



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 9, 2021

By Email and First Class Mail

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RE: MUR 7735
Big Tent Project Fund

Dear Ms. Utrecht and Mr. Clark:

On May 11, 2020, the Federal Election Commission notified your client, Big Tent Project Fund, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information provided by you, the Commission, on July 13, 2021, found that there is reason to believe that Big Tent Project Fund violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political committee and report its independent expenditures as a political committee, and violated 52 U.S.C. § 30104(b)(4)(H)(iii), (b)(5)(A), and (g)(1) by failing to report independent expenditures as a political committee. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. We request that all responses to the enclosed Request for Written Answers and Production of Documents be submitted to the Office of the General Counsel within 30 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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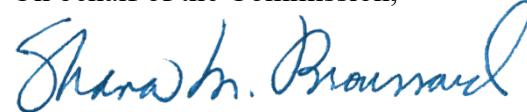
If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission’s “Guidebook for Complainants and Respondents on the FEC Enforcement Process,” which is available on the Commission’s website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and (a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission’s procedures for handling possible violations of the Act. If you have any questions, please contact Thaddeus H. Ewald, the attorney assigned to this matter, at (202) 694-1650 or tewald@fec.gov.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures

Factual and Legal Analysis
Requests for Written Answers and Production of Documents
Procedures

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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FACTUAL AND LEGAL ANALYSIS

3 RESPONDENTS: Big Tent Project Fund MUR 7735
4 Jonathan Kott

5 I. INTRODUCTION

6 The Complaint alleges that the Big Tent Project Fund (“Big Tent Project”) and Big Tent
7 Project’s Executive Director Jonathan Kott (collectively, the “Respondents”) violated the Federal
8 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations (1) by
9 failing to register and report as a political committee, or, in the alternative, by failing to disclose
10 contributors who gave for political purposes and who funded its independent expenditures, and
11 (2) by failing to report certain independent expenditures. In less than a month after its formation,
12 Big Tent Project reported spending \$4,819,713.56 on independent expenditures in opposition to
13 U.S. Senator Bernie Sanders’s campaign for the 2020 Democratic presidential nomination.

14 For the reasons set forth below, the Commission finds reason to believe that the Big Tent
15 Project violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a
16 political committee and violated 52 U.S.C. § 30104(b)(4)(H)(iii), (b)(5)(A), and (g)(1) by failing
17 to report independent expenditures. The Commission takes no action at this time as to any
18 allegations against Kott.

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1 **II. FACTUAL BACKGROUND**

2 Big Tent Project is a 501(c)(4) organization that registered as a corporation in Delaware
 3 on February 12, 2020.¹ Jonathan Kott is the Executive Director of Big Tent Project.² Big Tent
 4 Project is not registered as a political committee with the Commission.

5 Between February 19, 2020, and March 2, 2020, Big Tent Project reported making
 6 \$4,819,713.56 in independent expenditures opposing Sanders's campaign for the Democratic
 7 presidential nomination, including \$4,448,335.14 in digital and online advertising and
 8 \$371,378.42 in "mailing expense[s]."³ According to Facebook's Ad Library, Big Tent Project
 9 paid \$164,673 to sponsor approximately 1,900 advertisements on Facebook and Instagram
 10 between February 19, 2020, and March 10, 2020, including 58 advertisements in Michigan
 11 between March 5, 2020, and March 10, 2020.⁴ Big Tent Project has not reported making any
 12 independent expenditures since March 2, 2020.⁵ Generally, the advertisements on Facebook's

¹ Compl. ¶¶ 5, 7, 8, 15 (May 7, 2020) (citing news articles' descriptions of Big Tent Project); Resp. at 6 (July 24, 2020); *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name for "Big Tent Project Fund" or File Number for "7848378") (last visited May 12, 2021).

² Compl. ¶ 5 (citing Anna Palmer & Jake Sherman, *The Dem Ad Campaign Aimed At Taking Down Bernie*, POLITICO: PLAYBOOK (Feb. 19, 2020) [hereinafter Playbook Article], <https://www.politico.com/newsletters/playbook/2020/02/19/the-dem-ad-campaign-aimed-at-taking-down-bernie-488357>).

³ FEC Form 5, Big Tent Project Fund, Report of Independent Expenditures Made and Contributions Received (Apr. 10, 2020) [hereinafter Big Tent Project Form 5], <https://docquery.fec.gov/pdf/321/202004109216633321/202004109216633321.pdf>; *Independent Expenditures*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90019175&is_notice=true&candidate_id=P60007168&support_oppose_indicator=O&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited May 12, 2021) [hereinafter Big Tent Project IEs Website].

