



**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.<sup>1</sup> 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.<sup>2</sup>

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,<sup>3</sup> the Commission dismissed the reporting violations related to the additional contributions. I dissented as to that dismissal.<sup>4</sup> 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).<sup>5</sup>

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.<sup>6</sup>

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

<sup>2</sup> *Id.* at 43.

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

<sup>4</sup> *Id.* at ¶2.

<sup>5</sup> 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.

<sup>6</sup> *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”).

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

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.’”<sup>8</sup> 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.”<sup>9</sup>

The relevant statutory text pertaining to the disclosure requirements of nonpolitical committees dates to the 1979 FECA amendments.<sup>10</sup> 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.’”<sup>11</sup> 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.”<sup>12</sup> As explained more fully in the attached proposed Factual and Legal Analysis,<sup>13</sup> 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.

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<sup>7</sup> 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/>.

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

<sup>9</sup> *Id.* at 408.

<sup>10</sup> *Id.* at 374.

<sup>11</sup> *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.).”).


<sup>12</sup> 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).

<sup>13</sup> See Attachment A at 19–20, 25–38.

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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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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

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<sup>1</sup> Compl. ¶ 3 (Mar. 23, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

1 website.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *See* Compl. ¶ 9; Resp. at 3.

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

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

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

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<sup>8</sup> 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](https://apps.irs.gov/pub/epostcard/cor/464331510_202106_990O_2022080220262113.pdf) (“2021 TPA Form 990”).

<sup>9</sup> Compl. ¶ 12.

<sup>10</sup> 2021 TPA Form 990 at 7.

<sup>11</sup> 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](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).

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

<sup>13</sup> 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](https://apps.irs.gov/pub/epostcard/cor/821225311_202006_990_2021052518187032.pdf).

<sup>14</sup> 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](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.”<sup>15</sup> 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.”<sup>16</sup> 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.”<sup>17</sup>

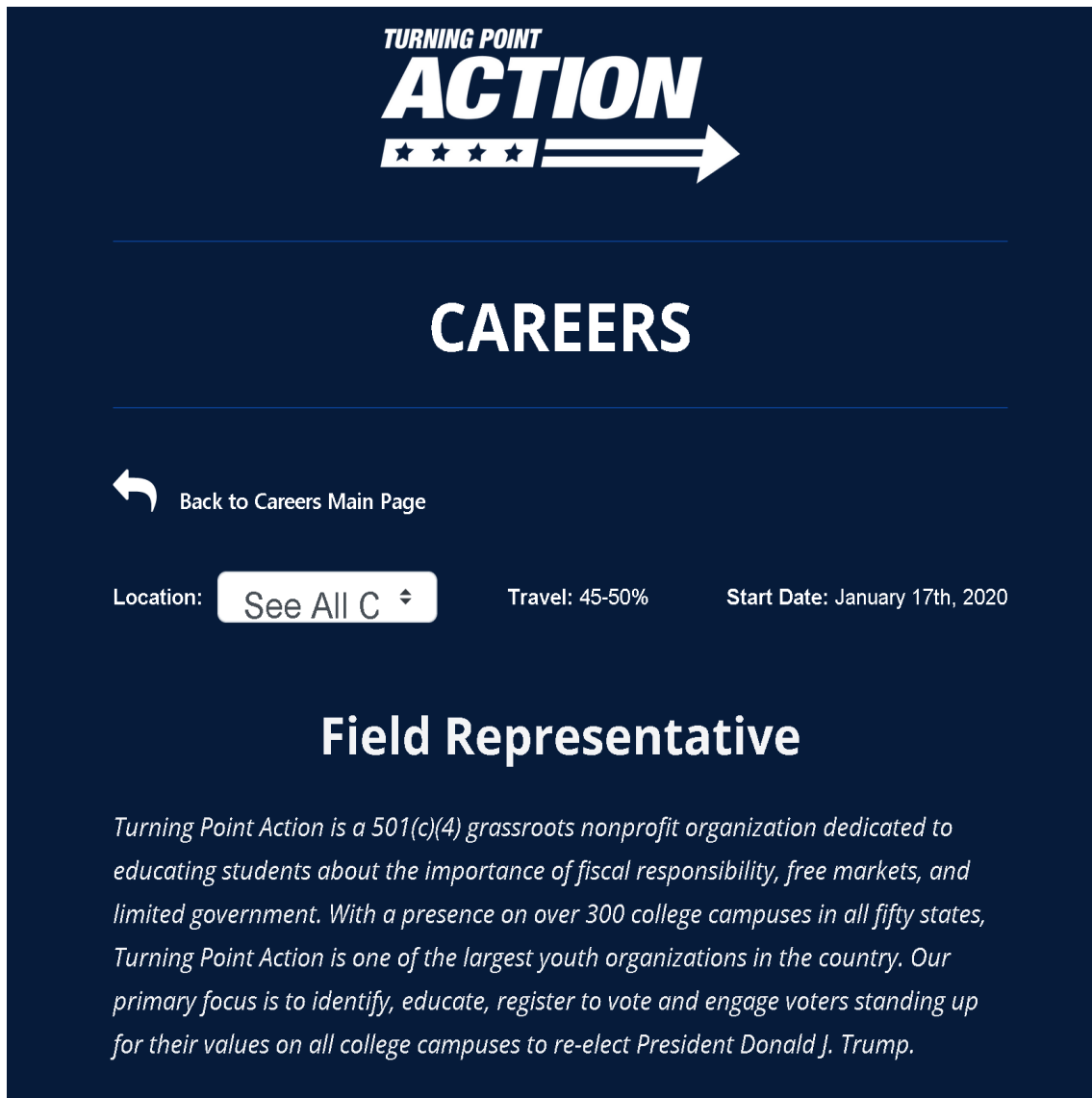
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<sup>15</sup> Compl. ¶ 10 (quoting Press Release, Turning Point Action, Turning Point Action Launches 2020 Expansion, Acquires “Students for Trump” (July 2, 2019), <https://www.democracyinaction.us/2020/interestg/turningpoint070219pr.html> ).

