



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

May 31, 2022

Via Email

mreif@robinskaplan.com

Michael D. Reif, Esq.
Robbins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

RE: MURs 7838, 7849, 7852, 7856
Expensify, Inc.
David Barrett

Dear Mr. Reif:

On October 29, 30 and November 4, 17, 2020, the Federal Election Commission notified your clients, Expensify, Inc. and David Barrett, of complaints alleging that they may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 12, 2022, on the basis of information in the complaints and provided by the Respondents, the Commission found no reason to believe that Expensify, Inc. and David Barrett violated 52 U.S.C. §§ 30118(a) 30120(a), 30121 and 11 C.F.R. § 110.11(a)(1)-(2); found no reason to believe that David Barrett violated 52 U.S.C. § 30104(c) and 11 C.F.R. §§ 109.10(d), 114.10(b)(1); and dismissed the allegation that Expensify, Inc. violated 52 U.S.C. § 30104(c) and 11 C.F.R. §§ 109.10(d), 114.10(b)(1). Accordingly, the Commission closed its files in these matters.

Documents related to these cases 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 Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302 or rwolcott@fec.gov.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

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FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

Respondents acknowledge that Barrett sent the email on behalf of Expensify and the email expressly advocated for Biden, but otherwise deny the allegations. They argue that the email was not a contribution or expenditure and, therefore, Expensify was not required to file any disclosures with the Commission. Moreover, they assert there was no coordination between either of the Respondents and Biden or his campaign committee. Finally, they argue that the email did not solicit a foreign national contribution or otherwise encourage foreign nationals to do anything prohibited by the Act or Commission regulations.⁴

1 MUR 7849 Compl. at 1, 3 (Oct. 29, 2020).
2 MUR 7838 Compl. at 3-4, 6-8 (Oct. 26, 2020); MUR 7852 Compl. at 1-2 (Oct. 30, 2020); MUR 7856
Compl. at 1-2 (Nov. 12, 2020).
3 MUR 7856 Compl. at 1.
4 MURs 7838, 7849, 7852 Resp. at 2-4 (Nov. 12, 2020); MUR 7856 Resp. at 2-5 (Dec. 1, 2020).

As discussed below, the Commission: (1) finds no reason to believe that Respondents violated 52 U.S.C. § 30118(a) by making a prohibited in-kind corporate contribution; (2) dismisses, as a matter of prosecutorial discretion, the allegation that Expensify violated 52 U.S.C. § 30104(c) and 11 C.F.R. §§ 109.10(d), 114.10(b)(1) by failing to report an independent expenditure; (3) finds no reason to believe that Barrett violated 52 U.S.C. § 30104(c) and 11 C.F.R. §§ 109.10(d), 114.10(b)(1) by failing to report an independent expenditure; (4) finds no reason to believe that Respondents violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1)-(2) by failing to include a disclaimer; and (5) finds no reason to believe that Respondents violated 52 U.S.C. § 30121 by soliciting foreign national contributions.

II. FACTUAL BACKGROUND

Expensify is a corporation that provides receipt and expense management services and software to individuals and businesses.⁵ Barrett is Expensify’s founder and CEO.⁶ On October 22, 2020, Barrett sent an email to an estimated 10 million Expensify customers from his official email account with the subject “Protect democracy, vote for Biden.”⁷ Barrett signed the email “david [sic], Founder and CEO of Expensify” and the email notes at the bottom that it was “[s]ent by: Expensify, Inc.”⁸

⁵ MUR 7838 Compl. at 1; MUR 7852 Compl. at 1; MUR 7856 Compl. at 1; Delaware Department of State Division of Corporations Entity Search, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (search for “Expensify”) (last visited Jan. 11, 2021).

⁶ MUR 7838 Compl. at 1; MUR 7852 Compl. at 1.

⁷ MUR 7838 Compl. at 1-2, Ex. 1; MUR 7849, Ex. 1; MUR 7852 Compl. at 1. A complete copy of the email is provided as Exhibit 1 to the MUR 7838 Complaint [hereafter Barrett Email].