⁴ *Ads from Big Tent Project*, FACEBOOK: AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=inactive&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=112739086975178&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=inactive&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=112739086975178&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited May 12, 2021) [hereinafter Big Tent Project Ad Profile]; *see also* Compl. ¶ 6 & n.5; *id.* ¶ 22. The Complaint alleges that neither the Google nor Snap ad archives reflect any advertisements run under the Big Tent Project name. *See* Compl. at 3 n.5.

⁵ Big Tent Project IEs Website; *see* Compl. ¶ 21.

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1 Ad Library criticize Sanders as a “socialist,” portray a vote for Sanders negatively on the basis
 2 that such votes would likely lead to the re-election of President Donald Trump, highlight
 3 Sanders’s positions as requiring tax increases, and, in some instances, expressly encourage the
 4 viewer to “Say No” to or “Vote No” on Sanders.⁶

5 The Complaint alleges that Big Tent Project violated the Act (1) by failing to register and
 6 report as a political committee, or in the alternative, by failing to disclose contributors who gave
 7 for political purposes and who funded its independent expenditures, and (2) by failing to report
 8 between \$35,124 and \$47,758 in independent expenditures made in early March 2020 in
 9 Michigan.⁷

10 The Complaint cites numerous news reports in which Kott made statements that Big Tent
 11 Project would make expenditures to ensure Democratic primary voters learned about Sanders’s
 12 ““record of politically toxic policy proposals . . . before they choose a nominee””⁸ and had
 13 information about Sanders’s record and positions ““before they vote,””⁹ and he characterized Big
 14 Tent Project as a project launching a ““debate about [Sanders’s] socialism and electability.””¹⁰

⁶ See Big Tent Project Ad Profile.

⁷ Compl. ¶¶ 26-52; Big Tent Project Ad Profile (filter to “Michigan” in “Delivery by Region”). Additionally, the Complaint alleges that Big Tent Project sponsored advertisements in Idaho, Compl. at 9 n.29, but Facebook’s Ad Library does not offer an option to filter Idaho advertisements to confirm this allegation. See Big Tent Project Ad Profile.

⁸ Compl. ¶ 7 (quoting Playbook Article).

⁹ *Id.* ¶¶ 14-15 (quoting Michael Warren, Jeff Zeleny, Lauren Fox & Fredreka Schouten, *Bernie Sanders’ Rise Has Moderate Democrats Wondering If It’s Too Late to Stop Him*, CNN (Feb. 25, 2020, 4:22PM), <https://www.cnn.com/2020/02/25/politics/bernie-sanders-2020-rise/index.html>; and Alana Abramson, *Big-Money Democratic Donors Are Trying to Stop Bernie Sanders. But Even They Worry It Could Be Too Late*, TIME (Feb. 27, 2020, 2:56PM), <https://time.com/5791185/bernie-sanders-democratic-party-donors/>).

¹⁰ *Id.* ¶ 8 (quoting NPR Staff, *Nevada Democratic Debate: Live Updates and Analysis*, NPR (Feb. 19, 2020), <https://will.illinois.edu/news/story/nevada-democratic-debate-live-updates-and-analysis>).

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1 Big Tent Project, in its Response, describes its primary purpose as “educating the public

2 on current events and policy issues such as healthcare, tax energy, [and] education.”¹¹

3 Respondents argue that Big Tent Project is not a political committee because it is a 501(c)(4)

4 organization with issue-related social welfare purposes as just described, it has made and plans to

5 continue to make significant expenditures related to those issue-related primary purposes, and

6 statements by Kott and the press about Big Tent Project’s mission are not dispositive.¹²

7 Furthermore, Big Tent Project contends that it was not required to report its contributors because

8 none of the donations it received were earmarked for the purpose of influencing federal elections

9 and it contends that the reporting requirements apply only when donations are earmarked for

10 independent expenditures pursuant to a “written proposal or some other specific indication.”¹³

11 Finally, Big Tent Project appears not to contest that it did not report certain independent

12 expenditures, but stated that it would amend its April 2020 Quarterly Report and asks that such

13 omission should be handled pursuant to the Commission’s Administrative Fines program.¹⁴ As

14 of May 12, 2021, Big Tent Project had not yet amended its April 2020 Quarterly Report nor had

15 it filed any subsequent quarterly reports.¹⁵

¹¹ Resp. at 6.

¹² *Id.* at 5-7.

