



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

**VIA ELECTRONIC MAIL AND  
UPS SIGNATURE REQUESTED**

Margaret Christ  
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March 10, 2025

RE: MUR 7735  
Big Tent Project Fund

Dear Ms. Christ:

This is in reference to the complaint you filed with the Federal Election Commission on May 7, 2020, concerning Big Tent Project Fund and Jonathan Kott. Based on that complaint, on July 31, 2021, the Commission found that there was reason to believe 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, and instituted an investigation of this matter. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision to find reason to believe, is enclosed. However, after considering the circumstances of this matter, on January 14, 2025, the Commission determined to take no further action as to Big Tent Project Fund and dismissed the allegations that Jonathan Kott violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register Big Tent Project Fund as a political committee and file periodic disclosure reports. Accordingly, on January 14, 2025, the Commission voted to close the file in this matter effective March 10, 2025. Any applicable Statements of Reasons available at the time of this letter's transmittal are enclosed.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action within 60 days of the dismissal, which became effective today. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter at (202) 694-1650 or [ddillenseger@fec.gov](mailto:ddillenseger@fec.gov).

Sincerely,

Lisa J. Stevenson  
General Counsel

*Mark Allen*

BY: Mark Allen  
Assistant General Counsel

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# FEDERAL ELECTION COMMISSION

## 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.<sup>1</sup> Jonathan Kott is the Executive Director of Big Tent Project.<sup>2</sup> 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]."<sup>3</sup> 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.<sup>4</sup> Big Tent Project has not reported making any  
 12           independent expenditures since March 2, 2020.<sup>5</sup> Generally, the advertisements on Facebook's

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<sup>1</sup> 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).

<sup>2</sup> 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>).

<sup>3</sup> 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](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].

<sup>4</sup> *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.

<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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””<sup>8</sup> and had  
 13 information about Sanders’s record and positions ““before they vote,””<sup>9</sup> and he characterized Big  
 14 Tent Project as a project launching a ““debate about [Sanders’s] socialism and electability.””<sup>10</sup>

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<sup>6</sup> See Big Tent Project Ad Profile.

<sup>7</sup> 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.

<sup>8</sup> Compl. ¶ 7 (quoting Playbook Article).

<sup>9</sup> *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/>).

<sup>10</sup> *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.”<sup>11</sup>

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.<sup>12</sup>

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.”<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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<sup>11</sup>       Resp. at 6.

<sup>12</sup>       *Id.* at 5-7.

<sup>13</sup>       *Id.* at 7-8.

<sup>14</sup>       *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).

<sup>15</sup>       *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.”<sup>16</sup> 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.<sup>17</sup> 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.”<sup>18</sup> Big Tent Project denies that  
 7        it made expenditures associated with United We Succeed.<sup>19</sup>

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.<sup>20</sup> 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

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<sup>16</sup>        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.

<sup>17</sup>        *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).

<sup>18</sup>        *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/>.

<sup>19</sup>        Resp. at 2 n.1.

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

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1 during a calendar year.”<sup>21</sup> In *Buckley v. Valeo*,<sup>22</sup> 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.”<sup>23</sup> 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.*”<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Instead, the Commission determined that  
 15 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis

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

<sup>22</sup> 424 U.S. 1 (1976).

<sup>23</sup> *Id.* at 79.

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> 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).

<sup>26</sup> 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.”<sup>27</sup>

## 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.<sup>28</sup> In 2020, Big Tent Project  
 9 reported that it spent \$4,819,713.56 on independent expenditures.<sup>29</sup> 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.<sup>30</sup>

## 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).”<sup>31</sup> The  
 17 Commission has stated that it compares how much of an organization’s spending is for “*federal*

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

<sup>28</sup>           *Id.* at 5606.

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

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

<sup>31</sup>           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.”<sup>32</sup> 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.<sup>33</sup> Big Tent Project reported \$4,819,713.56 in  
 8     independent expenditures opposing Sanders’s campaign for the Democratic presidential  
 9     nomination.<sup>34</sup> 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.<sup>35</sup> 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.

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<sup>32</sup>         *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).

<sup>33</sup>         *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)).

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

<sup>35</sup>         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 activity<sup>36</sup> 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%.<sup>37</sup> 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.<sup>38</sup>

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

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<sup>36</sup>       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%.

<sup>37</sup>       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.

<sup>38</sup>       *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 . . . .”<sup>39</sup> 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.”<sup>40</sup> 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.<sup>41</sup> Here, a “detailed examination of [Big Tent Project’s] contributions, expenditures, and  
 18 major purpose,” is sufficient to outweigh its tax designation.<sup>42</sup>

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<sup>39</sup> 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>).

<sup>40</sup> Resp. at 5-6.

<sup>41</sup> Supplemental E&J, 72 Fed. Reg. at 5598.

<sup>42</sup> *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,<sup>43</sup> and (2) is not coordinated with the candidate, her authorized committee, her agents,  
 11       or a political committee or its agents.<sup>44</sup> The Act requires both political committees and persons  
 12       other than political committees to report their independent expenditures.<sup>45</sup> 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.<sup>46</sup> The Act places similar reporting requirements on non-political  
 18       committee persons making independent expenditures aggregating greater than \$250 in a calendar

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<sup>43</sup>        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).

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

<sup>45</sup>        *See* 52 U.S.C. § 30104.

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

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1 year.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup> 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

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

<sup>48</sup> 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).

<sup>49</sup> 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.*

<sup>50</sup> See *id.*

<sup>51</sup> 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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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.<sup>52</sup>

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.<sup>53</sup> 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.

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<sup>52</sup> 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]”).

<sup>53</sup> 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).