<sup>16</sup> *Id.*

<sup>17</sup> 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.<sup>18</sup>

<sup>18</sup> *Id.*



1           According to TPA, its Google ads contained hyperlinks to “getinvolved.tpaction.com.”<sup>23</sup>  
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.<sup>24</sup>  
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.<sup>25</sup>

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.”<sup>26</sup> 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.”<sup>27</sup> The  
14           advertisements included statements such as: “We must work together to defeat Joe Biden and

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<sup>23</sup>        *Id.*

<sup>24</sup>        *Id.* at 4.

<sup>25</sup>        *Id.*

<sup>26</sup>        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>].

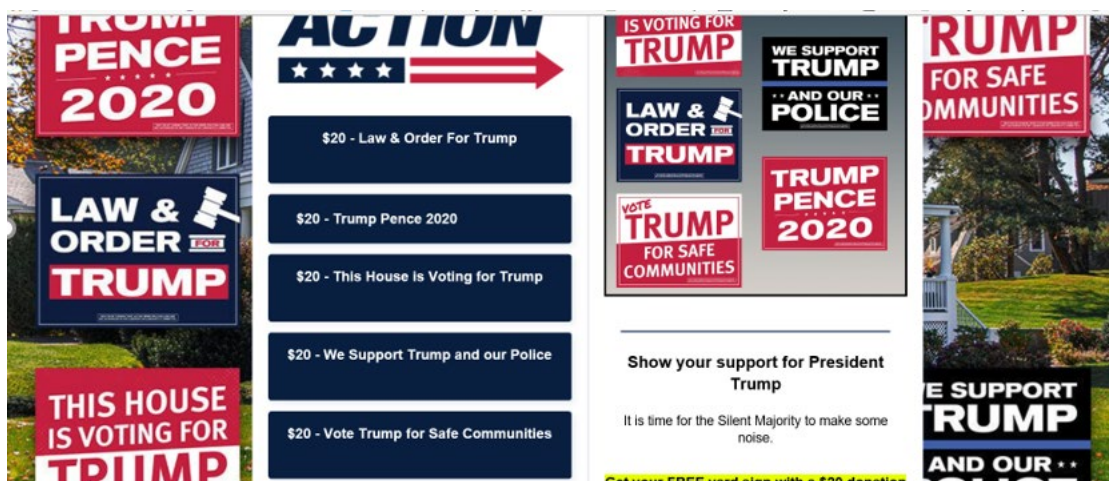
<sup>27</sup>        Compl. ¶¶ 21, 38.