¹³ *Id.* at 7-8.

¹⁴ *Id.* at 2 n.1 (acknowledging without elaboration “one minor reporting omission from the April quarterly report, which was discovered in preparation of” the Response).

¹⁵ *Big Tent Project Fund: Committee Filings*, FEC.GOV, <https://www.fec.gov/data/committee/C90019175/?tab=filings> (last visited May 12, 2021).

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1 The Complaint also alleges Big Tent Project spent approximately \$72,000 on anti-
 2 Sanders communications on Facebook under the group name “United We Succeed.”¹⁶ The
 3 Facebook Ad Library confirms that a “political organization” page entitled United We Succeed
 4 spent \$71,763 on advertisements opposing Sanders’s presidential campaign beginning in
 5 March 2020.¹⁷ United We Succeed’s Facebook profile and the organization’s website state that
 6 it is “[a] campaign in partnership with the Big Tent Project Fund.”¹⁸ Big Tent Project denies that
 7 it made expenditures associated with United We Succeed.¹⁹

8 **III. LEGAL ANALYSIS**

9 **A. The Commission Finds Reason to Believe That Big Tent Project Fund Failed**
 10 **to Register and Report as a Political Committee**

11 Political committees must register with the Commission, file periodic reports for
 12 disclosure to the public, appoint a treasurer who maintains its records, and identify themselves
 13 through “disclaimers” on all of their political advertising, on their websites, and in mass
 14 e-mails.²⁰ The Act and Commission regulations define a “political committee” as “any
 15 committee, club, association or other group of persons which receives contributions aggregating
 16 in excess of \$1,000 during a calendar year or which makes expenditures in excess of \$1,000

¹⁶ Compl. ¶ 23. The Complaint makes this allegation in context of its political committee violation as part of the argument that Big Tent Project’s major purpose was the election or nomination of federal candidates; it does not make a specific allegation that Big Tent Project failed to report these communications as independent expenditures like it does regarding the Michigan advertisements. *See id.* ¶¶ 23, 38, 39(d), 50-52.

¹⁷ *Ads from United We Succeed*, FACEBOOK: AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifETIME&view_all_page_id=100926438191751&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifETIME&view_all_page_id=100926438191751&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited May 12, 2021).

¹⁸ *See* Compl. at 9 n.32; *United We Succeed*, FACEBOOK, <https://www.facebook.com/pg/United-We-Succeed-100926438191751/about/> (last visited May 12, 2021); UNITED WE SUCCEED (June 29, 2020), <https://web.archive.org/web/20200629134349/https://www.unitedwesucceed.org/>.

¹⁹ Resp. at 2 n.1.

²⁰ *See* 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

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1 during a calendar year.”²¹ In *Buckley v. Valeo*,²² the Supreme Court held that defining political
 2 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was
 3 overbroad, reaching “groups engaged purely in issue discussion.”²³ To cure that infirmity, the
 4 Court concluded that the term “political committee” “need only encompass organizations that are
 5 under the control of a candidate or *the major purpose of which is the nomination or election of a*
 6 *candidate.*”²⁴ Accordingly, under the statute as thus construed, an organization that is not
 7 controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000
 8 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.

9 Although *Buckley* established the major purpose test, it provided no guidance as to the
 10 proper approach to determine an organization’s major purpose.²⁵ After *Buckley*, the Commission
 11 adopted a policy of determining on a case-by-case basis whether an organization is a political
 12 committee, including whether its major purpose is the nomination or election of federal
 13 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,
 14 the Commission has consistently declined to do so.²⁶ Instead, the Commission determined that
 15 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis

²¹ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

²² 424 U.S. 1 (1976).

²³ *Id.* at 79.

²⁴ *Id.* (emphasis added).

²⁵ See, e.g., *Real Truth About Abortion, Inc. v. FEC* (RTAA; formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), cert. denied, 568 U.S. 1114 (2013).