⁸ Barrett Email at 3.

1 In relevant part, the Barrett Email makes the following statements:

Page	Statement
1	“If you are a US citizen, anything less than a vote for Biden is a vote against democracy.”
1	“You know what to do: show up on November 3rd and vote for Biden.”
2	“... all evidence suggests that another 4 (or as Trump has hinted -- 8, or more?) years of Trump leadership will damage our democracy to such an extent, I’m obligated on behalf of shareholders to take any action I can to avoid it. I am confident our democracy (and Expensify) can survive a Biden presidency. I can’t say the same about Trump.”
2	“Biden wants democracy, Trump does not. A vote for Trump is to endorse voter suppression, it really is very basic.”
2	“Biden wins by promoting democracy; Trump wins by suppressing it. A vote for Biden is a vote for democracy.”
2	“... the only way to ensure a peaceful transition of power is to ensure this election is an overwhelming, undeniable landslide in favor of Biden.”
3	“Are you annoyed that you received this as a non-US citizen? If you’re lucky enough to live in a democracy, then I’d encourage you to protect it and be willing to do uncomfortable things -- like emailing millions of customers -- to defend it.”

2 The Complaints allege that the email was either a prohibited in-kind contribution to
3 Biden in violation of 52 U.S.C. § 30118(a) or an independent expenditure by Expensify in excess
4 of \$1,000 that Expensify failed to report in violation of 52 U.S.C. § 30104(c) and 11 C.F.R.
5 §§ 109.10(d), 114.10(b)(1). The Complaints argue that the value of the alleged expenditure is
6 tied to the value of Expensify’s customer email database, as well as the time and overhead costs
7 associated with drafting the email.⁹ The Complaints further allege that Respondents violated

⁹ MUR 7849 Compl. at 2-3 (asserting that the email database is worth \$10-100 million based on open source information about commercial mailing list valuation); MUR 7856 Compl. at 1-2 (asserting that the email has “a substantial fair market value, including time and overhead costs associated with the development of the message and the very large expense of properly obtaining recipient email addresses for the purpose of distributing the message”).

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52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1)-(2) by failing to include a disclaimer on the email.¹⁰ Lastly, the Complaint in MUR 7856 alleges that Respondents violated 52 U.S.C. § 30121 by soliciting foreign national contributions.¹¹

Respondents acknowledge that Barrett sent the email on behalf of Expensify for the purpose of endorsing Biden and that it contained express advocacy, but deny violating the Act or Commission regulations.¹² They argue that the email was not a contribution or expenditure of any sort that Expensify was required to report because “the announcement was not coordinated with President elect Biden, his authorized committee, or their agents, and Expensify did not make disbursements for a press release or press conference to announce the endorsement.”¹³ In addition, they argue that a disclaimer was not required because Expensify is not a political committee and the email was neither a public communication nor an electioneering communication as those terms are defined in the Commission regulations.¹⁴ Moreover, Respondents assert that Barrett and Expensify did not coordinate with either Biden or anyone

¹⁰ MUR 7838 Compl. at 8-9 (asserting that the Barrett Email did not state that it was not authorized by a candidate or candidate committee and that the text in the email noting that it was sent by Expensify neither appeared in a printed box nor in a color that contrasted with the background); MUR 7852 Compl. at 2 (characterizing the Barrett Email as an independent expenditure and asserting that it did not contain a disclaimer “making clear that this communication was neither paid for nor authorized by the Biden campaign”); MUR 7856 Compl. at 2 (arguing that “[t]he unauthorized public communication at issue also lacks a clear disclaimer on the email itself that would permit recipients to know for certain: whether the express advocacy communication for the Biden campaign was paid for by Expensify or some other individual/entity; and likewise whether the communication was authorized or coordinated by the Biden campaign or its agents”).