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

### 6 “Yard Sign” and “GOTV” Donation Portals

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

### 10 “Yard Sign”



11

<sup>28</sup> *Ad Details*, GOOGLE ADS TRANSPARENCY CTR., <https://transparencyreport.google.com/political-ads/advertiser/AR556213176958451712/creative/CR17442755422535680> (last visited Aug. 23, 2023) (showing information relating to ad reading “Turning Point Action – Support Our Door Knocking Army”).

<sup>29</sup> *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”).

<sup>30</sup> *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”).



1 shown above.<sup>35</sup> TPA acknowledges that the “GOTV” donation portal, which included the  
2 statements, “We must work together to defeat Joe Biden and Kamala Harris,” and “VOTE FOR  
3 DONALD TRUMP,” contained express advocacy.<sup>36</sup> TPA received 1,705 contributions from  
4 1,209 unique contributors between August 19, 2020, and December 30, 2020, through this portal,  
5 and TPA states that 145 contributions from 49 unique contributors exceeded the \$200 reporting  
6 threshold, for a total of \$26,975.<sup>37</sup>

### 7 C. TPA’s Spending in 2020

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

13 TPA’s original 2020 October Quarterly Report, filed on October 15, 2020, disclosed  
14 \$370,539.47 in independent expenditures but did not disclose any contributions.<sup>40</sup> Similarly, its  
15 original 2020 Year-End Report, filed on January 30, 2021, disclosed \$1,057,621.60 in

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<sup>35</sup> Resp. at 5-6.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *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.*

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

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

<sup>40</sup> TPA, 2020 October Quarterly Report at 1 (Oct. 15, 2020).

1 independent expenditures but no contributions.<sup>41</sup>

2 On February 9, 2021, the Reports Analysis Division (“RAD”) sent TPA a Request for  
3 Additional Information (“RFAI”) regarding missing contributor information.<sup>42</sup> After the  
4 Complaint was filed on March 23, 2021, TPA filed an amended 2020 October Quarterly Report  
5 on April 7, 2021, disclosing \$16,540 in contributions; it also filed an amended 2020 Year-End  
6 Report on April 9, 2021, disclosing \$17,255.00 in contributions, for a total of \$33,795.<sup>43</sup>

#### 7 **D. The Complaint and Response**

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

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

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

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

<sup>43</sup> 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).

<sup>44</sup> Compl. ¶ 19.

<sup>45</sup> *See supra* Part II(B).

<sup>46</sup> Compl. ¶¶ 41, 50.

1 number of reportable contributions from the advertisements identified in the Complaint.<sup>47</sup> 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.<sup>48</sup>

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).<sup>49</sup>  
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

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<sup>47</sup> Resp. at 4.

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

<sup>49</sup> Resp. at 2.



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

### 4 **III. LEGAL ANALYSIS**

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

#### 12 **A. Independent Expenditure Reporting by Persons Other Than Political Committees**

##### 13 1. Statutory Framework

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

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<sup>50</sup> 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”).

<sup>51</sup> *Id.*

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

7 In addition, the Act requires persons other than political committees who report  
8 independent expenditures to report certain information about their receipts. Under 52 U.S.C.  
9 § 30104(c)(1), a person other than a political committee who makes independent expenditures in  
10 excess of \$250 during a calendar year must file a statement containing the information required  
11 under 52 U.S.C. § 30104(b)(3)(A) “for all contributions received by such person.”<sup>55</sup> Section  
12 30104(b)(3)(A) requires identification of each “person (other than a political committee) who  
13 makes a contribution to the reporting committee during the reporting period, . . . [aggregating] in  
14 excess of \$200 within the calendar year.”<sup>56</sup> Furthermore, under 52 U.S.C. § 30104(c)(2)(C), a  
15 person other than a political committee reporting independent expenditures must also identify  
16 “each person who made a contribution in excess of \$200 . . . which was made for the purpose of  
17 furthering *an* independent expenditure.”<sup>57</sup> Subsection (c)(2) further requires the filing of

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

<sup>53</sup> 52 U.S.C. § 30104(c)(1).

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

<sup>55</sup> *Id.* § 30104(b)(3)(A).

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

<sup>57</sup> *Id.* § 30104(c)(2)(C) (emphasis added).