²⁶ See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

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1 of an organization’s conduct that is incompatible with a one-size fits-all rule,” and that “any list
 2 of factors developed by the Commission would not likely be exhaustive in any event, as
 3 evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions
 4 considering the political committee status of various entities.”²⁷

5 **1. Statutory Threshold**

6 To assess whether an organization has made an “expenditure,” the Commission analyzes
 7 whether spending on any of an organization’s communications made independently of a
 8 candidate constitute express advocacy under 11 C.F.R § 100.22.²⁸ In 2020, Big Tent Project
 9 reported that it spent \$4,819,713.56 on independent expenditures.²⁹ Therefore, Big Tent
 10 Project’s expenditures well exceeded the \$1,000 statutory threshold set forth in the Act’s
 11 political committee definition, which Big Tent Project acknowledges.³⁰

12 **2. Major Purpose**

13 To determine an entity’s “major purpose,” the Commission considers a group’s “overall
 14 conduct,” including, among other factors, public statements about its mission, organizational
 15 documents, government filings (*e.g.*, IRS notices), and the proportion of spending related to
 16 “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”³¹ The
 17 Commission has stated that it compares how much of an organization’s spending is for “*federal*

²⁷ Political Committee Status, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) [hereinafter Supplemental E&J].

²⁸ *Id.* at 5606.

²⁹ Big Tent Project Form 5; *see also* Compl. ¶¶ 2, 24.

³⁰ Resp. at 5 (“[Big Tent Project] made independent expenditures aggregating in excess of \$1,000, satisfying the first prong of the political committee test.”).

³¹ Supplemental E&J, 72 Fed. Reg. at 5597, 5605.

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1 ~~campaign activity~~” relative to “activities that [a]re not campaign related.”³² Under the
 2 Commission’s case-by-case approach, Big Tent Project’s “overall conduct,” including its
 3 proportion of spending on federal campaign activity, raises a reasonable inference that Big Tent
 4 Project’s major purpose was the nomination or election of federal candidates.

5 The proportion of Big Tent Project’s spending related to federal campaign activity
 6 compared to its total spending indicates that Big Tent Project’s major purpose was the
 7 nomination or election of federal candidates.³³ Big Tent Project reported \$4,819,713.56 in
 8 independent expenditures opposing Sanders’s campaign for the Democratic presidential
 9 nomination.³⁴ Although it has not yet filed any tax return with the IRS, Big Tent Project states in
 10 its Response that, as of July 24, 2020, it had made approximately \$3.75 million in “primary
 11 purpose expenditures,” which it represents includes issue advocacy, educational
 12 communications, primary purpose grants to other organizations, and other expenditures
 13 consistent with the Internal Revenue Code.³⁵ Big Tent Project’s Response is not clear on
 14 whether the alleged \$3.75 million in “primary purpose expenditures” are entirely independent of
 15 the \$4.8 million in reported independent expenditures, or whether there is some overlap between
 16 those categories.

³² ~~Id.~~ at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. *See RTAA*, 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

³³ ~~See FEC v. Mass. Citizens for Life, Inc.~~, 479 U.S. 238, 262 (1986) (“[S]hould [a corporation’s] independent spending become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.”) (citing *Buckley v. Valeo*, 424 U.S. 1, 79 (1976)).

³⁴ Big Tent Project Form 5; *see also* Compl. ¶¶ 2, 24.

³⁵ Resp. at 6.

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1 Regardless, Big Tent Project appears to acknowledge that its expenditures on federal
 2 campaign activity constituted at least 56% of its total expenditures in the first six months of its
 3 existence. If Big Tent Project’s “primary purpose expenditures” were mutually exclusive of its
 4 independent expenditures as reported to the Commission and Big Tent Project made no other
 5 expenditures during its first six months of existence, approximately 56% of its total expenditures
 6 were on federal campaign activity³⁶ If there is overlap between the two categories, the total
 7 amount of Big Tent Project’s known expenditures is lower, but the amount of reported
 8 independent expenditures remains the same, which would make the proportion spent on federal
 9 campaign activity higher than 56%.³⁷ While the Commission has never set a threshold on the
 10 proportion of spending on federal campaign activity required to satisfy the major purpose
 11 analysis, it has previously found reason to believe in matters where the organization’s proportion
 12 was comparable or less than the apparent minimum 56% proportion present here.³⁸

13 Additionally, the true proportion of Big Tent Project’s spending on federal campaign
 14 activity relative to its non-campaign related expenditures may be even higher. The Complaint

³⁶ This percentage is calculated as follows: $\$4,819,714 / (\$3,750,000 + \$4,819,714) = 56\%$. This percentage presently excludes the alleged unreported independent expenditures from Michigan and United We Succeed, *see infra*, from this calculation. However, even with the addition of the low or high range for Michigan advertisements, the United We Succeed advertisements, or any combination thereof, the proportion of spending on federal campaign activity ranges between 56% and 57%.

³⁷ Big Tent Project suggests that it “may have overreported certain expenditures that did not contain express advocacy, which therefore were not in furtherance of an electoral major purpose.” Resp. at 6 n.17. However, Big Tent Project does not offer any example of a reported independent expenditure that did not contain express advocacy.

