates' committees or agents regarding the preparation, contents and distribution of the voter
3 guide; and no portion of the voter guide expressly advocates the election or defeat of one or more
4 clearly identified candidate or candidates of any clearly identified political party.²⁴

5 The Commission has in the past considered whether an organization's voter guide is
6 exempt from regulation under 11 C.F.R. § 114.4(c)(5) or contained express advocacy and should
7 be considered a contribution or expenditure. In MUR 5874 (Gun Owners of America), the
8 Commission found no reason to believe a voter guide that rated every candidate in all 50 states
9 based on their positions on gun issues expressly advocated the election or defeat of federal
10 candidates. In that matter: 1) each candidate was given equal space in the voter guide: 2) there
11 were no marks of any kind indicating a preference for any one candidate over another; 3) each
12 candidate was rated on a scale from "A+" to "F" with an additional rating of "NR" for candidates
13 who refused to answer the questionnaire seeking information for the ratings, or had no record on
14 gun issues; 4) no other information about the candidates or comment on their fitness for office
15 was included in the voter guide; and 5) while candidates were rated in the guide based on their

²⁴ 11 C.F.R. § 114.4(c)(5)(ii)(A). A communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman, or "Smith for Congress," or uses campaign slogans or individual words, "which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)..." See 11 C.F.R. §100.22(a); *Buckley v. Valeo*, 424 U.S. 144 n.52 (1976); see also *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986). A communication may also contain express advocacy "when taken as a whole and with limited reference to external events" it "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. §100.22(b); see also Factual & Legal Analysis at 12-13, 14-15 MUR 5024R (Council for Responsible Government/Kean) (analyzing brochures under 11 C.F.R. § 100.22(b)), General Counsel's Report # 3 at 1, MURs 5511/5525 (Swift Boat Veterans) (requesting that the Commission enter into a Conciliation Agreement for violations of section 100.22(b)); Conciliation Agreement at ¶¶ 5, 25-28, MURs 5511/5525 (Swift Boat Veterans); Certification, MURs 5511/5525 (Swift Boat Veterans) (approving the recommendations in General Counsel's Report #3 and authorizing the Conciliation Agreement); Factual and Legal Analysis at 7-8, MUR 5831 (Softer Voices) (Mar. 26, 2009).

1 position on gun issues, they were not rated in such a way as to advocate the election of a specific
2 candidate.²⁵ More recently, in MUR 7416 (Unknown Respondents), the Commission split on the
3 question of whether a voter guide had “unambiguous, unmistakable meaning” when it described
4 one candidate as being a “[s]trong supporter of President Trump” and claimed he would “fight
5 for additional tax cuts in Congress” and a second candidate as having “[c]riticized Trump during
6 the 2016 campaign” and as someone who “[b]roke his promise to never raise out taxes.”²⁶

7 The CVI mailer appears to be a voter guide that does not include express advocacy, for
8 the same reasons articulated in MUR 5874. Here, each candidate is given equal space without
9 markings indicating a preference for either candidate. The information about the candidates’
10 positions are stated only as “yes” or “no,” unlike in MUR 7416, and are based on information
11 contained on the candidates’ website or the public record. Additionally, there is also no
12 comment on either candidate’s fitness for office and no portion of the mailer expressly advocates
13 the election or defeat of Kopser or Roy, or any other clearly identified candidate or political
14 party. Further, the mailer does not contain words or “in effect” explicit directives that urge the
15 election or defeat of Kopser or Roy.²⁷ In fact, there is no language to encourage voting at all.

16 Because the record is insufficient to support the allegations that Respondents violated the
17 Act in connection with the mailer, the Commission dismisses allegations that Center for Voter
18 Information violated 52 U.S.C. § 30118. Additionally, the Commission also dismisses the

²⁵ Factual & Legal Analysis at 4-6, MUR 5874 (Gun Owners of America, Inc.); *see also* Factual & Legal Analysis at 8-10, MUR 6683 (Fort Bend County Democratic Party) (allocating costs of voter guide that expressly advocated the election of a federal candidate); Factual & Legal Analysis at 4, MUR 5820 (ACORN) (materials used for voter registration and GOTV efforts that did not include express advocacy and were not partisan did not trigger political committee status).

²⁶ Certification, MUR 7416 (Unknown Respondent) (June 5, 2019).

²⁷ *See* 11 C.F.R. § 100.22(a).

- 1 allegations that Kopser for Congress and Steven M. Carroll in his official capacity as treasurer,
- 2 violated 52 U.S.C. § 30118.