



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

November 1, 2024

VIA EMAIL

Eric H. Spencer
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, AZ 85004-2202
espencer@swlaw.com

RE: MUR 7892 (Turning Point Action)

Dear Mr. Spencer:

On October 2, 2024, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Accordingly, the file has been closed in this matter, effective today.

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). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. Payment can be made online by debit, credit card, or automated clearing house (ACH) withdrawal, using this link to the government's secure portal for online collections: <https://www.pay.gov/public/form/start/316805379>. Payment can also be made by check or money order payable to the Federal Election Commission and sent via regular mail to the Federal Election Commission, 1050 First Street NE, Washington, DC 20463, or by courier or overnight delivery to the same address but with a different zip code (20002). Please write the matter number "MUR 7892 civil penalty" on the memo line of the check. If you have any questions, please contact Dominique Dillenseger at (202) 694-1650.

Sincerely,

Rocelyn Halili
Rocelyn Halili
Attorney

Enclosure:
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Turning Point Action

MUR 7892

CONCILIATION AGREEMENT

This matter was generated by a Complaint filed with the Federal Election Commission ("Commission"). The Commission found reason to believe that Turning Point Action ("Respondent") violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose contributions totaling \$33,795 on its 2020 October Quarterly and Year-End Reports.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation prior to a finding of probable cause to believe, agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this Agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent is a tax-exempt organization that operates under Section 501(c)(4) of the Internal Revenue Code.

2. According to Respondent's Form 990 filed with the Internal Revenue Service, the organization's self-described mission is "to promote social welfare through raisin

awareness about free markets and capitalism, initiating civic action amongst the younger generation and educating youth in order to be a resource for free market thinkers to further advance their values to educate and empower the younger generation.”

3. Charles “Charlie” Kirk is Respondent’s founder, president, and CEO.

4. Respondent states that it fundraised through advertising platforms on Facebook and Google in 2020. It states that it placed 131 online advertisements, which linked to donation portals on Respondent’s website, <https://tpaction.com>. Hyperlinks on each of the ads directed to one of three donation portals on Respondents’ website: “Get Involved,” “Yard Sign,” and “GOTV.” These donation portals were also directly available on Respondent’s website.

5. Respondent states that its Google ads contained hyperlinks to the “Get Involved” Donation Portal. Respondent states that between August 1, 2019, and December 25, 2020, 549 donors made contributions through this portal, but only 12 contributions from six contributors exceeded the \$200 reporting threshold, for a reportable contributions total of \$6,820.

6. The “Get Involved” portal solicited contributions, stating, “[p]lease make a contribution of any amount to help us win in 2020.” Respondent’s Google ads linking to this portal sought donations to help Respondent “re-elect Trump” or “defeat Joe Biden and Kamala Harris.” The advertisements included statements such as: “We must work together to defeat Joe Biden and Kamala Harris. Help us reach critical swing voters by contributing today”; and “Your donation will support Charlie Kirk’s grassroots door-knocking army to re-elect Trump. We need your help to defeat Biden and Kamala Harris.”

7. Respondent states that its ad library contained a total of 129 independent expenditure advertisements published between August 19, 2020, and November 4, 2020, that

linked to the “Yard Sign” or “GOTV” donation portals.

8. The “Yard Sign” portal included campaign slogans such as “TRUMP PENCE 2020,” “THIS HOUSE IS VOTING FOR TRUMP,” and “WE SUPPORT TRUMP,” which Respondent acknowledges contained express advocacy. There were 14 advertisements that ran on Facebook from September 10, 2020, to October 26, 2020, linked to the “Yard Sign” portal, which resulted in 127 contributions received from 118 unique contributors. However, according to Respondent, it had no reporting obligation associated with these contributions because none of the donors’ aggregate contributions exceeded the \$200 reporting threshold for 2020.

9. Respondent states that a second set of independent expenditures consisted of 115 Facebook ads that ran from August 19, 2020, to November 4, 2020, and linked to its GOTV donation portal. Respondent acknowledges that the “GOTV” donation portal, which included the statements, “We must work together to defeat Joe Biden and Kamala Harris,” and “VOTE FOR DONALD TRUMP,” contained express advocacy. Respondent states that it received 1,705 contributions from 1,209 unique contributors between August 19, 2020, and December 30, 2020, through this portal, and Respondents states that 145 contributions from 49 unique contributors exceeded the \$200 reporting threshold, for a total of \$26,975.

10. According to reports filed with the Commission, Respondent made its earliest independent expenditure, in the amount of \$27,926.25, on August 20, 2020, which it reported as for “advertising-billboard/banner.” In all of 2020, Respondent disclosed a total of \$1,428,161.07 in independent expenditures.

11. Respondent’s original 2020 October Quarterly Report, filed on October 15, 2020, disclosed \$370,539.47 in independent expenditures but did not disclose any

contributions. Similarly, its original 2020 Year-End Report, filed on January 30, 2021, disclosed \$1,057,621.60 in independent expenditures but no contributions.

12. On February 9, 2021, the Reports Analysis Division sent Respondent a Request for Additional Information regarding missing contributor information. After the Complaint was filed on March 23, 2021, Respondent filed an amended 2020 October Quarterly Report on April 7, 2021, disclosing \$16,540 in contributions; it also filed an amended 2020 Year-End Report on April 9, 2021, disclosing \$17,255.00 in contributions, for a total of \$33,795.

13. An “independent expenditure” is an expenditure made by any person for a communication that (1) expressly advocates for the election or defeat of a clearly identified candidate, and (2) is not coordinated with the candidate, her authorized committee, her agents, or a political party committee or its agents. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16. The Act requires persons other than political committees to report their independent expenditures aggregating over \$250 in a calendar year. 52 U.S.C. § 30104(c)(1). Persons, other than political committees, must disclose certain information about their disbursements for independent expenditures (including the name and address of each person who receives disbursements aggregating over \$200 in connection with an independent expenditure), and indicate the candidates the independent expenditures support or oppose. *Id.* § 30104(c)(2)(A) (incorporating requirements of 52 U.S.C. § 30104(b)(6)(B)(iii)).

14. In addition, the Act requires persons other than political committees who report independent expenditures to report certain information about their receipts. Under 52 U.S.C. § 30104(c)(1), a person other than a political committee who makes independent expenditures in excess of \$250 during a calendar year must file a statement containing the information required under 52 U.S.C. § 30104(b)(3)(A) “for all contributions received by such

person.” *Id.* § 30104(c)(1). Section 30104(b)(3)(A) requires identification of each “person (other than a political committee) who makes a contribution to the reporting [entity] during the reporting period, . . . [aggregating] in excess of \$200 within the calendar year.” *Id.*; *see also id.* § 30101(13) (defining “identification” to include name, address, and, for individuals, occupation and employer). Furthermore, under 52 U.S.C. § 30104(c)(2)(C), a person, other than a political committee, reporting independent expenditures must also identify “each person who made a contribution in excess of \$200 . . . which was made for the purpose of furthering *an* independent expenditure.” *Id.* § 30104(c)(2)(C) (emphasis added). Subsection (c)(2) further requires the filing of statements in accordance with subsection (a)(2), which sets out the timing for filing disclosure reports by political committees. *Id.* § 30104(c)(2). The Act defines a “contribution” to include “any gift, subscription, loan, advance or deposit of money or anything of value made . . . for the purpose of influencing” a federal election. 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a).

15. Respondent contends that the “Get Involved” portal existed over one year before it made any independent expenditures, and that it has no means of identifying which persons made “contributions” through this portal that were intended to support independent expenditures.

V. Respondent violated 52 U.S.C. § 30104(c)(1) and (c)(2)(C) by failing to disclose contributions totaling \$33,795 on its 2020 October Quarterly and Year-End Reports containing the information required under 52 U.S.C. § 30104(b)(3)(A).

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Commission in the amount of Eighteen Thousand Dollars (\$18,000) pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C.

§ 30104(c)(1) and (c)(2)(C), which includes a requirement to disclose the information required under 52 U.S.C. § 30104(b)(3)(A).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This Agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire Agreement.

IX. Respondent shall have no more than 30 days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the Commission and Respondent and constitutes a final settlement as to Respondent. No other

statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written Agreement shall be enforceable.

FOR THE COMMISSION:


Lisa Jane
Stevenson

Digitally signed by Lisa
Jane Stevenson
Date: 2024.10.24 13:26:11
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Lisa J. Stevenson
Acting General Counsel

Date

FOR THE RESPONDENT:



(Name) TYLER BONYER
(Position) CHIEF OPERATIONS OFFICER

9/17/24

Date



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Turning Point Action)	MUR 7892
)	

STATEMENT OF REASONS OF COMMISSIONERS SHANA M. BROUSSARD AND DARA LINDENBAUM

This matter arose from a Complaint alleging that Turning Point Action (“TPA”), a non-profit corporation, violated 52 U.S.C. § 30104(c) by failing to disclose any of its contributors when it reported making more than \$1.4 million in independent expenditures in 2020. In its analysis, the Office of General Counsel (“OGC”) identified three categories of receipts that it concluded should have been disclosed pursuant to 52 U.S.C. § 30104(c): (1) \$33,795 in contributions that TPA subsequently disclosed in amended disclosure reports; (2) an unknown amount of receipts that TPA likely solicited and accepted and that should have been disclosed because TPA represented that its purpose was to influence the 2020 presidential election; and (3) contributions that TPA received during the first two quarters of 2020, before TPA began making independent expenditures.¹ We write to explain our vote to dismiss the allegation with respect to this third category of receipts.²

I. Factual Background

According to reports filed with the Commission, TPA made its earliest independent expenditure on August 20, 2020.³ In its Response, TPA acknowledged receiving contributions from contributors who exceeded the \$200 disclosure threshold found in section 30104(b)(3)(A), but whom TPA did not disclose because the contributions were received in the first or second quarterly report period of 2020, prior to the first independent expenditure.⁴ TPA asserted that it was not required to disclose these

¹ First Gen. Counsel’s Rpt. (“First GCR”) at 2-3 (Oct. 31, 2023).

² Certification ¶ 2 (May 1, 2024). The Commission unanimously voted to find reason to believe with respect to the first category of receipts. *Id.* ¶ 1.a. The Commission’s reasoning for that vote is explained in the Factual and Legal Analysis that was unanimously adopted. Certification ¶ 1-2 (June 25, 2024); *see generally* Factual & Legal Analysis (July 16, 2024). We voted to find reason to believe with respect to the second category of receipts consistent with OGC’s recommendation, but the Commission was evenly split on that recommendation. Certification ¶ 2 (April 30, 2024).

³ *See* TPA, Amended 2020 October Quarterly Report at 36 (Apr. 7, 2021) (disclosing payment to Rally Forge, Queen Creek, AZ).

⁴ Resp. at 2 (Apr. 9, 2021).

contributions because, in its view, independent expenditure reports are triggered by the making of independent expenditures, not the receipt of contributions.⁵

II. Legal Analysis

The Act requires persons other than political committees who make independent expenditures aggregating over \$250 in a calendar year (“non-political committee reporting entities”) to file a statement disclosing such independent expenditures (“independent expenditure disclosure statement”).⁶ The Act further requires non-political committee reporting entities to report certain information about their receipts on their independent expenditure disclosure statements. Specifically, section 30104(c)(1) requires that an independent expenditure disclosure statement contain the information required under 52 U.S.C. § 30104(b)(3)(A) “for all contributions received by such person.”⁷ Section 30104(b)(3)(A) requires the identification of each “person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, . . . [aggregating] in excess of \$200 within the calendar year.”⁸ In addition, non-political committee reporting entities must also identify on their independent expenditure disclosure statements “each person who made a contribution in excess of \$200 . . . which was made for the purpose of furthering *an* independent expenditure.”⁹ Regarding the timing of independent expenditure disclosure statements, section 30104(c)(2) requires the filing of such statements in accordance with section 30104(a)(2), which in turn states that certain political committees must file quarterly reports and pre- and post-election reports as applicable.¹⁰

In 2018, in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”),¹¹ the District Court for the District of Columbia vacated the Commission’s implementing regulation at 11 C.F.R. § 109.10(e)(1)(vi), which limited non-political committee reporting entities’ disclosure of contributors to those persons “who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering *the reported* independent expenditure.”¹² On August 21, 2020, the D.C. Circuit affirmed the district court’s decision in its opinion in *Crossroads GPS v. CREW* (“*CREW II*”).¹³ In the absence of an implementing regulation, the Commission looks to the statutory language to determine which contributions must be disclosed by a non-political committee reporting entity such as TPA. To inform the public of how it interpreted the

⁵ *Id.*

⁶ 52 U.S.C. § 30104(c)(1).

⁷ *Id.*

⁸ *Id.* § 30104(b)(3)(A); *see also id.* § 30101(13) (defining “identification” to include name, address, and, for individuals, occupation and employer).

⁹ *Id.* § 30104(c)(2)(C) (emphasis added).

¹⁰ *Id.* § 30104(c)(2); *see id.* § 30104(a)(2).

¹¹ 316 F. Supp. 3d 349 (D.D.C. 2018) (“*CREW I*”).

¹² 11 C.F.R. § 109.10(e)(1)(vi) (2018) (emphasis added).

¹³ 971 F.3d 340, 354 (D.C. Cir. 2020) (“*CREW II*”).