³⁸ *See, e.g.*, F&LA at 15, MUR 6538R (Americans for Job Security, *et al.*) (“More than half of [AJS’s total spending] was for independent expenditures . . . and the electioneering communications analyzed above The Commission has never set a threshold on the proportion of spending on major purpose activities required for political committee status and declines to do so now. Without determining whether it is *necessary* to cross a 50 percent threshold to determine an organization’s major purpose, it is *sufficient* in this case, based on the available information, to find reason to believe that AJS’s major purpose had become the nomination or election of federal candidates.” (emphasis in original)).

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1 quotes a March 6, 2020, press article, reporting that Kott stated that Big Tent Project ““ha[d]
 2 spent nearly \$7 million in South Carolina, Super Tuesday and now Michigan, Washington, and
 3 Idaho exposing Bernie’s radical record and ideas,”” and that ““[o]nce voters learn more about
 4 him, they overwhelmingly reject his candidacy””³⁹ Whether Kott’s statement was referring
 5 to the \$4.8 million in reported independent expenditures up to that point plus some combination
 6 of (1) Big Tent Project’s \$3.75 million in “primary purpose expenditures,” (2) the alleged
 7 unreported independent expenditures in Michigan, (3) the alleged unreported independent
 8 expenditures tied to United We Succeed, or (4) other unknown and unreported campaign-related
 9 expenditures, it suggests that Big Tent Project’s reported independent expenditure activity may
 10 not fully encompass all of its spending on federal campaign activity and warrants further inquiry.

11 Respondents contend that Big Tent Project’s tax status as a 501(c)(4) organization
 12 entitles it to a “rebuttable presumption of non-political committee status.”⁴⁰ An organization’s
 13 tax status is relevant to the major purpose analysis, but the Commission has previously
 14 determined that “neither FECA, as amended, nor any judicial decision interpreting it, has
 15 substituted tax status for the conduct-based determination required for political committee
 16 status,” and the Commission has accordingly followed a well-established case-by-case
 17 analysis.⁴¹ Here, a “detailed examination of [Big Tent Project’s] contributions, expenditures, and
 18 major purpose,” is sufficient to outweigh its tax designation.⁴²

³⁹ Compl. ¶ 20 (citing Jackie Kucinich, *An Anti-Sanders Group That’s Ticking Off Bernie Plans Another Round of Ads*, DAILY BEAST (Mar. 6, 2020, 2:28PM), <https://www.thedailybeast.com/an-anti-sanders-group-thats-ticking-off-bernie-plans-another-round-of-ads?ref=scroll>).

⁴⁰ Resp. at 5-6.

⁴¹ Supplemental E&J, 72 Fed. Reg. at 5598.

⁴² *Id.* at 5599.

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1 For the foregoing reasons, Big Tent Project’s significant independent expenditures in
 2 opposition to Sanders compared to its total spending indicates that Big Tent Project’s major
 3 purpose was the nomination or election of federal candidates. Accordingly, the Commission
 4 finds reason to believe that Big Tent Project violated 52 U.S.C. §§ 30102, 30103, and 30104 by
 5 failing to register and report as a political committee.

6 **B. The Commission Finds Reason to Believe That Big Tent Project Fund Failed
 7 to Report Independent Expenditures**

8 An “independent expenditure” is an expenditure made by any person for a
 9 communication that (1) expressly advocates the election or defeat of a clearly identified
 10 candidate,⁴³ and (2) is not coordinated with the candidate, her authorized committee, her agents,
 11 or a political committee or its agents.⁴⁴ The Act requires both political committees and persons
 12 other than political committees to report their independent expenditures.⁴⁵ Political committees
 13 other than authorized committees must disclose their independent expenditures and itemize such
 14 expenditures with information including the name and address of each person who receives
 15 disbursements in connection with an independent expenditure, as well as the date, amount,
 16 purpose, and identity of the candidate in support of or opposition to for which the independent
 17 expenditure is made.⁴⁶ The Act places similar reporting requirements on non-political
 18 committee persons making independent expenditures aggregating greater than \$250 in a calendar

⁴³ Under the Commission’s regulations, a communication can expressly advocate for the election or defeat of a clearly identified federal candidate if it uses certain “magic words,” such as “vote for” or “elect.” 11 C.F.R. § 100.22(a).

⁴⁴ 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

⁴⁵ *See* 52 U.S.C. § 30104.