¹¹ MUR 7856 Compl. at 1 (arguing that “to the extent that Mr. Barrett knowingly encouraged foreign nationals to participate in the 2020 general election, he may have violated FECA’s ban on facilitating foreign national political activity concerning federal elections”).

¹² MURs 7838, 7849, 7852 Resp. at 4 (acknowledging that the Barrett Email “unquestionably endorsed a candidate . . . and communicated that endorsement beyond Expensify’s restricted class” but arguing that the Barrett Email “was not a contribution or expenditure, and it did not trigger a reporting requirement”).

¹³ MURs 7838, 7849, 7852 Resp. at 3-4; MUR 7856 Resp. at 3-5.

¹⁴ MURs 7838, 7849, 7852 Resp. at 1-3; MUR 7856 Resp. at 2-3.

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representing his campaign.¹⁵ Lastly, Respondents deny soliciting any contributions or other actions by foreign nationals that would violate the Act or Commission regulations.¹⁶

III. LEGAL ANALYSIS

A. The Commission Finds No Reason to Believe That Expensify and Barrett Made a Prohibited In-Kind Corporate Contribution

The Act and Commission regulations prohibit corporations from making contributions to a candidate or authorized committee and prohibit any officer or any director of any corporation from consenting to such a contribution.¹⁷ Additionally, corporations and labor organizations (including officers, directors or other representatives acting as agents of corporations and labor organizations) are prohibited from facilitating the making of contributions to candidates or political committees.¹⁸ However, “[a] corporation . . . may endorse a candidate, and may communicate the endorsement to . . . the general public” and any disbursements for such announcements “are not contributions or expenditures, provided that” they are “not coordinated with a candidate, a candidate’s authorized committee, or their agents” and that “[d]isbursements for any press release or press conference to announce the endorsement are de minimis.”¹⁹

The Act defines a contribution 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

¹⁵ MURs 7838, 7849, 7852 Resp. at 4 (stating that “the announcement was not coordinated with President elect Biden, his authorized committee, or their agents”); MUR 7856 Resp. at 4 (same).

¹⁶ MUR 7856 Resp. at 2.

¹⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); *see id.*, Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

¹⁸ 11 C.F.R. § 114.2(f)(1).

¹⁹ *Id.* § 114.4(c)(6)(i)-(ii).

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Federal office.”²⁰ The term “anything of value” includes all in-kind contributions, including the “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge.”²¹ Coordinated communications are considered in-kind contributions.²²

Commission regulations provide a three-part test for determining when a communication is a “coordinated communication.”²³ The communication must: (1) be paid for by a third party; (2) satisfy one of the five enumerated “content” standards; and (3) satisfy one of the five enumerated “conduct” standards.²⁴ All three prongs are required to be satisfied for a communication to be considered a coordinated communication under these regulations.²⁵ Based on the available information, the Barrett Email does not appear to satisfy this test.

1. Payment Prong

The payment prong is satisfied where a communication “[i]s paid for, in whole or in part, by a person other than [the] candidate, authorized committee, or political party committee.”²⁶ In discussing implementation of the 2006 regulations on internet communications, the Commission stated that “there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients, and there is nothing in the record that suggests a payment is normally required to do so.”²⁷ There is no information indicating that Expensify made any payments associated with drafting or sending the email. Rather, the information

²⁰ 52 U.S.C. § 30101(8)(A).

²¹ 11 C.F.R. § 100.52(d)(1).

²² *Id.* §§ 109.20, 109.21.

²³ *Id.* § 109.21(a).

²⁴ *Id.* (referencing content and conduct standards at 11 C.F.R. § 109.21(c) and (d), respectively).

²⁵ *Id.*

²⁶ *Id.* § 109.21(a)(1).