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Statement of Reasons of Commissioner Shana M. Broussard and Dara Lindenbaum

statutory language following the *CREW I* decision, on October 4, 2018, the Commission issued guidance regarding the filing obligations for persons other than political committees making independent expenditures (“*CREW Guidance*”).¹⁴

In our view, the Act requires that a non-political committee reporting entity must disclose on its independent expenditure disclosure statement the “identification of each ‘person (other than a political committee)’” who made a contribution to the reporting entity *during the reporting period* for which the reporting entity is submitting the independent expenditure disclosure statement and whose contributions aggregate in excess of \$200 within the calendar year. This reading of the statutory language is supported by the court’s opinion *CREW II*, as well as the Commission’s own *CREW Guidance*.¹⁵

In *CREW II*, the court held that “[section 30104](c)(1) unambiguously requires an entity making over \$250 in [independent expenditures] to disclose the name of any contributor whose contributions *during the relevant reporting period* total \$200, along with the date and amount of each contribution.”¹⁶ The D.C. Circuit also explained that the invalidation of 11 C.F.R. § 109.10(e)(1)(vi) meant that a person other than a political committee who makes independent expenditures “will be required, as a result of the district court’s judgment, to disclose nearly all contributions it receives *during any reporting period in which it makes [independent expenditures]*.”¹⁷

In describing how the Commission would enforce the Act following the *CREW I* decision, the *CREW Guidance* stated that sections 30104(c)(1) and (c)(2)(C) “require entities making independent expenditures of more than \$250 in the calendar year to disclose information about those who contributed for political purposes anytime *during the full reporting quarter*.”¹⁸

OGC disagreed with this interpretation of section 30104(c). In its First General Counsel’s Report, OGC recommended that the Commission find reason to believe that TPA failed to disclose contributions that were received in the first and second quarters of 2020, before TPA made its first reportable independent expenditure.¹⁹ In OGC’s view, section 30104(c)(1) requires the disclosure of every contribution received by the reporting entity, “not just contributions received during a discrete period of time.”²⁰ Even if the cross-reference to section 30104(b)(3)(A) limits disclosure to those contributions received during “the reporting period,” OGC argues that section 30104(b)(3)(A) “does not

¹⁴ See Press Release, Fed. Election Comm’n, FEC Provides Guidance Following U.S. District Court Decision in *CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/> (“*CREW Guidance*”).

¹⁵ See *CREW Guidance*.

¹⁶ *CREW II*, 971 F.3d at 354 (emphasis added).

¹⁷ *Id.* at 347 (emphasis added).

¹⁸ *CREW Guidance*, Section 3.

¹⁹ First GCR at 41.

²⁰ *Id.* at 38.

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Statement of Reasons of Commissioner Shana M. Broussard and Dara Lindenbaum

anywhere refer to a quarterly reporting period.”²¹ This is so, OGC asserts, because different reporting persons have different reporting periods.²² While it is true that different reporting persons have different reporting periods, it is also true that non-political committee reporting entities are required to file statements “in accordance with subsection (a)(2) of this section,” which sets out a quarterly report schedule.²³

OGC acknowledges that “section 30104(c)(2) references 30104(a)(2), which addresses the timing for filings by principal campaign committees, and discusses filing on a quarterly basis, and Commission regulations specify that person other than political committees must file quarterly reports, as well as 24-Hour and 48-Hour reports, based on when the reportable independent expenditures are made,” but concludes that none of that applies here.²⁴ OGC argues that notwithstanding that section 30104(b)(3)(A) specifically refers to contributions received during a “reporting period” and that section 30104(a)(2) specifically requires the filing of quarterly reports, we should understand the statute to require that non-political committee reporting entities like TPA disclose every contribution ever received by the reporting entity.

We do not disagree with the policy considerations that support OGC’s interpretation. Nevertheless, we must give effect to Congress’s language, including its decision to cross-reference other provisions in the Act. The term “identification” is defined in the Act; Congress could have written section 30104(c)(1) to require that every non-political committee reporting entity shall file a statement containing the identification of each contributor for all contributions received by the reporting entity. It did not.

To the extent that there is ambiguity in the statute, the Commission may engage in notice and comment rulemaking to promulgate new regulations implementing 52 U.S.C. § 30104(c)(1) and (c)(2). But in the absence of such a rulemaking and given the statutory language, we do not think that there is a

²¹ *Id.* at 39.

²² *Id.*

²³ 52 U.S.C. § 30104(c)(2); *id.* § 30104(a)(2).

²⁴ First GCR at 36.

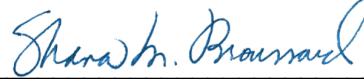
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Statement of Reasons of Commissioner Shana M. Broussard and Dara Lindenbaum

sufficient basis to require TPA to disclose contributions received in a reporting period prior to the one in which it triggered the independent expenditure reporting threshold.

October 29, 2024

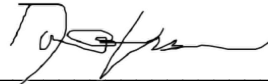
Date



Shana M. Broussard
Commissioner

October 29, 2024

Date



Dara Lindenbaum
Commissioner



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Turning Point Action, *et al.*

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MUR 7892

**STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY
AND COMMISSIONERS ALLEN J. DICKERSON AND
JAMES E. “TREY” TRAINOR, III**

In this matter, the Commission unanimously found reason to believe that Turning Point Action (“TPA”), a tax-exempt social welfare organization established under Internal Revenue Code § 501(c)(4), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to disclose \$33,795 in contributions when it reported independent expenditures made in the third quarter of 2020.¹ At the same time, the Commission also dismissed the Complaint’s allegations that TPA further violated the Act by not disclosing additional contributions it had received during the first two quarters of 2020, before it had made the reportable expenditures.² This statement explains the our reasoning on that issue.

Under 52 U.S.C. § 30104(c)(1), organizations other than political committees (“non-committee organizations”) that make independent expenditures exceeding \$250 in a calendar year must file a report containing the same information required under § 30104(b)(3)(A) “for all contributions received by such person.” Section 30104(b)(3)(A), in turn, requires identification of each “person (other than a political committee) who makes a contribution to the reporting [non-committee organization] during the reporting period, ... in excess of \$200 within the calendar year.”³ In addition to the duty to report contributions pursuant to § 30104(c)(1), 52 U.S.C. § 30104(c)(2)(C) requires that reports of independent expenditures made by non-committee

¹ Certification ¶ 1 (May 1, 2024), MUR 7892 (Turning Point Action, *et al.*).

² *Id.* ¶ 2.

³ Following judicial vacatur of the Commission’s longstanding regulation implementing 52 U.S.C. § 30104(c)(1) and (c)(2)(C), three Commissioners interpreted “contributions” for purposes of § 30104(c)(1)’s disclosure requirements only to reach donations made to non-committee organizations if they are “earmarked for a political purpose,” that is, “designated or solicited for, or restricted to, activities or communications that expressly advocate the election or defeat of a clearly identified candidate for federal office.” *See* Policy Statement of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III Concerning the Application of 52 U.S.C. § 30104(c) at 6 (June 8, 2022).

organizations identify “each person who made a contribution in excess of \$200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.” Except in the case of certain independent expenditures of more than \$1,000 or \$10,000,⁴ both initial and subsequent reports of independent expenditures are filed on the same quarterly schedule as regular reports by political committees.⁵ The Commission’s corresponding regulation largely mirrors the statute’s language.⁶

In finding reason to believe here, the Commission determined that TPA—which made independent expenditures that exceeded the \$250 statutory threshold in August 2020—had failed to report both “contributions” of more than \$200 received during the third quarter of 2020, as required by 52 U.S.C. § 30104(c)(1), and “contribution[s] in excess of \$200 ... made for the purpose of furthering an independent expenditure” received in that same quarter, as required by 52 U.S.C. § 30104(c)(2)(C). In its Response, TPA effectively admitted that it had not complied with its duties to disclose certain contributions when it first reported independent expenditures in the third quarter of 2020, and after receiving the Complaint in this matter, TPA subsequently amended its relevant reports from 2020 to reflect its receipt of \$33,795 in contributions in the same third quarter of 2020.⁷ In light of TPA’s acknowledgement of noncompliance, the Commission found reason to believe the organization had violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose contributions totaling \$33,795 received during the third quarter of calendar year 2020.

At the same time, the Commission dismissed allegations that TPA violated the same provisions of the Act by also failing to disclose other contributions raised in the first and second quarters of 2020—that is, in earlier reporting periods of the same calendar year before TPA made any independent expenditures. We agreed with Commissioners Broussard and Lindenbaum that TPA’s statutory obligation to disclose contributions under both § 30104(c)(1) and (c)(2)(C) was limited to contributions it had received in the same reporting period in which it made the reportable independent expenditures.⁸

We joined Commissioners Broussard and Lindenbaum in rejecting the Office of the General Counsel’s (“OGC”) assertion that “[t]he Act’s plain language ... forecloses any argument by TPA that contributions made in the first or second quarter of 2020 ... need not be disclosed by

⁴ See 52 U.S.C. § 30104(g)(1)-(2) (requiring 24-hour reporting of independent expenditures of \$1,000 or more after the 20th day, but more than 24 hours before, an election, and 48-hour reporting of independent expenditures of \$10,000 or more made up to and including the 20th day before an election).

⁵ 52 U.S.C. § 30104(c)(2) (requiring the filing of reports in accordance with § 30104(a)(2), which specifies the timing for reports by political committees); 11 C.F.R. § 109.10(b).

⁶ 11 C.F.R. § 109.10.

⁷ See Response at 2 (Apr. 9, 2021), MUR 7892 (Turning Point Action, *et al.*) (“TPA’s analysis demonstrates that \$33,795 in contributions should have been reported, ... These issues have been promptly remedied by filing amended October 15 Quarterly and January 31 Year-End FEC Form 5 Reports of Independent Expenditures Made and Contributions Received (‘Form 5 Reports’).”).

⁸ Certification ¶ 2 (May 1, 2024), MUR 7892 (Turning Point Action, *et al.*) (voting 5-1 to dismiss the allegation that TPA violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose additional contributions received during the April Quarterly Report period or the July Quarterly Report period).

virtue of TPA’s having made independent expenditures beginning in the third quarter of 2020.”⁹ Rather, we understand the operation of the overall statutory scheme to compel a different understanding of the reporting requirements: § 30104(c)(1)’s reference to “the information required under [§ 30104(b)(3)(A)],” which requires that reports include the “identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period” in excess of \$200 within the calendar year, establishes the coverage period for contributions to be included on reports of independent expenditures by non-committee organizations. While OGC claimed that TPA had to report contributions of more than \$200 received both in the relevant reporting period *and* earlier in the calendar year,¹⁰ that reading of the Act overlooks that the text of § 30104(c)(1) plainly incorporates the disclosure requirements of § 30104(b)(3)(A), which imposes a quarterly coverage period for reportable contributions.

This understanding of the relevant coverage period for disclosing contributions under § 30104(c) accords not only with basic canons of statutory interpretation, but also with the Commission’s own regulations and guidance.¹¹ Notably, the Commission has published instructions for FEC Form 5—which non-committee organizations use to report their independent expenditures—explaining that “[e]ach calendar year is divided into quarterly reporting periods. Reports for independent expenditures are due on April 15, July 15, October 15 and January 31 of the following year and must include all reportable contributions received ... from the closing date of the last report filed through the end of the calendar quarter for which the report is submitted.”¹² The instructions further direct filers to “enter total contributions received during the reporting period, including contributions of \$200 or less that were not itemized on Schedule 5-A.”¹³ For each itemized receipt (that is, “contribution”) included on Schedule 5-A, Form 5 contains an entry for the “Amount of Each Receipt this Period.” But it requires no such information for contributions received before the start of the reporting period.

Similarly, after a federal court vacated the Commission’s regulation implementing 52 U.S.C. § 30104(c)(1) and (c)(2)(C), the Commission issued a press release with updated guidance on independent-expenditure reporting by non-committee organizations. The press release stated that, as part of Form 5, filers should disclose “each person (other than a political committee) who made a contribution or contributions to the reporting person *during the reporting period* whose contribution or contributions had an aggregate amount or value in excess of \$200 within the calendar year.”¹⁴ Considering the Commission’s publication of these guidance materials intended

⁹ First General Counsel’s Report at 37 (Oct. 31, 2023), MUR 7892 (Turning Point Action, *et al.*).

¹⁰ *See id.*

¹¹ *See* 11 C.F.R. § 109.10(b) (requiring filing of reports of independent expenditures “for any *quarterly* period during which any [] independent expenditures that aggregate in excess of \$250 are made and in any *quarterly* reporting period thereafter in which additional independent expenditures are made.”) (emphasis added).

¹² *See* Instructions for Preparing FEC Form 5 (Reports of Independent Expenditures Made and Contributions Received to be Used by Persons Other than Political Committees), FEC (revised Sept. 2013), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/fecfrm5i.pdf>.

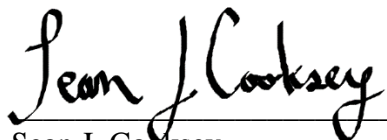
¹³ *Id.*

¹⁴ *FEC provides guidance following U.S. District Court decision in* CREW v. FEC, 316 F. Supp. 3d 349 (D.D.C. 2018), FEC (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018> (emphasis added).

for the regulated community, it would seriously impinge on principles of fair notice and due process for the Commission now to proceed with enforcement against TPA based on a different—and much broader—construction of the reporting periods for contributions under § 30104(c).

* * *

For these reasons, we voted with our colleagues to dismiss the allegations that TPA violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose contributions it had received in calendar quarters before it made the reportable independent expenditures.