⁴⁶ 52 U.S.C. § 30104(b)(3)(B)(iii), (g); 11 C.F.R. § 109.10.

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1 year.⁴⁷ A person, including a political committee, also may have to file additional disclosure
 2 reports depending on the amount and timing of an independent expenditure.⁴⁸

3 Facebook's Ad Library reflects that Big Tent Project sponsored 58 versions of three
 4 unique advertisements in the five days before Michigan's primary on March 10, 2020.⁴⁹ Two of
 5 the Michigan advertisements are static advertisements that equate "Socialist Bernie Sanders"
 6 with "Four More Years of Trump," and explicitly advocate the viewer "Vote NO on Bernie
 7 Sanders," respectively.⁵⁰

8 The available information thus indicates that, in addition to evidencing Big Tent Project's
 9 major purpose of nominating or electing a federal candidate, Big Tent Project failed to report
 10 these advertisements as independent expenditures. Big Tent Project does not dispute that it
 11 failed to report some independent expenditures, which appear to correspond to the Michigan
 12 advertisements alleged in the Complaint.⁵¹ The Michigan advertisements were independent
 13 expenditures for which reporting was required because they contained express advocacy and
 14 there is no indication they were coordinated with any candidate's campaign. At least two

⁴⁷ 52 U.S.C. § 30104(c), (g); 11 C.F.R. § 109.10.

⁴⁸ See, e.g., 52 U.S.C. § 30104(g)(1) (requiring reports within 24 hours from persons making independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before an election).

⁴⁹ See Big Tent Project Ad Profile (filter to "Michigan" in "Delivery by Region"). The third is a video advertisement that criticizes Sanders's platform and states that voting for him would cost "another four years of Donald Trump." *Id.*

⁵⁰ See *id.*

⁵¹ See Resp. at 2 n.1 (acknowledging "one minor reporting omission" discovered in the course of preparing the Response, but denying the Complaint's allegations that Big Tent Project was involved in advertisements under the name "United We Succeed"). Respondents stated they would amend Big Tent Project's April 2020 Quarterly Report to correct the acknowledged omission, and argued that omission should be handled through the Administrative Fines program and that none of the expenditures involved required 24-Hour Reports. *Id.* As of May 12, 2021, Big Tent Project has not filed an Amended April 2020 Quarterly Report. *Supra* note 15.

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Factual and Legal Analysis

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1 unreported advertisements constitute express advocacy under 11 C.F.R. § 100.22(a) because they
2 explicitly encourage the viewer to vote against Sanders.⁵²

3 It appears the Michigan advertisements cost over \$1,000 and were made in the week
4 leading up to the Democratic primary election in that state; therefore, Big Tent Project was
5 required to file 24-Hour Reports disclosing those expenditures.⁵³ Therefore, the Commission
6 finds reason to believe that the Big Tent Project violated 52 U.S.C. § 30104(b)(4)(H)(iii),
7 (b)(5)(A), and (g)(1) by failing to report independent expenditures as a political committee.

⁵² See Big Tent Project Ad Profile; 11 C.F.R. § 100.22(a) (defining express advocacy as a communication using a phrase such as “vote for the President” and “vote against [candidate’s name]”).

⁵³ See 52 U.S.C. § 30104(g)(1) (requiring persons, including political committees, that make independent expenditures aggregating \$1,000 or more less than 20 days, but more than 24 hours, before an election to report those expenditures within 24 hours); 11 C.F.R. § 109.10(d) (same).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 7735

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**REQUEST FOR WRITTEN ANSWERS
AND PRODUCTION OF DOCUMENTS**

TO: Big Tent Project Fund
c/o Lyn Utrecht, Esq.
Adam Clark, Esq.
Utrecht, Kleinfeld, Fiori, Partners
1776 Eye Street NW, Tenth Floor
Washington, D.C. 20006

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce for inspection and copying the documents specified below, in their entirety, via email or another appropriate electronic submission to tewald@fec.gov and via U.S. mail to the Office of the General Counsel, Federal Election Commission, 1050 First Street NE, Washington, DC 20463, on or before the same deadline. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals. We request that you produce documents and communications in an easily readable format (*i.e.*, PDF). For the purposes of these questions, “identify” and “identity” with respect to a person shall mean provide the person’s full name, most recent business and residence addresses, telephone numbers, and email addresses.