²⁷ Internet Communications, 71 Fed. Reg. 18589, 18594-18595 (Apr. 12, 2006) (“Internet Communications E&J”).

indicates that Barrett wrote the email himself and sent the email using Expensify’s own mailing list — a list it maintains in the normal course of business for contacting customers. Thus, the associated cost that could potentially satisfy this prong appears to be limited to Expensify’s payments to Barrett for his time spent to draft and send the email and the value of the use of the email list. However, to the extent that this may have satisfied the payment prong, because the Barrett Email clearly does not satisfy the content and conduct prongs, as explained below, it therefore was not a coordinated communication.

2. Content Prong

The content prong contains four standards, all of which require that the communication, at a minimum, be either an “electioneering communication” or a “public communication.”²⁸ The Barrett Email is neither, however, since “electronic mail” and “communications over the Internet, except for communications placed for a fee on another person’s Web site” are specifically exempted from the definitions of electioneering communication and public communication, respectively.²⁹

²⁸ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is *an electioneering communication* under 11 C.F.R. § 100.29; (2) *a public communication* that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee; (3) *a public communication* that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) *a public communication* that, in relevant part, refers to a clearly identified Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days or fewer before the candidate’s primary election or nominating caucus in that jurisdiction; or (5) *a public communication* that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5) (emphasis added).

²⁹ *Id.* § 100.29(c)(1) (stating that the definition of electioneering communication “does not include ... communications over the Internet, including electronic mail ...”); *Id.* § 100.26 (stating that the definition of public communication “shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site”).

1 3. Conduct Prong

2 The conduct prong is satisfied by one of five types of interactions between the payor and
 3 the candidate or campaign regarding the communication: a request or suggestion, material
 4 involvement, substantial discussion, use of a common vendor, or involvement of a former
 5 employee or independent contractor.³⁰ The Complaints do not allege, and the Commission is not
 6 aware of, any information suggesting such interactions between Expensify and either Biden or
 7 his campaign committee that might satisfy any of the conduct standards. Furthermore,
 8 Respondents specifically deny any such coordination occurred.³¹ Therefore, it does not appear
 9 the Barrett Email satisfied the conduct prong.

10 Because the Barrett Email does not appear to satisfy all of the three prongs, there is no
 11 basis to conclude that it was a coordinated communication.

12 Finally, the Complaint in MUR 7849 alleges that the Barrett Email constitutes an in-kind
 13 contribution to Biden “because [Complainant’s] personal information has value” and Expensify
 14 used Complainant’s and other customers’ personal information to send out the email.³² To the
 15 extent that the Complaint is alleging that Expensify made an in-kind contribution to the Biden
 16 campaign by lending its valuable email list to the Biden campaign (and therefore defraying the
 17 campaign the cost of renting or purchasing an email list),³³ as stated above, there are no facts
 18 suggesting any such interaction between Respondents and the Biden campaign.

³⁰ *See id.* § 109.21(d)(1)-(5); *see also id.* 109.21(e) (stating that an agreement or formal collaboration “is not required for a communication to be a coordinated communication”).

³¹ *Supra* note 15.

³² MUR 7849 Compl. at 2; *see* 11 C.F.R. § 100.52(d)(1) (defining “provision of any goods or services without charge or at a charge that is less than the usual and normal charge” as an in-kind contribution).

³³ In determining whether there is an in-kind contribution, the Commission has considered whether the provision of an item would “relieve” the campaign of an expense it “would otherwise incur” to obtain a similar benefit. Advisory Op. 2017-06 (Stein and Gottlieb) at 5; *accord* Advisory Op. 2015-07 (Hillary for America) at 2; *see* Advisory Op. 2007-22 (Hurysz) at 6 (explaining that the provision of election materials to a campaign results in

Therefore, because there is no basis to conclude that the Barrett Email was a coordinated communication or that Expensify otherwise made or Barrett consented to making, an in-kind contribution to Biden through the use of Expensify’s email list, the Commission finds no reason to believe that Expensify or Barrett violated 52 U.S.C. § 30118(a) by making a prohibited corporate contribution to Biden or his campaign committee.