Sean J. Cooksey
Chairman

October 30, 2024

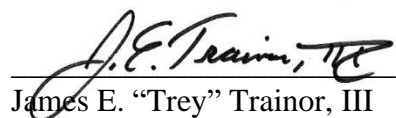
Date



Allen Dickerson
Commissioner

October 30, 2024

Date



James E. "Trey" Trainor, III
Commissioner

October 30, 2024

Date



**FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Turning Point Action, *et al.*) MUR 7892
)

STATEMENT OF REASONS OF VICE CHAIR ELLEN L. WEINTRAUB

The Complaint in this matter alleged that Turning Point Action (“TPA”), a non-profit corporation, violated the Federal Election Campaign Act of 1971 (“FECA”) by failing to disclose any of its contributors when it reported making more than \$1.4 million in independent expenditures in 2020.¹ The Federal Election Commission’s nonpartisan Office of General Counsel (“OGC”) recommended finding reason to believe TPA violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose contributions totaling \$33,795, as well as finding reason to believe TPA failed to properly disclose the funding of some or all of the rest of the \$1,394,205 it reported spending on independent expenditures.²

While the Commission unanimously found reason to believe TPA violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose contributions totaling \$33,795,³ the Commission dismissed the reporting violations related to the additional contributions. I dissented as to that dismissal.⁴ Instead, I supported OGC’s recommendation to find reason to believe TPA also failed to disclose additional contributions and voted to support the attached Factual and Legal Analysis (Attachment A).⁵

In 2018, a federal district court invalidated and vacated a long-standing Commission regulation that permitted politically active persons other than political committees, including non-profit organizations, to evade donor disclosure when making independent expenditures.⁶

¹ First. Gen. Counsel’s Rpt. at 1, MUR 7892 (Turning Point Action; Austin Smith) (Oct. 31, 2023).

² *Id.* at 43.

³ Cert. ¶1(a), MUR 7892 (Turning Point Action; Austin Smith) (May 1, 2024).

⁴ *Id.* at ¶2.

⁵ Cert. ¶1, MUR 7892 (Turning Point Action; Austin Smith) (Apr. 30, 2024). I joined my colleagues in voting to dismiss allegations that Austin Smith violated 52 § 30104(b)(3)(A), (c)(2), and (c)(2)(C). *Id.* at ¶3. Attachment A is an edited version of the Factual and Legal Analysis proposed by the Office of General Counsel.

⁶ *CREW v. Fed. Election Comm’n*, 316 F. Supp. 3d 349, 387 (D.D.C. 2018), *aff’d*, 971 F.3d 340 (D.C. Cir. 2020) (“*CREW* decision”).

Statement of Reasons of Vice Chair Ellen L. Weintraub
MUR 7892 (Turning Point Action, *et al.*)
Page 2 of 3

Following the decision, which was affirmed on appeal, the Commission released filing guidance for persons other than political committees making independent expenditures.⁷

Disclosure requirements for persons other than political committees making independent expenditures are “‘part of Congress’[s] effort to achieve ‘total disclosure’ by reaching ‘every kind of political activity’ in order to insure that the voters are fully informed and to achieve through publicity the maximum deterrence to corruption and undue influence possible.’”⁸ In the *CREW* decision, the District Court opined that “Congress expressly intended broad disclosure for not-political committees making independent expenditures in excess of \$250, regardless of when and how often such entities file statements.”⁹

The relevant statutory text pertaining to the disclosure requirements of nonpolitical committees dates to the 1979 FECA amendments.¹⁰ Those amendments were intended to “‘enhance[]’ the ‘laudable goals of disclosure and limitations on the influence of money in Federal campaigns,’ while simultaneously ‘easing the bureaucratic obstacles for individuals and committees to participate in political campaigns.’”¹¹ Reviewing the legislative history, the D.C. Circuit Court observed that the 1979 FECA amendments were meant to “simplif[y] reporting without affecting meaningful disclosure.”¹² As explained more fully in the attached proposed Factual and Legal Analysis,¹³ the Commission’s decision here is inconsistent with that statutory language and purpose, as well as with the guidance provided immediately after the *CREW* decision.

⁷ See Press Release, *FEC Provides Guidance Following U.S. District Court Decision in CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>.

⁸ 316 F. Supp. 3d at 356 (citing *Buckley v. Valeo*, 424 U.S. 1, 76 (1976)).

⁹ *Id.* at 408.

¹⁰ *Id.* at 374.

¹¹ *Id.* (citing “Hearing Before the S. Comm. on Rules & Admin. to Amend the Federal Election Campaign Act of 1971, as Amended, & for Other Purposes, 96th Cong. 1–2 (July 13, 1979) (statement of Sen. Claiborne Pell, Chairman, S. Comm. On Rules & Admin.)).


¹² 971 F.3d at 352 (citing Federal Election Campaign Act Amendments, 1979: Hearing before the S. Comm on Rules and Admin., 96th Cong. 97 (1979), *reprinted in* Fed. Election Comm’n, Legislative History of Federal Election Campaign Act Amendments of 1979, at 103).

¹³ See Attachment A at 19–20, 25–38.

Statement of Reasons of Vice Chair Ellen L. Weintraub
MUR 7892 (Turning Point Action, *et al.*)
Page 3 of 3

Here's the unfortunate bottom line: The American people will now never be informed as to the identity of the donors who supported some or all of the \$1,394,205 million used by Turning Point Action for independent expenditures, and future spenders may look to this decision as a roadmap for circumventing the disclosure requirements of FECA. I agreed with the recommendation of the nonpartisan professional staff of the Commission that the law supported a different result here, one that would have better effectuated Congress's pro-disclosure goals.

10/30/2024
Date


Ellen L. Weintraub
Vice Chair

Attachment A

PROPOSED F&LA**THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.****FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Turning Point Action**MUR 7892****I. INTRODUCTION**

The Complaint in this matter alleges that Turning Point Action (“TPA”), a non-profit corporation, violated 52 U.S.C. § 30104(c) of the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to disclose any of its contributors when it reported making more than \$1.4 million in independent expenditures in 2020.¹ Specifically, the Complaint alleges that while TPA made independent expenditures that exceeded the \$250 statutory threshold in August 2020, it disclosed no contributors as required by 52 U.S.C. § 30104(c)(1) in its 2020 October Quarterly Report or in its 2020 Year-End Report.² The Complaint further alleges that TPA solicited donations for the purpose of furthering an independent expenditure and did not disclose contributors who donated for that purpose, as required by 52 U.S.C. § 30104(c)(2)(C), in its relevant reports.³

In its Response, TPA acknowledges that it did not initially report contributors but asserts that it subsequently amended its reports to disclose contributors it deemed to be reportable following receipt of the Complaint.⁴ TPA contends that it was only required to identify those contributors who collectively gave a total of \$33,795 through donation portals on TPA’s

¹ Compl. ¶ 3 (Mar. 23, 2021).

² *Id.*

³ *Id.*

⁴ Resp. at 2 (Apr. 9, 2021).

1 website.⁵ TPA further contends that it was not required to disclose other sources of the
2 remaining funds that were used to pay for the reported \$1.4 million in independent expenditures
3 because most of those donations were comprised of “unrestricted grants” made to support TPA’s
4 social welfare mission.⁶

5 Based on the available information, TPA failed to timely disclose at least \$33,795 in
6 itemized contributions as reflected in its amended disclosure reports and failed to disclose
7 contributions received during the first two quarters of 2020, before TPA commenced making
8 independent expenditures during the third quarter of 2020. The available information further
9 suggests that TPA likely solicited and accepted additional contributions that should have been
10 disclosed because TPA publicly announced a major expansion of its organization designed to
11 influence the 2020 presidential election, represented its purpose to be associated with that
12 election, and solicited funds through other methods besides its website, raising more than \$1.4
13 million to spend on independent expenditures in 2020. Accordingly, the Commission finds
14 reason to believe that TPA failed to timely disclose itemized contributions totaling \$33,795 and
15 failed to disclose additional contributions in violation of 52 U.S.C. § 30104(b)(3)(A), (c)(1), and
16 (c)(2)(C).

17 **II. FACTUAL BACKGROUND**

18 **A. Organizational Structure of TPA**

19 TPA is described in the Complaint and Response as a tax-exempt social welfare
20 organization that is organized under Section 501(c)(4) of the Internal Revenue Code.⁷

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *See* Compl. ¶ 9; Resp. at 3.

According to TPA’s Form 990 filed with the Internal Revenue Service, the organization’s self-described mission is “to promote social welfare through raising awareness about free markets and capitalism, initiating civic action amongst the younger generation and educating youth in order to be a resource for free market thinkers to further advance their values to educate and empower the younger generation.”⁸ Austin Smith served as TPA’s field director during the 2020 election cycle and is the organization’s signatory on the independent expenditure reports TPA filed with the Commission.⁹

Charles “Charlie” Kirk is the founder, president, and CEO of TPA.¹⁰ He is also the founder, president, and CEO of Turning Point USA (“TPUSA”),¹¹ TPA’s sister organization, which describes itself as “the largest and fastest growing conservative youth activist organization in the country.”¹² Kirk is also president and/or CEO of two other related 501(c)(3) organizations: Turning Point Endowment, Inc.,¹³ and America’s Turning Point Inc.¹⁴

In a press release, dated July 2, 2019, which was released more than one year prior to TPA’s first reported independent expenditure spending occurring in August 2020, TPA

⁸ IRS Form 990, TPA, 2021 Return of Organization Exempt From Income Tax at 1 (July 6, 2022), https://apps.irs.gov/pub/epostcard/cor/464331510_202106_990O_2022080220262113.pdf (“2021 TPA Form 990”).

⁹ Compl. ¶ 12.

¹⁰ 2021 TPA Form 990 at 7.

¹¹ IRS Form 990, Turning Point USA Inc., 2020 Return of Organization Exempt from Income Tax at 7 (May 12, 2021), https://apps.irs.gov/pub/epostcard/cor/800835023_202006_990_2021052018152764.pdf (“2020 TPUSA Form 990”); TURNING POINT USA, <https://www.tpusa.com/> (last visited Aug. 23, 2023).

¹² *See Meet the Founder*, TURNING POINT ACTION, <https://www.tpusa.com/meetthefounder> (last visited Aug. 23, 2023).

¹³ IRS Form 990, Turning Point Endowment, Inc., 2020 Return of Organization Exempt from Income Tax at 7 (May 12, 2021), https://apps.irs.gov/pub/epostcard/cor/821225311_202006_990_2021052518187032.pdf.

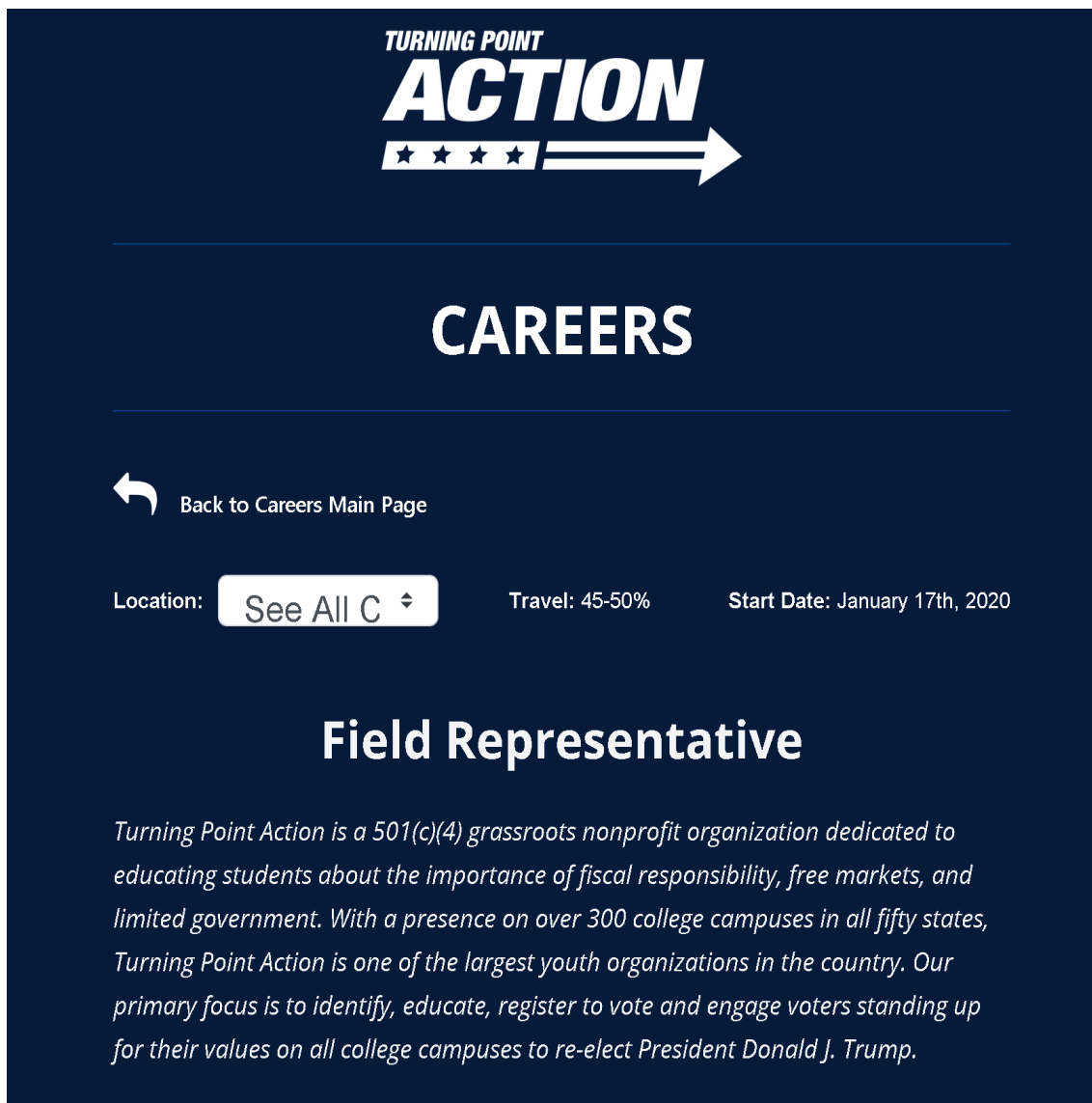
¹⁴ IRS Form 990, America’s Turning Point Inc., 2020 Return of Organization Exempt from Income Tax at 7 (May 10, 2021), https://apps.irs.gov/pub/epostcard/cor/814294120_202006_990_2021052018152327.pdf.