1. State the date of Big Tent Project Fund’s incorporation and whether its corporate registration is presently valid. Provide copies of all articles of incorporation and by-laws under which Big Tent Project Fund has operated since its inception.
2. State whether Big Tent Project Fund has filed any Form 990 or other exempt return with the Internal Revenue Service. Provide copies of any Form 990 or other exempt return Big Tent Project Fund has filed with the Internal Revenue Service.
3. For the time period from January 1, 2020, to the present, identify all persons who have been directors, officers, employees, representatives, or agents of Big Tent Project Fund.

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4. Provide the total of Big Tent Project Fund's aggregate receipts and aggregate disbursements to date. Identify every recipient that received at least \$25,000 in aggregate disbursements from Big Tent Project Fund and provide the aggregate amount of disbursements to each identified recipient rounded to the nearest \$25,000. State the purposes of these disbursements.
5. Identify all contributions, disbursements, and donations to any political committees or organizations made by Big Tent Project Fund from January 1, 2020, to the present, and specify the amount and purpose of each contribution, disbursement, and donation. Produce all documents reflecting such contributions, disbursements, and donations.
6. State which expenditures and disbursements identified in response to Questions 4-5 correspond to those Big Tent Project Fund referred to as "primary purpose expenditures" on page six of its Response to the Complaint in MUR 7735.
7. For the time period from January 1, 2020, to the present, produce a representative copy of each unique communication that (i) identifies or references a candidate for federal office or a political party which nominates candidates for federal office; (ii) is distributed through any means described in 52 U.S.C. § 30101(22) or any other media (e.g., internet communications); and (iii) is funded in whole or in part by Big Tent Project Fund. As to each such communication, please state:
 - a) The costs associated with the creation, production, distribution, and transmission of the communication;
 - b) Whether the costs associated with the communication were reported to the Commission as an independent expenditure, and if so, the payment's location on a Big Tent Project Fund disclosure report filed with the Commission;
 - c) If not paid entirely by Big Tent Project Fund, the identity of the third party or third parties that paid a portion of the costs and how much the third party or third parties paid;
 - d) The vendor(s) and/or outside consultant(s) used to create, produce, distribute, and transmit the communication;
 - e) The election(s) and/or candidate(s), federal and nonfederal, identified or referred to in the communication; and
 - f) The date(s) on which the communication was distributed and the target audience.

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8. For the time period from January 1, 2020, to the present, produce a representative copy of each unique or template fundraising solicitation, including, but not limited to, any plans, mission statements, brochures, organizational profiles, reports provided to potential donors, and scripts or written materials provided to those making oral solicitations, funded in whole or in part by Big Tent Project Fund, and as to each fundraising solicitation, please state:
 - a) The costs associated with the creation, production, and distribution of the communication;
 - b) If not paid entirely by Big Tent Project Fund, the identity of the third party or third parties that paid a portion of the costs and how much the third party or third parties paid;
 - c) The amount of the funds received in response to each separate solicitation;
 - d) The vendor(s) and/or outside consultant(s) used to create and distribute each separate solicitation;
 - e) The election(s) and/or candidate(s), federal and nonfederal, identified or referred to in the communication;
 - f) The date(s) on which each solicitation was distributed (orally and/or in writing) and the target audience; and
 - g) For written or electronic solicitations, provide the mailing or distribution list used.
9. For the time period from January 1, 2020, to the present, produce a representative copy of each unique or template communication from Big Tent Project Fund to its contributors and donors, including, but not limited to, bulletins, candidate and political party endorsements, and recommendations regarding contributions and donations, and identify the following:
 - a) The number of contributors and donors to whom Big Tent Project Fund communicated information during each election cycle about any candidate for federal office, their authorized committee(s), or any political party which nominates candidates for federal office;
 - b) The medium in which Big Tent Project Fund distributed each communication to its contributors and donors (e.g., direct mail, email);
 - c) The cost of duplicating and distributing each communication;