B. The Commission Dismisses the Allegation that Expensify Made an Independent Expenditure, and Finds No Reason to Believe that Barrett Made an Independent Expenditure

The Complaints allege that the Barrett Email constituted an independent expenditure that Expensify was required to, but did not report.³⁴ Respondents argue that the email was not an expenditure of any sort, and therefore was not an independent expenditure that triggered the reporting requirements.³⁵

The Act defines “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”³⁶ An “independent expenditure” is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified federal candidate, and is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents.³⁷ Every person (other than a political committee) who makes independent expenditures aggregating in excess of \$250

a contribution because it “would relieve [the] campaign of the expense that it would otherwise incur to obtain such materials”); *see also* Advisory Op. 1992-33 (DNC/RNC) at 3 (“As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services.”).

³⁴ *Supra* note 2.

³⁵ MURs 7838, 7849, 7852 Resp. at 3.

³⁶ 52 U.S.C. § 30101(9)(A).

³⁷ *Id.* § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of “expressly advocating”).

1 during a calendar year must report such independent expenditures in accordance with
2 Commission regulations.³⁸ Additionally, every person who makes independent expenditures
3 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
4 hours before 12:01 a.m. of the day of an election, must file a 24-hour report.³⁹

5 As discussed above, there is no information in any of the Complaints suggesting that
6 Expensify incurred any direct costs associated with preparing or sending the email and, as noted
7 above, the Commission has stated that, generally speaking, “there is virtually no cost associated
8 with sending e-mail communications, even thousands of e-mails to thousands of recipients.”⁴⁰
9 To the extent that there may have been incidental costs — such as Expensify’s payments to
10 Barrett for his time spent to draft and send the email and the value of the use of the email list —
11 the Commission does not reach any conclusion as to whether those costs constitute expenditures
12 when the communication associated with the costs is exempted from the definitions of
13 electioneering communication and public communication. Even if they were expenditures, it
14 appears that those costs were minimal and in any event would require an investigation to
15 quantify whether the amount exceeded the \$250 reporting threshold or \$1,000 24-hour report
16 threshold. Under these circumstances, we do not believe that such additional fact-finding would
17 be an efficient use of the Commission’s limited resources.

18 Accordingly, the Commission dismisses, as a matter of prosecutorial discretion, the
19 allegation that Expensify, Inc. violated 52 U.S.C. § 30104(c) and 11 C.F.R. §§ 109.10(d),

³⁸ 52 U.S.C. § 30104(c); 11 C.F.R. § 114.10(a), (b)(1)-(2).

³⁹ 11 C.F.R. § 109.10(d).

⁴⁰ *See* Internet Communications E&J at 18594-95 (recognizing that “there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients.”).

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114.10(b)(1) by failing to report an independent expenditure.⁴¹ Because these reporting obligations only extend to the corporation and not to corporate officers in their individual capacity, the Commission finds no reason to believe that Barrett violated 52 U.S.C. § 30104(c) and 11 C.F.R. §§ 109.10(d), 114.10(b)(1).⁴²

C. The Commission Finds No Reason to Believe That Expensify and Barrett Failed to Include a Required a Disclaimer

The Complaints allege that Expensify was required to, but did not, include a disclaimer on the Barrett Email.⁴³ Respondents argue that a disclaimer was not required because Expensify is not a political committee and the email was not a public communication.

A disclaimer identifying who paid for a communication and, where applicable, whether a communication was authorized by a candidate, is required on, among other communications, all “public communications” made by any person that expressly advocate the election or defeat of a clearly identified candidate and all electioneering communications.⁴⁴ As discussed above, the Barrett Email is neither a public communication nor an electioneering communication, and was therefore not required to include a disclaimer.⁴⁵ Accordingly, the Commission finds no reason to

⁴¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁴² Unlike 52 U.S.C. § 30118(a), which specifically applies in part to “any officer or any director of any corporation,” these reporting provisions do not, on their face, impose any reporting obligations on corporate officers personally. The relevant reporting obligations only extend to the “corporation” or “person” who made the expenditure. See 52 U.S.C. § 30104(c) (requiring “[e]very person other than a political committee who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year” to file the appropriate disclosure reports) (internal parenthesis omitted); 11 C.F.R. § 109.10(d) (applying a reporting requirement to “[e]very person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating \$1,000 or more with respect to a given election); 11 C.F.R. § 114.10(b)(1)-(2) (requiring “[c]orporations and labor organizations” that make independent expenditures or electioneering communications to file reports).