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

5           2.       Relevant Case Law and Commission Guidance

6           In 2018, in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”),<sup>60</sup>  
 7 the District Court for the District of Columbia vacated the Commission’s implementing  
 8 regulation at 11 C.F.R. § 109.10(e)(1)(vi), which limited the disclosure of contributors to those  
 9 persons “who made a contribution in excess of \$200 to the person filing such report, which  
 10 contribution was made for the purpose of furthering *the reported* independent expenditure.”<sup>61</sup>  
 11 The district court held that the regulation was invalid because it conflicted with 52 U.S.C.  
 12 § 30104(c)(1) and (c)(2)(C), which “unambiguously require separate and complementary  
 13 requirements to identify donors of over \$200 to reporting not-political committees and mandate  
 14 significantly more disclosure than that required by the challenged regulation.”<sup>62</sup>

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

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

<sup>58</sup> *Id.* § 30104(c)(2).

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

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

<sup>61</sup> 11 C.F.R. § 109.10(e)(1)(vi) (emphasis added).

<sup>62</sup> *CREW I*, 316 F. Supp. 3d at 410.

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

8  
9 Further relying upon *MCFL*, the district court observed that under section 30104(c)(1), a  
10 “not-political committee,” which spends in excess of \$250 on independent expenditures in a  
11 calendar year, must “‘identify all contributors who annually provide in the aggregate \$200 in  
12 funds intended to influence elections’ to meet ‘[t]he state interest in disclosure’ concerning the  
13 spending activity and receipt of contributions by a not-political committee,’ but ‘in a manner less  
14 restrictive’” than the rules governing political committees.<sup>64</sup> Although the district court found  
15 that donors who wish to only fund administrative and non-political expenditures may do so  
16 without being disclosed,<sup>65</sup> it held that “those donors funding the not-political committee’s  
17 political activities to influence a federal election . . . must be identified to inform the electorate  
18 on the sources of funding of participants in the electoral process.”<sup>66</sup> In reaching this conclusion,  
19 the district court considered the Second Circuit’s decision in *FEC v. Survival Education Fund*,

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<sup>63</sup> *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).

<sup>64</sup> *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.*

<sup>65</sup> *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 *Spechnow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010)).

<sup>66</sup> *Id.* at 401.

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

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

13 [S]ubsection (c)(2)(C) is properly read to cover contributions used  
14 by the not-political committee for express advocacy for or against  
15 the election of a federal candidate, whereas subsection (c)(1)  
16 covers contributions used for other political purposes in support or  
17 opposition to federal candidates by the organization for  
18 contributions directly to candidates, candidate committees,  
19 political party committees, or super PACs.<sup>71</sup>  
20

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

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

<sup>68</sup> *CREW I*, 316 F. Supp. 3d at 402 n.43

<sup>69</sup> *Id.*

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

<sup>71</sup> *Id.* at 392.

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

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

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<sup>72</sup> *Id.* at 413.

<sup>73</sup> 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/>.

<sup>74</sup> *CREW Guidance*, Section 4.

<sup>75</sup> *Id.*, Section 3.

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

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

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

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

<sup>78</sup> *Id.* at 353 (quoting *Buckley*, 424 U.S. at 78).

<sup>79</sup> *Id.* at 353 (citing *MCFL*, 479 U.S. at 262).

<sup>80</sup> *Id.* at 354.

<sup>81</sup> *Id.* at 350-51.

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

6 Following the foregoing decisions in *CREW I* and *CREW II*, and subsequent to the  
7 issuance of the Commission’s post-*CREW I* guidance, Wisconsin Family Action (“WFA”), a  
8 501(c)(4) organization, filed suit against the Commission on December 2, 2021, challenging the  
9 constitutionality of 52 U.S.C. § 30104(c).<sup>84</sup> WFA’s court complaint alleged that the  
10 Commission’s interpretation of the Act unlawfully expanded contributor disclosure requirements  
11 for non-political organizations, violating the First Amendment rights of speech, association, and  
12 assembly of WFA and its donors.<sup>85</sup> WFA sought an injunction to prevent the Commission from  
13 enforcing section 30104(c) to the extent it required disclosure of contributions not earmarked for  
14 independent expenditures.<sup>86</sup>

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

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<sup>82</sup> *Id.* at 347.

<sup>83</sup> *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.

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

<sup>85</sup> *Id.* at \*1.

