



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.<sup>1</sup> We write to explain our vote to dismiss the allegation with respect to this third category of receipts.<sup>2</sup>

**I. Factual Background**

According to reports filed with the Commission, TPA made its earliest independent expenditure on August 20, 2020.<sup>3</sup> 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.<sup>4</sup> TPA asserted that it was not required to disclose these

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

<sup>2</sup> 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).

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

<sup>4</sup> Resp. at 2 (Apr. 9, 2021).

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

## 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”).<sup>6</sup> 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.”<sup>7</sup> 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.”<sup>8</sup> 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*.”<sup>9</sup> 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.<sup>10</sup>

In 2018, in *Citizens for Responsibility and Ethics in Washington v. FEC* (“CREW I”),<sup>11</sup> 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*.”<sup>12</sup> On August 21, 2020, the D.C. Circuit affirmed the district court’s decision in its opinion in *Crossroads GPS v. CREW* (“CREW II”).<sup>13</sup> 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

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<sup>5</sup> *Id.*

<sup>6</sup> 52 U.S.C. § 30104(c)(1).

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.* § 30104(c)(2)(C) (emphasis added).

<sup>10</sup> *Id.* § 30104(c)(2); *see id.* § 30104(a)(2).

<sup>11</sup> 316 F. Supp. 3d 349 (D.D.C. 2018) (“CREW I”).

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

<sup>13</sup> 971 F.3d 340, 354 (D.C. Cir. 2020) (“CREW II”)

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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*”).<sup>14</sup>

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*.<sup>15</sup>

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.”<sup>16</sup> 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]*.”<sup>17</sup>

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*.”<sup>18</sup>

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.<sup>19</sup> 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.”<sup>20</sup> 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

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<sup>14</sup> 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*”).

<sup>15</sup> See *CREW Guidance*.

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

<sup>17</sup> *Id.* at 347 (emphasis added).

<sup>18</sup> *CREW Guidance*, Section 3.

<sup>19</sup> First GCR at 41.

<sup>20</sup> *Id.* at 38.

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anywhere refer to a quarterly reporting period.”<sup>21</sup> This is so, OGC asserts, because different reporting persons have different reporting periods.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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

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<sup>21</sup> *Id.* at 39.

<sup>22</sup> *Id.*

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

<sup>24</sup> First GCR at 36.

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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