⁴³ *Supra* note 2.

⁴⁴ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2), (4). Disclaimers are also required on emails of more than 500 substantially similar communications sent by political committees and on public communications that solicit any contribution; neither of which apply here. 11 C.F.R. § 110.11(a)(1), (3).

⁴⁵ *Supra* note 29 and accompanying text (explaining that emails are specifically exempted from the definition of both “electioneering communication” and “public communication”).

believe that Expensify, Inc. and Barrett violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1)-(2) by failing to include a disclaimer on the Barrett Email.⁴⁶

D. The Commission Finds No Reason to Believe that Expensify and Barrett Solicited Prohibited Foreign National Contributions

The Complaint in MUR 7856 alleges that Respondents “may have violated 52 U.S.C. § 30121 by using corporate resources to encourage non-citizens to participate in election activities.”⁴⁷ Respondents deny the allegation, arguing that the email did not solicit any of the prohibited activity enumerated in the Act or Commission regulations.⁴⁸

The Act and Commission regulations prohibit any foreign national from “directly or indirectly” making “a contribution or donation of money or other thing of value,” including “an express or implied promise to make a contribution or donation,” or making “an expenditure, independent expenditure, or disbursement for an electioneering communication,” in connection with a federal, state, or local election.⁴⁹ The Act and Commission regulations also prohibit any person from knowingly soliciting, accepting, or receiving a contribution or donation from a foreign national.⁵⁰ Under Commission regulations, “to solicit” means “to ask, request, or

⁴⁶ Even if the facts supported the allegations that Expensify should have included a disclaimer on the Barrett Email, a no reason to believe finding with respect to Barrett would still be appropriate because, as with the reporting requirements discussed above, neither the Act nor Commission regulations impose any individual obligation on corporate officers, but rather only to the “person” which makes a public communication or electioneering communication. *See* 11 C.F.R. § 110.11(a)(2)-(4) (requiring a disclaimer on certain public communications and all electioneering communication made “by any person”).

⁴⁷ MUR 7856 Compl. at 1.

⁴⁸ MUR 7856 Resp. at 2.

⁴⁹ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f).

⁵⁰ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g); *see also* 11 C.F.R. § 110.20(a)(4) (definition of knowingly).

1 recommend, explicitly or implicitly, that another person make a contribution, donation, transfer
2 of funds, or otherwise provide anything of value.”⁵¹

3 As an initial matter, there is no dispute that foreign nationals were likely among the
4 recipients of the Barrett Email. Indeed, text of the email states: “Are you annoyed that you
5 received this as a non-US citizen? If you’re lucky enough to live in a democracy, then I’d
6 encourage you to protect it and be willing to do uncomfortable things -- like emailing millions of
7 customers -- to defend it.”⁵² Nonetheless, the email does not specifically solicit contributions,
8 and the only call to action — to vote for Biden — is explicitly directed to U.S. citizens.⁵³ The
9 portion directed to foreign nationals appears to be encouraging those recipients to participate in
10 their own countries’ democratic process, not those of the United States. Accordingly, the
11 Commission finds no reason to believe that Expensify, Inc. and Barrett violated 52 U.S.C.
12 § 30121 by soliciting foreign national contributions.

⁵¹ 11 C.F.R. § 110.20(a)(6) (incorporating the definition at 11 C.F.R. § 300.2(m)).

⁵² Barrett Email at 3.

⁵³ *Id.* at 1 (“*If you are a US citizen, anything less than a vote for Biden is a vote against democracy*”) (emphasis added).