<sup>86</sup> *Id.* at \*5.

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



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

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

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<sup>88</sup> *WFA*, 2022 WL 844436 at \*11-16.

<sup>89</sup> *Id.* at \*21.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at \*11.

<sup>92</sup> *Id.* at \*22.

<sup>93</sup> *Id.*

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

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

5  
6

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

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

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<sup>94</sup> *Id.* at \*23.

<sup>95</sup> 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.*

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

<sup>97</sup> *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”).

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

1 portals, “Get Involved,” did not contain express advocacy on its webpage, this portal was linked  
2 to certain advertisements that appear to have expressly advocated the election or defeat of a  
3 federal candidate.<sup>99</sup> TPA states that it disclosed all contributions received through this portal  
4 (\$6,820), because it could not determine whether the contributors were directed to the portal  
5 from an online advertisement or directly through the website.<sup>100</sup>

6 TPA appears to have had disclosure obligations under section 30104(c)(1), which  
7 requires a person other than a political committee who makes independent expenditures in excess  
8 of \$250 during a calendar year to file a statement containing the information required under  
9 52 U.S.C. § 30104(b)(3)(A) “for all contributions received by such person,”<sup>101</sup> aggregating “in  
10 excess of \$200 within the calendar year.”<sup>102</sup> First, the “Yard Sign” and “GOTV” donation  
11 portals solicit contributions “earmarked for political purposes,” and indicate that funds would be  
12 used to influence the 2020 presidential election.<sup>103</sup> The “Yard Sign” portal includes campaign  
13 slogans such as “TRUMP PENCE 2020” and “THIS HOUSE IS VOTING FOR TRUMP.”<sup>104</sup>  
14 The “GOTV” portal stated, “SUPPORT OUR DOOR KNOCKING ARMY. We must work  
15 together to defeat Joe Biden and Kamala Harris.”<sup>105</sup> Further, although the “Get Involved” portal

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

<sup>100</sup> Resp. at 7.

<sup>101</sup> 52 U.S.C. § 30104(b)(3)(A).

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

<sup>103</sup> *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).

<sup>104</sup> Resp. at 5.

<sup>105</sup> *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](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.<sup>106</sup> 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.”<sup>107</sup> 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).<sup>108</sup> Indeed, TPA reported  
13 receiving 1,705 contributions from 1,209 unique contributors through this portal alone.<sup>109</sup> 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).<sup>110</sup>

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<sup>106</sup> See *supra* notes 26-30.

<sup>107</sup> See *supra* page 10.

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

<sup>109</sup> Resp. at 7.

<sup>110</sup> *CREW I*, 316 F. Supp. 3d at 389.

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

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

13  
 14           1.     Contributions Earmarked for Political Purposes and/or Made for the  
 15           Purpose of Furthering Independent Expenditures  
 16

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

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<sup>111</sup> Resp. at 8.

<sup>112</sup> See *infra* Part III(C).

<sup>113</sup> 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”).

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

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

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

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<sup>114</sup> 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](https://apps.irs.gov/pub/epostcard/cor/800835023_202106_990_2022052520135676.pdf).

<sup>115</sup> Resp. at 2.

<sup>116</sup> See 2020 TPA Form at 1.

<sup>117</sup> *Id.*, Schedule G at 1.

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

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

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<sup>118</sup> *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).

<sup>119</sup> *CREW I*, 316 F. Supp. 3d at 392.

<sup>120</sup> *WFA*, 2022 WL 844436, at \*22.

<sup>121</sup> 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).

<sup>122</sup> *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.<sup>123</sup> 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.”<sup>124</sup> 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.”<sup>125</sup> 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.<sup>126</sup> The solicitations available to the Commission, as well as and including the

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

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

<sup>124</sup> 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).

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

<sup>126</sup> See *supra* Part II(B).