1 announced that it had launched an expansion for the 2020 election cycle by acquiring Students
2 for Trump, “the official chapter-based, pro-Trump student group on hundreds of college and high
3 school campuses.”¹⁵ The press release quoted Kirk, who stated, “[i]t’s no question that freedom
4 is on the ballot in 2020 We’re proud to be at the forefront of the youth movement to re-elect
5 freedom in 2020 by adding one million new voters to support four more years of President
6 Trump.”¹⁶ An archived webpage from TPA’s website from January 2020 (shown below), states
7 in a job description that TPA’s “primary focus is to identify, educate, register to vote and engage
8 voters standing up for their values on all college campuses to re-elect President Donald J.
9 Trump.”¹⁷

¹⁵ Compl. ¶ 10 (quoting Press Release, Turning Point Action, Turning Point Action Launches 2020 Expansion, Acquires “Students for Trump” (July 2, 2019), <https://www.democracyinaction.us/2020/interestg/turningpoint070219pr.html>).

¹⁶ *Id.*

¹⁷ TPA, *Careers* (Jan. 11, 2020), <https://www.tpaction.com/careers> [<https://web.archive.org/web/20200111074615/https://www.tpaction.com/careers>].



**TURNING POINT
ACTION**

CAREERS

← Back to Careers Main Page

Location: **See All C** ▾ Travel: 45-50% Start Date: January 17th, 2020

Field Representative

Turning Point Action is a 501(c)(4) grassroots nonprofit organization dedicated to educating students about the importance of fiscal responsibility, free markets, and limited government. With a presence on over 300 college campuses in all fifty states, Turning Point Action is one of the largest youth organizations in the country. Our primary focus is to identify, educate, register to vote and engage voters standing up for their values on all college campuses to re-elect President Donald J. Trump.

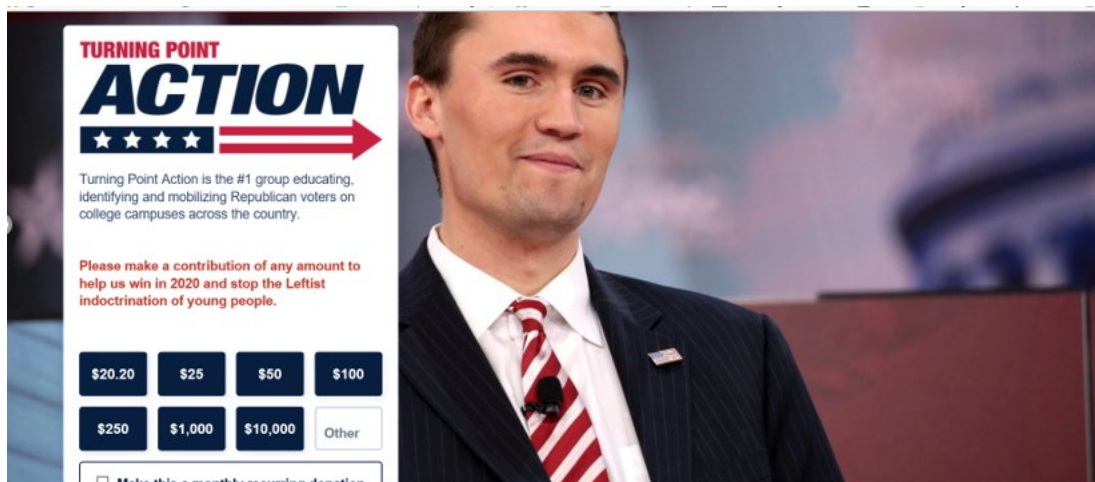
- 1
- 2 The job description states that a “Field Representative is responsible for working with Students
- 3 for Trump chapters and student activists to register new voters, organize campus rallies and
- 4 events, recruit chapter members, and develop strong grassroots activist networks throughout their
- 5 assigned territory” and invites candidates to send application materials to Austin Smith.¹⁸

¹⁸ *Id.*

B. TPA's Fundraising in 2020

As alleged by the Complaint and confirmed in the Response, TPA fundraised through advertising platforms on Facebook and Google in 2020.¹⁹ TPA's Response states that it placed 131 online advertisements, which linked to donation portals on TPA's website, <https://tpaction.com>.²⁰ Hyperlinks on each of the ads directed to one of three donations portals on TPA's website: "Get Involved," "Yard Sign," and "GOTV."²¹ These donation portals were also directly available on TPA's website. The portals are described and shown below:

"Get Involved" Donation Portal²²



¹⁹ Compl. ¶¶ 15-22; Resp. at 3.

²⁰ Resp. at 3.

²¹ GOTV is a common short reference to "Get Out the Vote," which means any activity encouraging or urging potential voters to vote, whether by mail or by any other means; and informing them about hours or location of polling places, or about early voting or voting by absentee ballot; offering or arranging to transport, or actually transporting voters to the polls; and any other activity that assists potential voters in voting. See 11 C.F.R. § 100.24(a)(3) (defining get out the vote activity in the context of Federal Election Activity for party committees). The "GOTV" donation portal, however, was used to solicit contributions for independent expenditures for Facebook ads. See *infra* page 10.

²² According to TPA, the donation portal for the "Get Involved" portal was accessed through the hyperlink "getinvolved.tpaction.com" but it "currently redirects to <https://getinvolved.tpaction.com/tpa>." Resp. at 3, 4.

1 According to TPA, its Google ads contained hyperlinks to “getinvolved.tpaction.com.”²³
2 TPA asserts that because the “Get Involved” portal (screenshot above) does not contain express
3 advocacy, donations received from donors who navigated directly to that portal on the website
4 (in contrast to those directed to it from online advertisements) are not required to be disclosed.²⁴
5 TPA further states that it has no way of determining whether donors accessed the portal from the
6 advertisements or simply navigated there from other parts of its website, but that, nevertheless,
7 between August 1, 2019, and December 25, 2020, 549 donors made contributions through this
8 portal, but only 12 contributions from six contributors exceeded the \$200 reporting threshold, for
9 a reportable contributions total of \$6,820.²⁵

10 The “Get Involved” portal included the statement that TPA is “educating, identifying, and
11 mobilizing Republican voters on college campuses” and solicited contributions “to help us win
12 in 2020.”²⁶ According to the Complaint, TPA’s Google ads linking to this portal sought
13 donations to help TPA “re-elect Trump” or “defeat Joe Biden and Kamala Harris.”²⁷ The
14 advertisements included statements such as: “We must work together to defeat Joe Biden and

²³ *Id.*

²⁴ *Id.* at 4.

²⁵ *Id.*

²⁶ The Complaint notes that TPA solicited help “to win in 2020” from “as far back as October 11, 2019, and as recently as January 19, 2021. Compl. ¶ 21, *see also Get Involved*, TURNING POINT ACTION (Oct. 11, 2019), <https://getinvolved.tpaction.com/tpa> [<http://web.archive.org/web/20191011065608/https://getinvolved.tpaction.com/tpa>]; *Get Involved*, TURNING POINT ACTION (Jan. 19, 2021), <https://getinvolved.tpaction.com/tpa> [<http://web.archive.org/web/20210119021733/https://getinvolved.tpaction.com/tpa>].

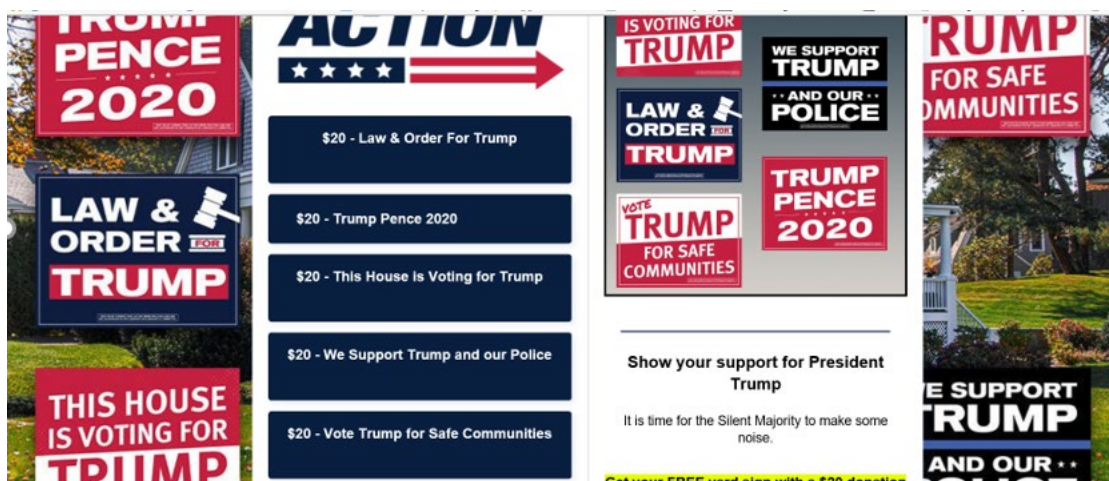
²⁷ Compl. ¶¶ 21, 38.

Kamala Harris. Help us reach critical swing voters by contributing today”;²⁸ “Your donation will support Charlie Kirk’s grassroots door-knocking army to re-elect Trump. We need your help to defeat Biden and Kamala Harris”;²⁹ and “We need your help to defeat Biden and Kamala Harris, your donation will support Charlie Kirk’s grassroots door-knocking army to re-elect Trump.”³⁰

“Yard Sign” and “GOTV” Donation Portals

According to TPA, Facebook’s TPA ad library contains a total of 129 independent expenditure advertisements published between August 19, 2020, and November 2, 2020, that linked to one of two donation portals, each of which is discussed below.

“Yard Sign”



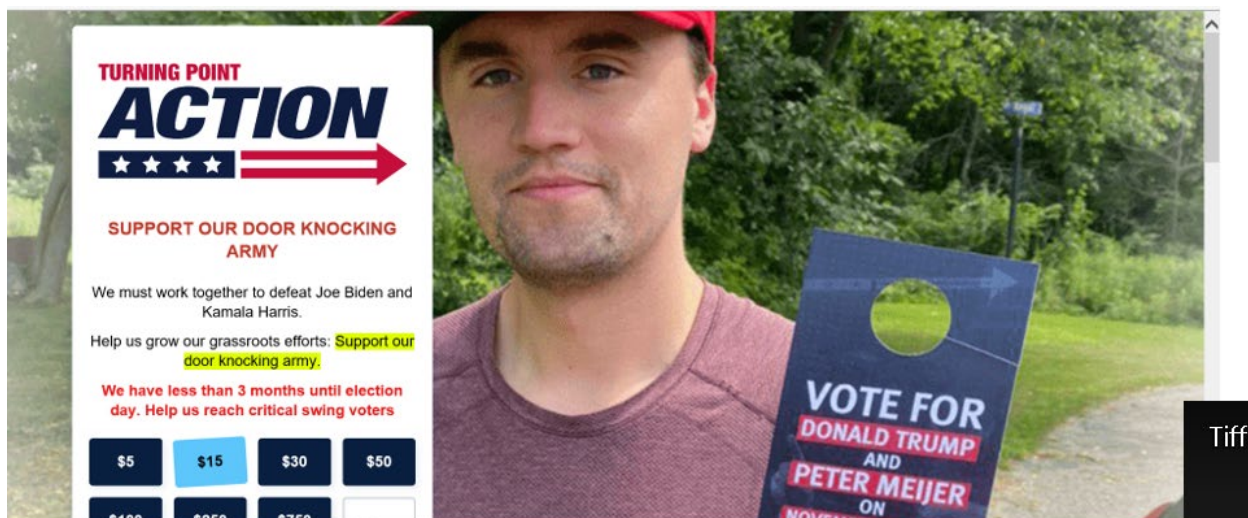
²⁸ Ad Details, GOOGLE ADS TRANSPARENCY CTR., <https://transparencyreport.google.com/political-ads/advertiser/AR556213176958451712/creative/CR174427555422535680> (last visited Aug. 23, 2023) (showing information relating to ad reading “Turning Point Action – Support Our Door Knocking Army”).

²⁹ Ad Details, GOOGLE ADS TRANSPARENCY CTR., <https://transparencyreport.google.com/political-ads/advertiser/AR556213176958451712/creative/CR544567149797048320> (last visited Aug. 23, 2023) (showing information relating to ad reading “Stop the Radical Left| Charlie Kirk -- Donate Here| Contribute Today”).

³⁰ Ad Details, GOOGLE ADS TRANSPARENCY CTR., <https://transparencyreport.google.com/political-ads/advertiser/AR556213176958451712/creative/CR520747329892909056> (last visited Aug. 23, 2023) (showing information relating to ad reading “Support Turning Point Action | Charlie Kirk – Donate Here | Contribute Today”).

