



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

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