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

3 Because TPA spent over \$1.4 million in independent expenditures in 2020 and reported  
4 raising more than \$11 million and spending more than \$9 million in fiscal year 2020, it is  
5 unlikely that TPA was able to raise sufficient funds for its independent expenditures without  
6 conducting additional fundraising and soliciting potential donors beyond those solicitations  
7 linking to the donation portals on its website. The Complaint alleges that TPA may have  
8 accepted contributions in response to “substantially similar solicitations,”<sup>128</sup> and TPA reported  
9 on its Form 990 that it solicited funds through other methods, such as fundraisers, email,  
10 telephone, and in-person communications in 2020-2021.<sup>129</sup> In light of how TPA communicated  
11 with its donors, how it described itself and its purposes on its website, and its publicly-described  
12 acquisition of Students for Trump, all of which directly focused on the 2020 election, the  
13 available information indicates a strong likelihood that a much greater set of TPA’s donors’  
14 contributions than have been disclosed to date were “‘earmarked for political purposes,’ which  
15 contributions are ‘intended to influence elections’”<sup>130</sup> or made in furtherance of “an independent

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

<sup>128</sup> Compl. ¶ 51.

<sup>129</sup> 2020 TPA Form 990, Schedule G at 1.

<sup>130</sup> *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

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

6 TPA’s Response focuses heavily on the \$33,795 in contributions it eventually disclosed  
 7 but provides virtually no information about the intent of the donors who funded the “vast  
 8 majority” of its independent expenditures; it asserts simply that these donors “support TPA’s  
 9 social welfare mission.”<sup>133</sup> TPA appears to contend that it was only required to disclose the  
 10 \$33,795 in contributions because solicitations associated with their receipt contained express  
 11 advocacy.<sup>134</sup> But, as discussed above, the case law and the Commission’s precedent appears to  
 12 require broader disclosure. In *CREW II*, the D.C. Circuit rejected Crossroads GPS’s argument  
 13 that *Buckley* required a narrowing construction of section 30104(c)(1), such that only donors who

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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.”).

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

<sup>132</sup> *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.”).

<sup>133</sup> Resp. at 2.

<sup>134</sup> Resp. at 4-5.

1 provide funds to further independent expenditures, *i.e.* donations tied to expenditures containing  
2 express advocacy, are required to be disclosed.<sup>135</sup> Rather, the D.C. Circuit determined that  
3 “*Buckley* stated more broadly that the term covers any donation ‘earmarked for political  
4 purposes,’”<sup>136</sup> indicating that “earmarked for political purposes” should be understood more  
5 broadly than the standard for express advocacy under 11 C.F.R. § 100.22. Citing *MCFL*, the  
6 D.C. Circuit stated that the Supreme Court has “similarly read the term ‘contribution’ in section  
7 30104(c)(1) to cover ‘funds intended to influence elections.’”<sup>137</sup> Finally, in *WFA*, the district  
8 court found that the plaintiff would not suffer harm if the Commission, instead of limiting  
9 disclosure for contributions specifically earmarked for activities expressly advocating the  
10 election or defeat of a clearly identified candidate, required disclosure of donors “whose  
11 contributions are earmarked for political purposes and are tied to a federal election.”<sup>138</sup>

12 The Second Circuit’s decision in *Survival Education Fund, Inc.* addressed what  
13 constituted “earmarked for political purposes” under *Buckley* for the purposes of determining an  
14 application of the Act’s disclaimer provision in 52 U.S.C. § 30120.<sup>139</sup> The Second Circuit  
15 reasoned that disclaimers would be required for a solicitation of contributions “that are  
16 earmarked for activities or ‘communications that expressly advocate the election or defeat of a  
17 clearly identified candidate.’”<sup>140</sup> It further explained:

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<sup>135</sup> *CREW II*, 971 F.3d at 353.

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

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

<sup>138</sup> *WFA*, 2022 WL 844436, at \*10.

<sup>139</sup> *Survival Education Fund, Inc.*, 65 F.3d at 295.

<sup>140</sup> *Id.*

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

6  
 7 Accordingly, when considering the following statement: “your special election-year contribution  
 8 today will help us communicate your views to hundreds of thousands of members of the *voting*  
 9 *public*, letting them know why Ronald Reagan and his anti-people policies *must* be stopped,”<sup>142</sup>  
 10 the Second Circuit did not analyze whether the statement contained express advocacy. Instead,  
 11 the court found that the statement solicited contributions requiring disclosure because the  
 12 “statement leaves no doubt that the funds contributed would be used to advocate President  
 13 Reagan’s defeat at the polls, not simply to criticize his policies during the election year.”<sup>143</sup>

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

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.* (emphasis in original).

<sup>143</sup> *Id.*

<sup>144</sup> 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.<sup>145</sup> 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.”<sup>146</sup>

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

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<sup>145</sup> 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.