The “Yard Sign” portal included campaign slogans such as “TRUMP PENCE 2020,” “THIS HOUSE IS VOTING FOR TRUMP,” and “WE SUPPORT TRUMP,” which TPA acknowledges contained express advocacy.³¹ There were 14 advertisements that ran on Facebook from September 10, 2020 to October 26, 2020, linked to the “Yard Sign” portal, which resulted in 127 contributions received from 118 unique contributors.³² However, according to TPA, it has no reporting obligation associated with these contributions because none of the donors’ aggregate contributions exceeded the \$200 reporting threshold for 2020.³³

“GOTV” Donation Portal³⁴



TPA states that a second set of independent expenditures consisted of 115 Facebook ads that ran from August 19, 2020, to November 4, 2020 and linked to the GOTV donation portal

³¹ Resp. at 5.

³² *Id.*

³³ *Id.*

³⁴ *Support Our Door Knocking Army*, TURNING POINT ACTION, https://getinvolved.tpaction.com/tp_don_om_fb_2e-gotv_di_2020-8-17-1?amount=15 (last visited Aug. 23, 2023).

shown above.³⁵ TPA acknowledges that the “GOTV” donation portal, which included the statements, “We must work together to defeat Joe Biden and Kamala Harris,” and “VOTE FOR DONALD TRUMP,” contained express advocacy.³⁶ TPA received 1,705 contributions from 1,209 unique contributors between August 19, 2020, and December 30, 2020, through this portal, and TPA states that 145 contributions from 49 unique contributors exceeded the \$200 reporting threshold, for a total of \$26,975.³⁷

C. TPA’s Spending in 2020

According to reports filed with the Commission, TPA made its earliest independent expenditure, in the amount of \$27,926.25, on August 20, 2020, which it reported as for “advertising-billboard/banner.”³⁸ In all of 2020, TPA disclosed a total of \$1,428,161.07 in independent expenditures, which included payments for social media, door hangers, yard signs, billboards, banners, and radio ads.³⁹

TPA’s original 2020 October Quarterly Report, filed on October 15, 2020, disclosed \$370,539.47 in independent expenditures but did not disclose any contributions.⁴⁰ Similarly, its original 2020 Year-End Report, filed on January 30, 2021, disclosed \$1,057,621.60 in

³⁵ Resp. at 5-6.

³⁶ *Id.* at 6.

³⁷ *Id.* at 7. TPA stated that it amended its 2020 October Quarterly and Year-End Form 5 Reports to disclose the following: for the 2020 October Quarterly Report, 44 contributions, consisting of 9 contributions received from the “Get Involved” portal and 35 contributions from the “GOTV” portal, for a total of \$16,504; for the 2020 Year-End Report, TPA disclosed 113 contributions received from the “GOTV” portal for a total of \$17,255. *Id.*

³⁸ See TPA, Amended 2020 October Quarterly Report at 36 (Apr. 7, 2021) (disclosing payment to Rally Forge, Queen Creek, AZ).

³⁹ See *Turning Point Action: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C90019597/?cycle=2020&tab=summary> (last visited Aug. 23, 2023).

⁴⁰ TPA, 2020 October Quarterly Report at 1 (Oct. 15, 2020).

independent expenditures but no contributions.⁴¹

On February 9, 2021, the Reports Analysis Division (“RAD”) sent TPA a Request for Additional Information (“RFAI”) regarding missing contributor information.⁴² After the Complaint was filed on March 23, 2021, TPA filed an amended 2020 October Quarterly Report on April 7, 2021, disclosing \$16,540 in contributions; it also filed an amended 2020 Year-End Report on April 9, 2021, disclosing \$17,255.00 in contributions, for a total of \$33,795.⁴³

D. The Complaint and Response

According to the Complaint, despite making over \$1.4 million in independent expenditures in the fall of 2020, and despite the fact that TPA had apparently solicited contributions to influence the 2020 presidential election, TPA failed to disclose any contributors.⁴⁴ The Complaint describes numerous Facebook and Google ads that led the viewer to TPA webpages soliciting contributions, which are described above, as support for its claim that TPA was soliciting contributions to influence the 2020 presidential election.⁴⁵ The Complaint alleges that contributions received in response to those solicitations or “similar solicitations” should have been disclosed.⁴⁶

In response to the Complaint’s allegations, TPA’s Response asserts that it raised a limited

⁴¹ TPA, 2020 Year-End Report at 1 (Jan. 30, 2021).

⁴² TPA, Request for Additional Info. (“RFAI”) at 1-3 (Feb. 9, 2021), <https://docquery.fec.gov/pdf/229/202102100300105229/202102100300105229.pdf>.

⁴³ Resp. at 7. TPA, Amended 2020 October Quarterly Report at 1 (Apr. 7, 2021); TPA, Amended 2020 Year-End Report at 1 (Apr. 9, 2021).

⁴⁴ Compl. ¶ 19.

⁴⁵ See *supra* Part II(B).

⁴⁶ Compl. ¶¶ 41, 50.

1 number of reportable contributions from the advertisements identified in the Complaint.⁴⁷ TPA
2 contends that it was required to report only 157 contributions totaling \$33,795, which met the
3 \$200 threshold for itemization of contributions under the Act.⁴⁸

4 As to the remaining \$1,394,366 spent on TPA’s independent expenditures, the Response
5 indicates that those funds came from three sources: (1) donors responding to the advertisements
6 in the Complaint whose contributions did not aggregate to \$200 or more; (2) “unrestricted grants
7 from individuals, organizations, and businesses that support [Turning Point Action]’s social
8 welfare mission” which constituted the “vast majority” of TPA’s funding for its independent
9 expenditures; and (3) contributions from contributors who exceeded the \$200 threshold but
10 whom TPA did not disclose because the contributions were received in the first quarterly report
11 period (April Quarterly) or second quarterly report period (July Quarterly), prior to the time
12 independent expenditures commenced in the third quarterly report period (October Quarterly).⁴⁹
13 TPA’s Response does not state whether it received other contributions that were not used to fund
14 its \$1.4 million in independent expenditures but nevertheless were made for the purpose of
15 influencing a federal election.

16 With respect to the contributions that were received during the first and second quarters
17 of 2020, TPA asserts that it is only required to report contributions made during the quarter in
18 which independent expenditures were made (the third quarter of 2020), on the basis of its view
19 that reports of independent expenditures are triggered by the making of independent

⁴⁷ Resp. at 4.

⁴⁸ *Id.* at 7 (citing 52 U.S.C. § 30104(b)(3)(A)).

⁴⁹ Resp. at 2.

expenditures, not the receipt of contributions.⁵⁰ TPA also states, however, that “in the unlikely event the Commission disagrees with TPA’s legal position, TPA is willing to disclose its Q1 and Q2 contributors upon request.”⁵¹

III. LEGAL ANALYSIS

As discussed below, the legal requirements applicable to disclosing the funding of independent expenditures made by persons other than political committees have been the subject of recent court opinions and Commission guidance. After applying the relevant standards to the Complaint’s allegations, it appears that Turning Point Action not only failed to timely report contributor information for a small subset of its funding sources (totaling \$33,795), but also appears to have failed to make required disclosures regarding the funding of some or all of the rest of the \$1,394,205 it reported spending on independent expenditures at issue in this matter.

A. Independent Expenditure Reporting by Persons Other Than Political Committees

1. Statutory Framework

An “independent expenditure” is an expenditure made by any person for a communication that (1) expressly advocates for the election or defeat of a clearly identified candidate, and (2) is not coordinated with the candidate, their authorized committee, their agents,

⁵⁰ TPA’s Response compares Commission regulations pertaining to the timing of the reporting of contributions with those relating to independent expenditure reporting. *See* Resp. at 2, n.3 (citing to 52 U.S.C. § 30104(b)(3)(A) (imposing contribution identification requirements for any “person . . . who makes a contribution to the reporting committee *during the reporting period*”) (emphasis added); 52 U.S.C. § 30104(c)(1) (reporting requirements apply to “[e]very person . . . who makes independent expenditures”); 11 C.F.R. § 109.10(b) (requirement to file a Form 5 Report is only triggered by a “person . . . that makes independent expenditures”); 11 C.F.R. § 109.10(c) (describing reporting obligations for “the person making the independent expenditures”); and 11 C.F.R. § 109.10(d) (imposing supplemental reporting requirements on “[e]very person making . . . independent expenditures”)).

⁵¹ *Id.*

or a political party committee or its agents.⁵² The Act requires persons other than political committees to report their independent expenditures aggregating over \$250 in a calendar year.⁵³ Persons other than political committees must disclose certain information about their disbursements for independent expenditures (including the name and address of each person who receives disbursements aggregating over \$200 in connection with an independent expenditure), and indicate the candidates the independent expenditures support or oppose.⁵⁴

In addition, the Act requires persons other than political committees who report independent expenditures to report certain information about their receipts. Under 52 U.S.C. § 30104(c)(1), a person other than a political committee who makes independent expenditures in excess of \$250 during a calendar year must file a statement containing the information required under 52 U.S.C. § 30104(b)(3)(A) “for all contributions received by such person.”⁵⁵ Section 30104(b)(3)(A) requires identification of each “person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, . . . [aggregating] in excess of \$200 within the calendar year.”⁵⁶ Furthermore, under 52 U.S.C. § 30104(c)(2)(C), a person other than a political committee reporting independent expenditures must also identify “each person who made a contribution in excess of \$200 . . . which was made for the purpose of furthering *an* independent expenditure.”⁵⁷ Subsection (c)(2) further requires the filing of

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

⁵³ 52 U.S.C. § 30104(c)(1).

⁵⁴ *Id.* § 30104(c)(2)(A) (incorporating requirements of 52 U.S.C. § 30104(b)(6)(B)(iii)).

⁵⁵ *Id.* § 30104(b)(3)(A).

⁵⁶ *Id.*; *see also id.* § 30101(13) (defining “identification” to include name, address, and, for individuals, occupation and employer).

⁵⁷ *Id.* § 30104(c)(2)(C) (emphasis added).

statements in accordance with subsection (a)(2), which sets out the timing for filing disclosure reports by political committees.⁵⁸ The Act defines a “contribution” to include “any gift, subscription, loan, advance or deposit of money or anything of value made . . . for the purpose of influencing” a federal election.⁵⁹

2. Relevant Case Law and Commission Guidance

In 2018, in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”),⁶⁰ the District Court for the District of Columbia vacated the Commission’s implementing regulation at 11 C.F.R. § 109.10(e)(1)(vi), which limited the disclosure of contributors to those persons “who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering *the reported* independent expenditure.”⁶¹ The district court held that the regulation was invalid because it conflicted with 52 U.S.C. § 30104(c)(1) and (c)(2)(C), which “unambiguously require separate and complementary requirements to identify donors of over \$200 to reporting not-political committees and mandate significantly more disclosure than that required by the challenged regulation.”⁶²

The district court, linking its conclusions to its analysis of the Supreme Court’s decisions in *Buckley v. Valeo* (“*Buckley*”) and *FEC v. Massachusetts Citizens for Life* (“*MCFL*”) determined that:

Subsection (c)(1) plainly requires broader disclosure than just those donors making contributions for the purposes of funding the

⁵⁸ *Id.* § 30104(c)(2).

⁵⁹ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a).

⁶⁰ 316 F. Supp. 3d 349 (D.D.C. 2018) (“*CREW I*”).

⁶¹ 11 C.F.R. § 109.10(e)(1)(vi) (emphasis added).

⁶² *CREW I*, 316 F. Supp. 3d at 410.

independent expenditures made by the reporting entity. Instead, subsection (c)(1) applies to “all contributions received by such” reporting not-political committee, and, as construed by the Supreme Court in *Buckley*, a decade earlier than *MCFL*, requires disclosure of donors of over \$200 annually making contributions “earmarked for political purposes,” which contributions are “intended to influence elections.”⁶³

Further relying upon *MCFL*, the district court observed that under section 30104(c)(1), a “not-political committee,” which spends in excess of \$250 on independent expenditures in a calendar year, must “‘identify all contributors who annually provide in the aggregate \$200 in funds intended to influence elections’ to meet ‘[t]he state interest in disclosure’ concerning the spending activity and receipt of contributions by a not-political committee,’ but ‘in a manner less restrictive’” than the rules governing political committees.⁶⁴ Although the district court found that donors who wish to only fund administrative and non-political expenditures may do so without being disclosed,⁶⁵ it held that “those donors funding the not-political committee’s political activities to influence a federal election . . . must be identified to inform the electorate on the sources of funding of participants in the electoral process.”⁶⁶ In reaching this conclusion, the district court considered the Second Circuit’s decision in *FEC v. Survival Education Fund*,

⁶³ *Id.* at 389 (quoting *Buckley v. Valeo*, 424 U.S. 1, 80 (1976); *FEC v. Mass. Citizens for Life* (“*MCFL*”), 479 U.S. 238, 262 (1986)) (emphasis in original) (internal citations omitted).

⁶⁴ *CREW I*, 316 F. Supp. 3d at 388 (citing *MCFL*, 479 U.S. at 262) (alterations in original). In response to the concern that organizations like *MCFL*, which was determined not to be a political committee, would spend massive amounts on undisclosed political spending, the Supreme Court noted that the disclosure provisions in the subsection then-codified at 2 U.S.C. § 434(c), would be triggered by spending “as little as \$250” on independent expenditures. *Id.*

⁶⁵ *Id.* at 393 (observing that a not-political committee “would not have to report contributions made exclusively for administrative expenses” under subsection (c)(2)(C) (quoting *Speechnow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010)).

⁶⁶ *Id.* at 401.