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- d) The vendor(s) and/or outside consultant(s) used to create, produce, distribute, and transmit the communication; and
- e) The date(s) on which each communication was distributed.
10. Identify the name and address of Big Tent Project Fund’s records custodian, describe its document retention and destruction policies, and identify the person(s) responsible for ensuring that documents are properly retained and/or destroyed. If such policies are reflected in documents, produce those documents. If any documents that would have been responsive to this Request for Written Answers and Production of Documents, and were previously in Big Tent Project Fund’s possession, custody, or control, were destroyed or transferred to any third party, identify all such documents and the persons who currently are in possession, custody, or control of the requested materials.
11. Identify the “minor reporting omission from the April quarterly report” referenced in footnote one on page two of Big Tent Project Fund’s Response to the Complaint in MUR 7735. State whether Big Tent Project Fund amended its April 2020 Quarterly Report to remediate the identified reporting omission. To the extent not provided in response to Questions 4 and 7, produce all documents and other information regarding the identified reporting omission.
12. State the nature of Big Tent Project Fund’s relationship, if any, with United We Succeed, including whether Big Tent Project Fund made any communications in partnership with United We Succeed or otherwise coordinated with United We Succeed on communications made by that organization. To the extent not provided in response to Question 7, produce all communications Big Tent Project Fund made in partnership with United We Succeed.
13. Identify the following:
 - a) Persons consulted by Big Tent Project Fund in preparing responses to this Request for Written Answers and Production of Documents, other than its attorneys; and
 - b) Individual(s) with the most personal knowledge regarding the communications and activities referenced in Questions 4-9.

**DESCRIPTION OF PRELIMINARY PROCEDURES
FOR PROCESSING COMPLAINTS FILED WITH THE
FEDERAL ELECTION COMMISSION**

1050 First Street, NE
Washington, D.C. 20463
EMAIL cela@fec.gov FAX (202) 219-3923

Complaints filed with the Federal Election Commission shall be referred to the Enforcement Division of the Office of the General Counsel, where they are assigned a MUR (Matter Under Review) number and forwarded to Complaints Examination & Legal Administration ("CELA") for processing. Within five days of receipt of the complaint, the Commission shall notify all respondents referenced in the complaint, in writing, that the complaint has been filed, and shall include with such notification a copy of the complaint. Simultaneously, the complainant shall be notified that the complaint has been received. The respondents shall then have 15 days to demonstrate, in writing, that no action should be taken against them in response to the complaint. If additional time is needed in which to respond to the complaint, the respondents may request an extension of time. The request must be in writing and demonstrate good cause as to why an extension should be granted. Please be advised that not all requests are granted.

After the response period has elapsed, cases are prioritized and maintained in CELA. Cases warranting the use of Commission resources are assigned as staff becomes available. Cases not warranting the use of Commission resources are dismissed.

If a case is assigned to a staff person, the Office of the General Counsel shall report to the Commission, making recommendations based upon a preliminary legal and factual analysis of the complaint and any submission made by the respondent. The report may recommend that the Commission: (a) find reason to believe that the complaint sets forth a possible violation of the Federal Election Campaign Act of 1971, as amended, (hereinafter the "Act"); or (b) find no reason to believe that the complaint sets forth a possible violation of the Act and, accordingly, close the file.

If, by an affirmative vote of four Commissioners, the Commission determines that there is reason to believe that a respondent has committed or is about to commit a violation of the Act, the Office of the General Counsel shall open an investigation into the matter. During the investigation, the Commission has the power to subpoena documents, to subpoena individuals to appear for deposition, and to order written answers to interrogatories. A respondent may be contacted more than once by the Commission during this phase.

If during this period of investigation, a respondent indicates a desire to enter into conciliation, the Office of the General Counsel may recommend that the Commission enter into conciliation prior to a finding of probable cause to believe that a violation has been committed. Conciliation is an attempt to correct or prevent a violation of the Act by informal methods of conference and persuasion. Most often, the result of conciliation is an agreement signed by the Commission and the respondent. The Conciliation Agreement must be adopted by four votes of

the Commission in order to become final. After signature by the Commission and the respondent, the Conciliation Agreement is made public within 30 days of closing of the entire file.

If the investigation warrants, and no conciliation agreement has been entered into prior to a probable cause to believe finding, the General Counsel must notify the respondent of his/her intent to recommend that the Commission proceed to a vote on probable cause to believe that a violation of the Act has been committed or is about to be committed. The General Counsel shall send the respondent a brief setting forth his/her position on the legal and factual issues of the case. A response brief stating respondent's position on the issues may be submitted within 15 days of receipt of the General Counsel's Brief. Both briefs are then filed with the Commission Secretary and considered by the Commission. Thereafter, if the Commission determines, by an affirmative vote of four Commissioners, that there is probable cause to believe that a violation of the Act has been committed or is about to be committed, the Commission must conciliate with the respondent for a period of at least 30 days, but not more than 90 days. If the Commission is unable to correct or prevent any violation through conciliation, the Office of the General Counsel may recommend that the Commission file a civil suit to enforce the Act against the respondent. Therefore, the Commission may, upon the affirmative vote of four Commissioners, institute civil action for relief in the United States District Court.

See 52 U.S.C. § 30109 and 11 C.F.R. Part 111.

March 2018