<sup>146</sup> *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).

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

3 2. Contributions Received in Reporting Periods Prior to the Commencement  
4 of TPA’s Independent Expenditures  
5

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

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

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<sup>147</sup> See *supra* n. 50.

<sup>148</sup> *Id.*

<sup>149</sup> Resp. at 2 & n.3.

<sup>150</sup> 11 C.F.R. § 109.10(b), (c), and (d).

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

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

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<sup>151</sup> 52 U.S.C. § 30104(c)(2).

<sup>152</sup> *Id.* § 30104(c)(2).

<sup>153</sup> *Id.* § 30104(c)(1).

1 30104(b)(3)(A) requires identifying “each person (other than a political committee) who made a  
2 contribution to the reporting committee during the reporting period” aggregating “in excess of  
3 \$200 within the calendar year . . . together with the date and amount of any such  
4 contributions.”<sup>154</sup>

5 Because section 30104(b)(3)(A) covers political committees, it refers to contributions  
6 made during a reporting period. Section 30104(c)(1), by contrast, covers contributions by non-  
7 committees and reporting triggered by the event of making a disclosable independent  
8 expenditure, but clarifies that “all” contributions received by the reporting entity must be  
9 disclosed. TPA’s argument that it is “only required to report contributions made during the  
10 quarter in which independent expenditures were conducted”<sup>155</sup> seems to treat section 30104(c)(1)  
11 as causing a reporting non-committee to commence (and restrict) reporting on a quarterly  
12 schedule. However, the text of section 30104(c)(1) states that the non-committee must file a  
13 “statement” about its contributions received using the aggregate \$200 threshold in section  
14 30104(b)(3)(A), as well as the specific timing and amount information for contributions in  
15 section 30104(b)(3)(A), and that it must do so “*for all* contributions received by such persons,”  
16 not just contributions received during a discrete period of time.<sup>156</sup> The words “for” and “all” in  
17 section 30104(c)(1) modify and adapt the political-committee reporting requirements, which  
18 apply to reporting entities, to the context of reporting non-committees, which may commence  
19 reporting at any point during a year. These modifications make clear that the threshold and

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<sup>154</sup> *Id.* § 30104(b)(3)(A).

<sup>155</sup> Resp. at 2 n.3.

<sup>156</sup> 52 U.S.C. § 30104(c)(1) (emphasis added).



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

3 Further, section 30104(b)(3)(A) does not anywhere refer to a *quarterly* reporting period  
4 for contributions; it in fact refers to “the reporting period” generally, consistent with the fact that  
5 different reporting persons have different reporting periods. Indeed, the instructions for Form 5  
6 appear to acknowledge the possibility of unique reporting periods for non-committees,  
7 instructing filers to “[i]nclude all activity from the ending coverage date of the last report filed or  
8 from the date of the filer’s initial receipt or disbursement, as appropriate.”<sup>157</sup> Section  
9 30104(b)(3)(A) requires disclosure of contributions “in excess of \$200 within the calendar year,”  
10 from the same individual, which suggests the disclosure of all prior contributions received year-  
11 to-date across multiple reporting periods, not just contributions received during any particular  
12 reporting period.<sup>158</sup> Analogously, when an individual becomes a candidate, all funds received  
13 and payments made in connection with testing-the-waters activities prior to becoming a  
14 candidate must be reported as contributions and expenditures in the first report filed by the  
15 candidate’s principal campaign committee, even if those contributions and expenditures occurred  
16 during a different reporting period.<sup>159</sup> Accordingly, TPA’s attempts to limit its disclosure  
17 obligations by grouping contributions by quarter is not supported by the Act.

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

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<sup>157</sup> 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>.

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

<sup>159</sup> 52 U.S.C. § 30101; 11 C.F.R. § 101.3.

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

7  
8 Accordingly, the Commission finds reason to believe TPA violated 52 U.S.C.  
9 §§ 30104(b)(3)(A), (c)(1), and (c)(2)(C) by failing to disclose additional contributions that were  
10 received in reporting periods prior to when independent expenditures commenced, and  
11 contributions earmarked for political purposes or made for the purpose of furthering independent  
12 expenditures.

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<sup>160</sup> *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).

<sup>161</sup> *CREW II*, 971 F. 3d at 351.