Inc.,⁶⁷ which addressed disclaimer requirements under 52 U.S.C. § 30120, noting that its analysis of 30104(c) was consonant with the *Survival Education Fund, Inc.* analysis.⁶⁸ Specifically, the district court noted that the Second Circuit had contrasted the reporting requirements of the predecessor to section 30104(c) as “more ‘far-reaching’ than” those at issue in the disclaimer dispute at issue in *Survival Education Fund, Inc.*, because section 30104(c) “triggered ‘broad disclosure obligations.’”⁶⁹

The district court also found that section 30104(c)(2)(C) “requires reporting not-political committees to identify those donors of over \$200 who contribute ‘for the purpose of furthering an independent expenditure,’” and that donors reported under subsection (c)(2)(C) would be a subset of donors disclosed under subsection (c)(1).⁷⁰ The court determined that the disclosure requirements under subsections (c)(1) and (c)(2)(C) are complementary and contrasted the two provisions by stating:

[S]ubsection (c)(2)(C) is properly read to cover contributions used by the not-political committee for express advocacy for or against the election of a federal candidate, whereas subsection (c)(1) covers contributions used for other political purposes in support or opposition to federal candidates by the organization for contributions directly to candidates, candidate committees, political party committees, or super PACs.⁷¹

The district court did not detail how a person other than a political committee would fulfill its obligation to identify the subset of its donors who provided funds intended to influence elections

⁶⁷ *FEC v. Survival Education Fund*, 65 F.3d 285 (2d Cir. 1995).

⁶⁸ *CREW I*, 316 F. Supp. 3d at 402 n.43

⁶⁹ *Id.*

⁷⁰ *Id.* at 389 (quoting 52 U.S.C. § 30104(c)(1)).

⁷¹ *Id.* at 392.

but considered the necessary data to be available to these groups, observing that “[n]ot-political committees likely keep close track of their donors, the donors’ articulated funding interests, if any, and their contribution history.”⁷²

Following the *CREW I* decision, on October 4, 2018, the Commission issued guidance regarding the filing obligations for persons other than political committees making independent expenditures (the “*CREW* Guidance” or “guidance”).⁷³ The *CREW* Guidance stated that for independent expenditures made on or after September 18, 2018, by persons other than political committees, the Commission will enforce the Act “[i]n accordance with the district court’s interpretation of the reporting requirements at 52 U.S.C. § 30104(c)(1) and (c)(2)(C).”⁷⁴ The guidance indicated that under the district court’s opinion in *CREW I*, sections 30104(c)(1) and (c)(2)(C) “require entities making independent expenditures of more than \$250 in the calendar year to disclose information about those who contributed for political purposes anytime during the full reporting quarter.”⁷⁵ The guidance also quoted portions of the *CREW I* opinion setting forth those interpretations, including a quotation noting that section 30104(c)(1) applies to “‘all contributions received’” and requires disclosure of donors making contributions over \$200 annually “‘earmarked for political purposes’” and “‘intended to influence elections.’”⁷⁶

⁷² *Id.* at 413.

⁷³ See Press Release, FEC Provides Guidance Following U.S. District Court Decision in *CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>.

⁷⁴ *CREW Guidance*, Section 4.

⁷⁵ *Id.*, Section 3.

⁷⁶ *Id.* (quoting *CREW I*, 316 F. Supp. 3d at 389, which cites to *Buckley* and *MCFL*) (emphasis in original).

On August 21, 2020, the D.C. Circuit affirmed the district court’s decision in its opinion in *Crossroads GPS v. CREW* (“*CREW I*”), holding that “[section 30104](c)(1) unambiguously requires an entity making over \$250 in IEs [independent expenditures] to disclose the name of any contributor whose contributions during the relevant reporting period total \$200, along with the date and amount of each contribution.”⁷⁷ In particular, the D.C. Circuit rejected an argument that the term “contribution” in section 30104(c) should be limited to “donations earmarked to support [independent expenditures]” and found that “*Buckley* stated more broadly that the term covers any donation ‘earmarked for political purposes.’”⁷⁸ Like the district court in *CREW I*, the D.C. Circuit observed that the Supreme Court in *MCFL* “similarly read the term ‘contribution’ as used in subsection 30104(c) to cover ‘funds intended to influence elections.’”⁷⁹

The D.C. Circuit further held that “[section 30104](c)(2)(C) is naturally read to cover contributions intended to support any [independent expenditure] made by the recipient.”⁸⁰ As such, the D.C. Circuit upheld the district court’s decision to vacate 11 C.F.R. § 109.10(e)(1)(vi), finding that the regulation “disregards (c)(1)’s requirement that IE makers disclose each donation from contributors who give more than \$200” and “impermissibly narrows (c)(2)(C)’s requirement that contributors be identified if their donations are ‘made for the purpose of furthering *an* independent expenditure’” by requiring disclosure only of donations linked to a particular independent expenditure.⁸¹ The D.C. Circuit also explained that the invalidation of

⁷⁷ *Crossroads GPS v. CREW*, 971 F.3d 340, 354 (D.C. Cir. 2020) (“*CREW II*”).

⁷⁸ *Id.* at 353 (quoting *Buckley*, 424 U.S. at 78).

⁷⁹ *Id.* at 353 (citing *MCFL*, 479 U.S. at 262).

⁸⁰ *Id.* at 354.

⁸¹ *Id.* at 350-51.

11 C.F.R. § 109.10(e)(1)(vi) meant that a person other than a political committee who makes independent expenditures “will be required, as a result of the district court’s judgment, to disclose nearly all contributions it receives during any reporting period in which it makes [independent expenditures].”⁸² The U.S. Supreme Court denied an earlier request to stay the district court’s vacatur.⁸³

Following the foregoing decisions in *CREW I* and *CREW II*, and subsequent to the issuance of the Commission’s post-*CREW I* guidance, Wisconsin Family Action (“WFA”), a 501(c)(4) organization, filed suit against the Commission on December 2, 2021, challenging the constitutionality of 52 U.S.C. § 30104(c).⁸⁴ WFA’s court complaint alleged that the Commission’s interpretation of the Act unlawfully expanded contributor disclosure requirements for non-political organizations, violating the First Amendment rights of speech, association, and assembly of WFA and its donors.⁸⁵ WFA sought an injunction to prevent the Commission from enforcing section 30104(c) to the extent it required disclosure of contributions not earmarked for independent expenditures.⁸⁶

On March 22, 2022, the District Court for the Eastern District of Wisconsin denied WFA’s motion for preliminary injunction.⁸⁷ Although the court found that WFA’s asserted First

⁸² *Id.* at 347.

⁸³ *Crossroads Grassroots Policy Strategies v. Citizens for Responsibility & Ethics in Wash.*, 139 S. Ct. 50 (2018) (Mem.). The Commission has not issued any additional guidance or proposed any regulation changes after the vacatur.

⁸⁴ *Wisconsin Family Action v. FEC*, Case No. 21-C-1373, 2022 WL 844436 (E.D. Wis. Mar. 22, 2022).

⁸⁵ *Id.* at *1.

⁸⁶ *Id.* at *5.

⁸⁷ *WFA*, Case No. 21-C-1373 (E.D. Wis. Mar. 22, 2022) (order denying preliminary injunction).

Amendment interests were substantial,⁸⁸ the court did not address the constitutionality of the Commission’s interpretation of the disclosure requirement because it found that WFA had not established that section 30104(c), as interpreted by the Commission, would require WFA to disclose its donors simply by making more than \$250 on independent expenditures.⁸⁹ The court noted that under the Commission’s interpretation of section 30104(c), WFA would be required to “disclose only those donors whose contributions are earmarked for political purposes and are tied to a federal election.”⁹⁰ WFA therefore had “failed to make a showing that it would suffer irreparable harm if its motion for a preliminary injunction is denied.”⁹¹

The district court observed that “whether a contribution is earmarked for political purposes and tied to an election can depend on whether the contribution is received in response to a solicitation and the way the solicitation is worded.”⁹² The court further stated that it was unclear from WFA’s complaint and moving papers what types of solicitations WFA intended to use and therefore whether additional donors would be required to be identified.⁹³ To the extent that WFA’s planned future conduct might result in a disclosure obligation as to contributors, the district court concluded that WFA had not provided sufficient information for a judicial ruling

⁸⁸ *WFA*, 2022 WL 844436 at *11-16.

⁸⁹ *Id.* at *21.

⁹⁰ *Id.*

⁹¹ *Id.* at *11.

⁹² *Id.* at *22.

⁹³ *Id.*

and might be better served by utilizing the Commission’s advisory opinion process to provide assurance that its donors’ identities would not need to be disclosed.⁹⁴

On May 10, 2022, WFA filed a Stipulation for Voluntary Dismissal in the Wisconsin court case,⁹⁵ and the district court dismissed the action without prejudice.⁹⁶

B. The Commission Finds Reason to Believe that Turning Point Action Failed to Report Contributions Totaling \$33,795

Having set out the regulatory background and legal developments relevant to this matter, we turn back to the merits. TPA’s failure to timely report its contributions appears to constitute violations of both sections 30104(c)(1) and (c)(2)(C). Here, TPA reported \$1,428,161.07 in independent expenditures and acknowledges that it should have reported \$33,795 in contributions that were at least mostly made in response to the solicitations or communications expressly advocating the election or defeat of a clearly identified federal candidate.⁹⁷ Following the filing of the Complaint in this matter, TPA amended its 2020 October and Year-End Reports to disclose 157 itemized contributions totaling \$33,795, which TPA states were made in response to donation portals on its website described above.⁹⁸ Although TPA contends that one of the

⁹⁴ *Id.* at *23.

⁹⁵ Stipulation of Dismissal, *Wisconsin Family Action v. FEC*, No. 21-1373 (E.D. Wis. May 10, 2022) (ECF No. 41). The filing cited to events affecting the security of plaintiff’s facilities, operations, and personnel and further noted that the Commission “has clarified its position in relation to matters at issue that were of concern to Plaintiff in commencing this action.” *Id.*

⁹⁶ Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure provides for dismissal effective upon that filing.

⁹⁷ *See* Resp. at 2 (stating that “TPA’s analysis demonstrates that \$33,795 in contributions should have been reported,” that the reporting issues were “minor,” “unintentional” and “have been fully and properly remedied”).

⁹⁸ *Id.* at 1, 2, 4, and 7; *see supra* Part II(B).

portals, “Get Involved,” did not contain express advocacy on its webpage, this portal was linked to certain advertisements that appear to have expressly advocated the election or defeat of a federal candidate.⁹⁹ TPA states that it disclosed all contributions received through this portal (\$6,820), because it could not determine whether the contributors were directed to the portal from an online advertisement or directly through the website.¹⁰⁰

TPA appears to have had disclosure obligations under section 30104(c)(1), which requires a person other than a political committee who makes independent expenditures in excess of \$250 during a calendar year to file a statement containing the information required under 52 U.S.C. § 30104(b)(3)(A) “for all contributions received by such person,”¹⁰¹ aggregating “in excess of \$200 within the calendar year.”¹⁰² First, the “Yard Sign” and “GOTV” donation portals solicit contributions “earmarked for political purposes,” and indicate that funds would be used to influence the 2020 presidential election.¹⁰³ The “Yard Sign” portal includes campaign slogans such as “TRUMP PENCE 2020” and “THIS HOUSE IS VOTING FOR TRUMP.”¹⁰⁴ The “GOTV” portal stated, “SUPPORT OUR DOOR KNOCKING ARMY. We must work together to defeat Joe Biden and Kamala Harris.”¹⁰⁵ Further, although the “Get Involved” portal

⁹⁹ *Id.* at 4; *see supra* pages 7-9 (describing TPA’s Google Ads).

¹⁰⁰ Resp. at 7.

¹⁰¹ 52 U.S.C. § 30104(b)(3)(A).

¹⁰² *Id.* § 30104(b)(3)(A); *see also id.* § 30101(13) (defining “identification” to include name, address, and, for individuals, occupation and employer).

¹⁰³ *See CREW II*, 971 F.3d at 352 (finding that the term “contribution” in subsection 30104(c) covers “funds intended to influence elections”); *CREW I*, 316 F. Supp 3d at 389 (same).

¹⁰⁴ Resp. at 5.

¹⁰⁵ *Support Our Door Knocking Army*, TURNING POINT ACTION, https://getinvolved.tpaction.com/tp_don_om_fb_2e-gotv_di_2020-8-17-1?amount=15 (last visited Aug. 23, 2023).

1 does not reference a federal election, as TPA notes, this portal was apparently linked to
2 advertisements containing express advocacy.¹⁰⁶ Accordingly, TPA should have disclosed the
3 contributions it received annually aggregating above \$200 in response to the donation portals
4 described above under section 30104(c)(1).

5 Second, TPA also appears to have had disclosure obligations under section
6 30104(c)(2)(C), which requires the reporting of donors who made contributions for the purpose
7 of furthering independent expenditures. The “GOTV” portal appears to request funds to further
8 independent expenditures in that the solicitation seeks support for TPA’s “door knocking army”
9 with an image appearing to be of Charlie Kirk, TPA’s CEO, working as a canvasser holding a
10 door hanger stating, “VOTE FOR DONALD TRUMP AND PETER MEIJER.”¹⁰⁷ This
11 statement expressly advocates the election of Trump and Peter Meijer, a candidate for
12 Michigan’s 3d Congressional District under 11 C.F.R. § 100.22(a).¹⁰⁸ Indeed, TPA reported
13 receiving 1,705 contributions from 1,209 unique contributors through this portal alone.¹⁰⁹ Thus,
14 contributions received in response to the “GOTV” portal sought contributions tied to
15 independent expenditures and were required to be disclosed under section 30104(c)(2)(C). A
16 failure to disclose such contributions would also be in violation of section 30104(c)(1), because,
17 as the district court noted in *CREW I*, subsection (c)(2)(C) is a subset of donors disclosed under
18 subsection (c)(1).¹¹⁰

¹⁰⁶ See *supra* notes 26-30.

¹⁰⁷ See *supra* page 10.

¹⁰⁸ See 11 C.F.R. § 100.22(a) (listing express advocacy as including phrases such as “vote for the President”).

¹⁰⁹ Resp. at 7.

¹¹⁰ *CREW I*, 316 F. Supp. 3d at 389.

While acknowledging its “reporting errors,” TPA argues that these errors were “minor in scope, and unintentional” and the Commission should therefore exercise its prosecutorial discretion and dismiss this matter.¹¹¹ However, TPA did not disclose its contributions until after the Complaint was filed, and, more importantly, there appears to be additional more significant violations involved.¹¹² Accordingly, the Commission finds reason to believe TPA failed to disclose contributions totaling \$33,795 in violation of 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C).

C. The Commission Finds Reason to Believe that TPA Failed to Disclose Additional Contributions That Appear to Have Been Earmarked for Political Purposes and/or Made for the Purpose of Furthering Independent Expenditures as Well as Contributions That Were Received in Reporting Periods Prior to When Independent Expenditures Commenced

1. Contributions Earmarked for Political Purposes and/or Made for the Purpose of Furthering Independent Expenditures

The \$33,795 in disclosed contributions discussed above appear to be limited to contributions TPA accepted through its website, but the available information also indicates that TPA should have disclosed additional contributions that it solicited and accepted from other sources and by other means. The total amount of contributions disclosed by TPA to date only constitutes 2% of the \$1.428 million TPA spent on its independent expenditures in 2020, a level of disclosure far below that contemplated by the courts in *CREW I* and *CREW II*,¹¹³ and which

¹¹¹ Resp. at 8.

¹¹² See *infra* Part III(C).

¹¹³ In *CREW II*, for example, the D.C. Circuit observed that the appellant in that case, a 501(c)(4) organization like TPA, “will be required, as a result of the district court’s judgment, to disclose *nearly all* contributions it receives during any reporting period in which it makes [independent expenditures].” 971 F.3d at 347 (emphasis added); accord *CREW I*, 316 F. Supp. 3d at 423 (explaining that 52 U.S.C. § 30104(c)(2)(C) requires disclosure “even when the donor has not expressly directed that the funds be used in the precise manner reported”).

does not appear to be justified based on TPA’s known activities and the commonsense notion that the funds provided to TPA, totaling more than \$11 million in its 2020 fiscal year, were likely provided with some understanding of what TPA would do with the money.¹¹⁴

TPA states that most of its independent expenditures were not funded through contributions collected through its website but rather that the “vast majority were funded by unrestricted grants from individuals, organizations, and business that support TPA’s social welfare mission.”¹¹⁵ According to TPA’s IRS Form 990 for its 2020 fiscal year (July 1, 2020 through June 30, 2021), TPA’s total revenue for that period was \$11,279,325, exclusively consisting of “contributions and grants.”¹¹⁶ Its fundraising was reportedly conducted through fundraisers, internet, email, telephone, and in-person solicitations.¹¹⁷

As reflected in the *CREW I* and *II* court opinions, which relied on the Supreme Court’s decisions in *Buckley* and *MCFL*, as well as the Commission’s *CREW* Guidance, the relevant legal standard for determining whether contributions should be disclosed is whether the funds are “earmarked for a political purpose,” such that they are “intended to influence a federal

¹¹⁴ Contributions to TPA increased from \$2 million to \$11 million during that period. See 2020 TPA Form 990; 2021 TPA Form 990; Brandy Zadrozny, *Turning Point USA Donations Surged During the Pandemic*, NBC NEWS (Jul. 13, 2022), <https://www.nbcnews.com/tech/internet/turning-point-usa-donations-surged-pandemic-rcna37143> (last visited Aug. 23, 2023). TPUSA, TPA’s sister organization, raised over \$55 million in revenue during the same time period, with its income coming from anonymous donors. See IRS Form 990, TPUSA Inc., 2021 Return of Organization Exempt from Income Tax at 7 (May 10, 2022), https://apps.irs.gov/pub/epostcard/cor/800835023_202106_990_2022052520135676.pdf.

¹¹⁵ Resp. at 2.

¹¹⁶ See 2020 TPA Form at 1.

¹¹⁷ *Id.*, Schedule G at 1.

election.”¹¹⁸ The district court in *CREW I* stated that subsection (c)(2)(c) covers contributions used for express advocacy whereas “subsection (c)(1) covers contributions used for other political purposes in support or opposition to federal candidates by the organization for contributions directly to candidates, candidate committees, political party committees, or super PACs.”¹¹⁹ Further in *WFA*, the district court observed that “whether a contribution is earmarked for political purposes and are tied to a federal election can depend on whether the contribution is received in response to a solicitation and the way a solicitations is worded.”¹²⁰ (In an oral argument hearing in *WFA*, in response to a question by the judge as to how to determine which contributions are made to influence a federal election, counsel for the FEC stated that it would include solicitations stating that the funds would be used in federal elections, such as, to help elect candidates from a particular party, not necessarily tied to a particular candidate.¹²¹)

In asserting that its independent expenditures were mostly funded by donors making unrestricted grants, TPA does not describe the circumstances under which TPA might have solicited those grants or accepted them or provide any other information about its understanding of donor intent associated with what it acknowledges is the vast majority of its donations relevant to this funding.¹²²

¹¹⁸ *CREW II*, 971 F. 3d at 353 (citing *Buckley*, 424 U.S. at 78 and *MCFL*, 479 U.S. at 262); *CREW I*, 316 F. Supp. 3d at 389 (citing same); see also *WFA*, 2022 WL 844436 (E.D. Wis. Mar. 22, 2022); *CREW* Guidance, Section 4 (first bullet) (quoting same).

¹¹⁹ *CREW I*, 316 F. Supp. 3d at 392.

¹²⁰ *WFA*, 2022 WL 844436, at *22.

¹²¹ Transcript of Oral Argument Hearing at 31, 35-37, *Wisconsin Family Action v. FEC*, Case No. 21-C-1373, (E.D. Wis. Mar. 22, 2022).

¹²² *CREW I*, 316 F. Supp. 3d at 413 (reasoning that “[n]ot-political committees likely keep close track of their donors, the donors’ articulated funding interests, if any, and their contribution history” and concluding that “the

1 However, there is credible information supporting the Complaint’s assertions that TPA
 2 likely solicited contributions that were earmarked for the purpose of influencing the 2020
 3 presidential election. The current record indicates that an important goal of TPA during the 2020
 4 election cycle was to help re-elect then-President Trump.¹²³ In 2019, TPA announced an
 5 expansion of its organization by acquiring Students for Trump in preparation for the 2020
 6 presidential election, and TPA’s CEO publicly declared that TPA planned “to add[] one million
 7 new voters to support four more years of President Trump.”¹²⁴ In January 2020, the Wayback
 8 Machine internet archive reflects that TPA’s website featured a “careers” page soliciting
 9 applications for “field representative” and “field administrator” positions, and in so doing
 10 described “Turning Point Action” as “one of the largest youth organizations in the country” and
 11 that “[o]ur primary focus is to identify, educate, register to vote and engage voters standing up
 12 for their values on all college campuses to re-elect President Donald J. Trump.”¹²⁵ Consistent
 13 with these intended efforts, TPA solicited funds to re-elect President Trump, as evidenced by the
 14 limited solicitations identified by the Complaint that apparently resulted in \$33,795 in
 15 contributions.¹²⁶ The solicitations available to the Commission, as well as and including the

burden of accessing and compiling information necessary for compliance with the statutory disclosure requirements is achievable”).

¹²³ See Discussion of TPA’s Facebook and Google ads, *supra*, Part II(B).

¹²⁴ Press Release, Turning Point Action, Turning Point Action Launches 2020 Expansion, Acquires “Students for Trump” (July 2, 2019), <https://www.democracyinaction.us/2020/interestg/turningpoint070219pr.html> (last visited Aug. 16, 2023).

¹²⁵ TPA, *Careers* (Jan. 11, 2020), <https://www.tpaction.com/careers> [<https://web.archive.org/web/20200111074615/https://www.tpaction.com/careers>].

¹²⁶ See *supra* Part II(B).

donation portals, are indicative that TPA’s self-descriptions included express advocacy and are reflective of a self-proclaimed “primary focus” of “re-elect[ing] President Donald J. Trump.”¹²⁷

Because TPA spent over \$1.4 million in independent expenditures in 2020 and reported raising more than \$11 million and spending more than \$9 million in fiscal year 2020, it is unlikely that TPA was able to raise sufficient funds for its independent expenditures without conducting additional fundraising and soliciting potential donors beyond those solicitations linking to the donation portals on its website. The Complaint alleges that TPA may have accepted contributions in response to “substantially similar solicitations,”¹²⁸ and TPA reported on its Form 990 that it solicited funds through other methods, such as fundraisers, email, telephone, and in-person communications in 2020-2021.¹²⁹ In light of how TPA communicated with its donors, how it described itself and its purposes on its website, and its publicly-described acquisition of Students for Trump, all of which directly focused on the 2020 election, the available information indicates a strong likelihood that a much greater set of TPA’s donors’ contributions than have been disclosed to date were “‘earmarked for political purposes,’ which contributions are ‘intended to influence elections’”¹³⁰ or made in furtherance of “an independent

¹²⁷ TPA, *Careers* (Jan. 11, 2020), <https://www.tpaction.com/careers> [<https://web.archive.org/web/20200111074615/https://www.tpaction.com/careers>].

¹²⁸ Compl. ¶ 51.

¹²⁹ 2020 TPA Form 990, Schedule G at 1.

¹³⁰ *CREW* Guidance, Section 4 (first bullet) (quoting *CREW I*, 316 F. Supp. 3d at 389 (quoting *Buckley* and *MCFL*)) (internal citations omitted). The Supreme Court’s description of levels of disclosure in *MCFL* appear to be presciently applicable to TPA here. See *MCFL*, 479 U.S. at 260-61 (describing individuals who contribute to MFCL as follows: “Individuals who contribute to appellee are fully aware of its political purposes, and in fact contribute precisely because they support those purposes. It is true that a contributor may not be aware of the exact use to which his or her money ultimately may be put, or the specific candidate that it may be used to support. However, individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction. Any contribution therefore necessarily involves at least some degree of delegation of authority to use such funds in a manner that best serves

expenditure” by TPA.¹³¹ Even if the contributions were provided without use restrictions, as TPA asserts, the context of the donors’ understanding can be considered by the Commission in evaluating donor intent relevant to disclosure.¹³² Moreover, the available information in this matter indicates that TPA’s fundraising appeals appeared to be in connection with the 2020 election.

TPA’s Response focuses heavily on the \$33,795 in contributions it eventually disclosed but provides virtually no information about the intent of the donors who funded the “vast majority” of its independent expenditures; it asserts simply that these donors “support TPA’s social welfare mission.”¹³³ TPA appears to contend that it was only required to disclose the \$33,795 in contributions because solicitations associated with their receipt contained express advocacy.¹³⁴ But, as discussed above, the case law and the Commission’s precedent appears to require broader disclosure. In *CREW II*, the D.C. Circuit rejected Crossroads GPS’s argument that *Buckley* required a narrowing construction of section 30104(c)(1), such that only donors who

the shared political purposes of the organization and contributor.”); *id.* at 262 (observing that MCFL’s decision to make “an independent expenditure of as little as \$250 by MCFL will trigger the disclosure provisions of § [30104(c)]” and stating “[s]hould MCFL’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.”).

¹³¹ *CREW* Guidance, Section 4 (second bullet) (quoting *CREW I*, 316 F. Supp. 3d at 389) (internal quotation marks omitted).

¹³² *CREW I*, 316 F. Supp. 3d at 418 n.53 (directing the Commission, on remand, to consider whether section 30104(c)(2)(C) required disclosure of any of the following: a donor who initiated the alleged matching challenge and “ended up making a donation ‘that was not in any way earmarked for any particular use’”; individuals who collectively gave \$1.3 million “not solicited for a particular purpose other than for general use in Ohio and were not for the purposes of aiding the election of Josh Mandel”; and “any of the individuals who gave money after watching the advertisements at the Tampa event” (internal quotation marks omitted)); *see also supra* note 131 (describing Tampa event); *WFA*, 2022 WL 844436, at *22 (“[W]hether a contribution is earmarked for political purposes and tied to an election can depend on whether the contribution is received in response to a solicitation and the way the solicitation is worded.”).

¹³³ Resp. at 2.

¹³⁴ Resp. at 4-5.

provide funds to further independent expenditures, *i.e.* donations tied to expenditures containing express advocacy, are required to be disclosed.¹³⁵ Rather, the D.C. Circuit determined that “*Buckley* stated more broadly that the term covers any donation ‘earmarked for political purposes,’”¹³⁶ indicating that “earmarked for political purposes” should be understood more broadly than the standard for express advocacy under 11 C.F.R. § 100.22. Citing *MCFL*, the D.C. Circuit stated that the Supreme Court has “similarly read the term ‘contribution’ in section 30104(c)(1) to cover ‘funds intended to influence elections.’”¹³⁷ Finally, in *WFA*, the district court found that the plaintiff would not suffer harm if the Commission, instead of limiting disclosure for contributions specifically earmarked for activities expressly advocating the election or defeat of a clearly identified candidate, required disclosure of donors “whose contributions are earmarked for political purposes and are tied to a federal election.”¹³⁸

The Second Circuit’s decision in *Survival Education Fund, Inc.* addressed what constituted “earmarked for political purposes” under *Buckley* for the purposes of determining an application of the Act’s disclaimer provision in 52 U.S.C. § 30120.¹³⁹ The Second Circuit reasoned that disclaimers would be required for a solicitation of contributions “that are earmarked for activities or ‘communications that expressly advocate the election or defeat of a clearly identified candidate.’”¹⁴⁰ It further explained:

¹³⁵ *CREW II*, 971 F.3d at 353.

¹³⁶ *Id.*; see also *CREW I*, 316 F. Supp. 3d at 388.

¹³⁷ *CREW II*, 971 F.3d at 353; see also *CREW I*, 316 F. Supp. 3d at 388.

¹³⁸ *WFA*, 2022 WL 844436, at *10.

¹³⁹ *Survival Education Fund, Inc.*, 65 F.3d at 295.

¹⁴⁰ *Id.*

Even if a communication does not itself constitute express advocacy, it may still fall within the reach of § 441d(a) [now codified as § 30120(a)] if it contains solicitations clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office.¹⁴¹

Accordingly, when considering the following statement: “your special election-year contribution today will help us communicate your views to hundreds of thousands of members of the *voting public*, letting them know why Ronald Reagan and his anti-people policies *must* be stopped,”¹⁴² the Second Circuit did not analyze whether the statement contained express advocacy. Instead, the court found that the statement solicited contributions requiring disclosure because the “statement leaves no doubt that the funds contributed would be used to advocate President Reagan’s defeat at the polls, not simply to criticize his policies during the election year.”¹⁴³

The Commission has subsequently relied on the standard set forth in *Survival Education Fund, Inc.* to indicate that a communication soliciting reportable contributions need not contain express advocacy in other contexts.¹⁴⁴ And, as noted above, in *CREW I*, the district court considered the description of the disclosure requirements of section 30104(c) in *Survival*

¹⁴¹ *Id.*

¹⁴² *Id.* (emphasis in original).

¹⁴³ *Id.*

¹⁴⁴ In MUR 5752 (Environment2004 Inc.), the Commission determined that language in fundraising communications solicited contributions within the meaning of the Act because they “clearly indicated that funds received would be targeted to the election or defeat of a clearly identified federal candidate.” Factual and Legal Analysis at 10, MUR 5752 (Environment2004 Inc.) (finding that incorporated entity exceeded statutory threshold for becoming a political committee by receiving over \$1,000 in response to solicitations clearly indicating that contributions would be targeted to the election or defeat of a clearly identified federal candidate). In subsequent advisory opinions, the Commission has similarly relied on *Survival Education Fund, Inc.* to determine whether proposed donation requests would solicit contributions under the Act. See Advisory Opinion 2012-27 at 5-6 (National Defense Committee) (finding that donation requests would not constitute solicitations under the Act because they did not “clearly indicat[e] that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office” (quoting *Survival Educ. Fund*, 65 F.3d at 295)); Advisory Opinion 2012-11 at 9 (Free Speech).

1 *Education Fund, Inc.* to be consonant with its analysis.¹⁴⁵ In this way, the Second Circuit echoed
 2 the discussion of section 30104(c) in *MCFL*, where the Supreme Court discounted a concern
 3 about opening the “door to massive undisclosed political spending” on the basis that “an
 4 independent expenditure of as little as \$250 by MCFL will trigger the disclosure provisions of
 5 § [30104](c),” with the result that the organization would “be required to identify all contributors
 6 who annually provide in the aggregate \$200 in funds intended to influence elections.”¹⁴⁶

7 Here, given that TPA’s solicitations indicated that funds received would be used to
 8 influence a federal election, regardless of whether they also expressly advocated the election or
 9 defeat of a clearly identified federal candidate, the case law indicates that such funds should have
 10 been disclosed as contributions under section 30104(c)(1). As discussed above, the available
 11 information in this matter reflects that TPA has consistently described itself in terms of
 12 influencing a federal election as set forth in *Buckley* and *MCFL*. Because TPA’s Response
 13 presents the relevant legal framework of subsections 30104(c)(1) and (c)(2)(C) as more narrowly
 14 limited — and in fact the Response does not appear to address the disclosure obligations of
 15 subsection 30104(c)(1), covering contributions “earmarked for political purposes,” anywhere at

¹⁴⁵ 316 F. Supp. 3d at 402 n.43. In *CREW I*, Crossroads GPS argued that the “the Second Circuit . . . further construed ‘contributions’ to mean only funds ‘that will be converted to expenditures’ subject to regulation under FECA.” Thus, *Buckley*’s definition of *independent expenditures* that are properly within the purview of FECA provides a limiting principle for the definition of contributions . . . as applied to groups acting independently of any candidate or his agents and which are not ‘political committees’ under FECA.” Crossroads GPS, Reply Mem. In Supp. Of Its Cross-Mot. For Summ. J. at 34, *CREW I*, No. 16-259 (ECF No. 36) (emphasis in original). Rejecting this argument, the district court wrote: “Nowhere did the Second Circuit hold that a ‘contribution’ under *Buckley* has to be tied to a specific independent expenditure or that the use of ‘contribution’ in 52 U.S.C. § 30104(c)(1) must be construed to target only independent expenditure activity.” *CREW I*, 316 F. Supp. 3d at 402 n.43.

¹⁴⁶ *MCFL*, 479 U.S. at 262. Cf. *CREW II*, 971 F.3d at 344 (observing that “a significant amount of [independent expenditure] spending now comes from organizations that do not disclose their contributors” and that there was nearly “1.4 billion” in such spending in the 2016 election cycle).

all — it appears that the limited disclosure TPA has provided does not completely account for its donations received for such purposes and is therefore insufficient.

2. Contributions Received in Reporting Periods Prior to the Commencement of TPA’s Independent Expenditures

The available information further indicates that TPA has failed to disclose contributions it acknowledges receiving during the first two quarters of 2020. TPA states that it has disclosed “only a small fraction” of the contributors who exceeded the \$200 threshold because “many contributions” were received during the first two quarters of 2020, asserting that contributions are only required to be disclosed if they are made during the same reporting period as reportable independent expenditures.¹⁴⁷ TPA has, however, indicated a willingness to disclose these contributions upon the Commission’s request.¹⁴⁸

TPA is incorrect that the timing of its receipt of contributions in certain quarters being different from the quarters in which it made independent expenditures relieves its disclosure obligations.¹⁴⁹ While section 30104(c)(2) references 30104(a)(2), which addresses the timing for filings by principal campaign committees, and discusses filing on a quarterly basis, and Commission regulations specify that persons other than political committees must file quarterly reports, as well as 24-Hour and 48-Hour reports, based on when the reportable independent expenditures are made,¹⁵⁰ these provisions do not contradict or limit other requirements to disclose contributors. As an initial matter, this argument is inapplicable to TPA’s disclosure

¹⁴⁷ See *supra* n. 50.

¹⁴⁸ *Id.*

¹⁴⁹ Resp. at 2 & n.3.

¹⁵⁰ 11 C.F.R. § 109.10(b), (c), and (d).

obligations pursuant to Section 30104(c)(2)(C), which on its face requires the disclosure of “each person” contributing more than \$200 “for the purpose of furthering an independent expenditure.”¹⁵¹ The Act’s plain language broadly calling for such unrestricted contributor information to be included in “[s]tatements”¹⁵² of non-political committees forecloses any argument by TPA that contributions made in the first or second quarter of 2020 for the purpose of furthering an independent expenditure need not be disclosed by virtue of TPA’s having made independent expenditures beginning in the third quarter of 2020.

Although TPA’s Response does not engage with contributions subject to disclosure under Section 30104(c)(1), it is also unpersuasive to the extent it suggests that a reportable contribution could be rendered un-reportable because of the timing of the contribution occurring in an earlier quarter. The Act and the opinion in *CREW I* are to the contrary. Section 30104(c)(1) provides that a person, other than a political committee, who makes more than \$250 in independent expenditures in a calendar year must disclose “the information required under subsection (b)(3)(A) of this section for all contributions received by such person.”¹⁵³ Section

¹⁵¹ 52 U.S.C. § 30104(c)(2).

¹⁵² *Id.* § 30104(c)(2).

¹⁵³ *Id.* § 30104(c)(1).

30104(b)(3)(A) requires identifying “each person (other than a political committee) who made a contribution to the reporting committee during the reporting period” aggregating “in excess of \$200 within the calendar year . . . together with the date and amount of any such contributions.”¹⁵⁴

Because section 30104(b)(3)(A) covers political committees, it refers to contributions made during a reporting period. Section 30104(c)(1), by contrast, covers contributions by non-committees and reporting triggered by the event of making a disclosable independent expenditure, but clarifies that “all” contributions received by the reporting entity must be disclosed. TPA’s argument that it is “only required to report contributions made during the quarter in which independent expenditures were conducted”¹⁵⁵ seems to treat section 30104(c)(1) as causing a reporting non-committee to commence (and restrict) reporting on a quarterly schedule. However, the text of section 30104(c)(1) states that the non-committee must file a “statement” about its contributions received using the aggregate \$200 threshold in section 30104(b)(3)(A), as well as the specific timing and amount information for contributions in section 30104(b)(3)(A), and that it must do so “*for all* contributions received by such persons,” not just contributions received during a discrete period of time.¹⁵⁶ The words “for” and “all” in section 30104(c)(1) modify and adapt the political-committee reporting requirements, which apply to reporting entities, to the context of reporting non-committees, which may commence reporting at any point during a year. These modifications make clear that the threshold and

¹⁵⁴ *Id.* § 30104(b)(3)(A).

¹⁵⁵ Resp. at 2 n.3.

¹⁵⁶ 52 U.S.C. § 30104(c)(1) (emphasis added).

informational content supplied by section 30104(b)(3)(A) applies to “all contributions” received by the reporting non-committee.

Further, section 30104(b)(3)(A) does not anywhere refer to a *quarterly* reporting period for contributions; it in fact refers to “the reporting period” generally, consistent with the fact that different reporting persons have different reporting periods. Indeed, the instructions for Form 5 appear to acknowledge the possibility of unique reporting periods for non-committees, instructing filers to “[i]nclude all activity from the ending coverage date of the last report filed or from the date of the filer’s initial receipt or disbursement, as appropriate.”¹⁵⁷ Section 30104(b)(3)(A) requires disclosure of contributions “in excess of \$200 within the calendar year,” from the same individual, which suggests the disclosure of all prior contributions received year-to-date across multiple reporting periods, not just contributions received during any particular reporting period.¹⁵⁸ Analogously, when an individual becomes a candidate, all funds received and payments made in connection with testing-the-waters activities prior to becoming a candidate must be reported as contributions and expenditures in the first report filed by the candidate’s principal campaign committee, even if those contributions and expenditures occurred during a different reporting period.¹⁵⁹ Accordingly, TPA’s attempts to limit its disclosure obligations by grouping contributions by quarter is not supported by the Act.

In *CREW I*, the district court explained that a “not-political committee,” which spends in excess of \$250 on independent expenditures in a calendar year, must “identify all contributors

¹⁵⁷ Instructions for Preparing FEC Form 5 (Report of Independent Expenditures Made and Contributions Received to be Used by Persons Other Than Political Committees) at 2, <https://www.fec.gov/resources/cms-content/documents/policy-guidance/fecfrm5i.pdf>.

¹⁵⁸ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. §§ 100.12, 104.3(a)(4).

¹⁵⁹ 52 U.S.C. § 30101; 11 C.F.R. § 101.3.

who annually provide in the aggregate \$200 in funds intended to influence elections.”¹⁶⁰ The Circuit Court in *CREW II* affirmed that understanding.¹⁶¹ While the Commission need not resolve here whether the Act requires an entity like TPA to identify contributors who gave in order to influence a federal election in a prior calendar year or election cycle, TPA’s argument that it need not disclose contributors from the first or second quarters of 2020 is inconsistent with the Act’s text and the *CREW I* opinion.

Accordingly, the Commission finds reason to believe TPA violated 52 U.S.C. §§ 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose additional contributions that were received in reporting periods prior to when independent expenditures commenced, and contributions earmarked for political purposes or made for the purpose of furthering independent expenditures.

¹⁶⁰ *CREW I*, 316 F. Supp. 3d at 388; *see also id.* at 408 (observing that “regulatory guidance from the FEC on this timing issue would be helpful”). The *CREW* Guidance states that “[t]he district court explained that the applicable underlying statutory provisions, 52 U.S.C. § 30104(c)(1) and (c)(2)(C), require entities making independent expenditures of more than \$250 in the calendar year to disclose information about those who contributed for political purposes anytime during the full reporting quarter.” *CREW* Guidance, Section 3. In light of the evident context of advising the regulated community about how the Commission planned to “exercise its prosecutorial discretion for the quarterly reports due Oct[ober] 15, 2018,” the reference to “the full reporting quarter” should not be viewed as a quarterly limitation on disclosure but rather a conceptual baseline against which certain within-quarter periods for the final quarter of 2018 would be treated differently due to notice concerns. *Accord CREW* Guidance, Section 4 (setting forth the future-looking requirements applicable to TPA, among others, without reference to practices for the reporting final quarter of 2018).

¹⁶¹ *CREW II*, 971 F. 3d at 351.