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June 9, 2021

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463
email: cela@fec.gov

Re: MUR 7894- Response of True the
Vote, Inc. and Catherine Engelbrecht

Dear Kathryn,

On March 31, 2021, the Federal Election Commission (“FEC”) received a complaint against True the Vote, Inc. (“TTV”) and the Georgia Republican Party Inc. (“GAGOP”). In the complaint, it was alleged that TTV and GAGOP violated the Federal Election Campaign Act (“FECA”). Respondents TTV and Catherine Engelbrecht timely file this Response.

For the reasons listed herein, Respondents did not violate FECA. TTV did not make any expenditures in the 2021 Georgia Senate Runoff Election, nor did they coordinate with GAGOP. As a result, Respondents did not violate 52 U.S.C.A. § 30118 and did not make any prohibited in-kind contributions to GAGOP.

Accordingly, the Commission should find that there is no reason to believe and dismiss the Complaint.

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I. Facts

TTV is the country's largest voters' rights organization and is well known for its ability to lead unified national plans to protect election integrity. Decl. of Catherine Engelbrecht ("Decl."), attached as Ex. 1, at ¶ 3. Since its founding in 2009, TTV has been on the front lines of election fraud prevention by building action-oriented election integrity movements in key states, counties, and precincts. *Id.* at ¶ 3. TTV's mission is to empower and equip citizens to ensure that election processes are protected from fraud and exploitation. *Id.* at ¶ 4. To do so, TTV serves as a network hub, working together with other organizations to implement targeted election integrity initiatives to expose and deter election fraud. *Id.* at ¶ 4.

Protecting election integrity is a non-partisan activity. *Id.* at ¶ 5. TTV does not have an interest in which candidates are elected, nor does it advocate for particular candidates. *Id.* Instead, TTV focuses its efforts on free and fair elections for Republicans, Democrats, and everyone in between. *Id.*

To this end, TTV engaged in a significant, nationwide election integrity efforts prior to the 2020 General Election. *Id.* at ¶ 6. This election integrity effort was named "Validate the Vote." *Id.* TTV engaged in similar election integrity efforts in Georgia (both before the 2020 General Election and the 2021 Georgia Senate Runoff Election), which included *inter alia*, hosting election worker training and signature verification courses, providing an election integrity hotline, and providing the data and research to preemptively challenge potentially ineligible voters. *Id.* at ¶¶ 6-8. Like all of TTV's efforts, all of these efforts were pursued in a non-partisan manner. *Id.* at ¶ 8.

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The issue herein stems from TTV's election integrity efforts prior to the 2021 Senate Runoff Election. In their Complaint, Complainants detail a "request" from GAGOP, which they argue makes TTV's efforts in Georgia "coordinated expenditures" with GAGOP. Complaint, at 3-5. While TTV engaged in election integrity efforts prior to the 2021 Senate Runoff Election, no efforts were coordinated, nor any expenditures made. Decl., Ex. 1, at ¶¶ 16-21, 26, 28.

In December of 2020, Ms. Engelbrecht met with GAGOP and explained that TTV was engaging in numerous election integrity efforts and that all of TTV's trainings and information were publicly available online *Id.* at ¶¶ 9-10. GAGOP requested that TTV provide their publicly available nonpartisan signature training verification, a 24x7 voter hotline, and ballot-curing support, etc. to Georgians. *Id.* at ¶ 12. Which TTV had already done and continued to do. *Id.*

GAGOP never requested that TTV do anything to influence an election, nor did GAGOP seek for TTV to make a contribution to, expenditure to, or coordinated expenditure with GAGOP. *Id.* at ¶ 12; *see also* ¶¶ 15-21, 26-28. Moreover, no conversations or requests were related to a specific candidate or party. *Id.*

All trainings and information were provided solely by TTV. *Id.* at ¶¶ 13-21, 28. None were coordinated with GAGOP. *Id.* Moreover, all trainings and information were publicly available on True the Vote's website, free of charge, as TTV was already engaging in efforts to ensure a free, fair, and secure election for all Georgia voters irrespective of political party prior to the meeting. *Id.* at ¶¶ 10-11. TTV did not create any specific trainings for GAGOP. *Id.* at ¶ 24. Instead, TTV simply directed GAGOP to their website. *Id.* at ¶¶ 10, 13-14, 24.

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To ensure that all efforts remained non-partisan, TTV offered the same assistance to the Democratic Party of Georgia. *Id.* at ¶ 22. On December 21, 2020,¹ TTV sent a letter to the Democratic Party of Georgia outlining TTV’s status as a nonpartisan organization, and informing the Democratic Party of Georgia of TTV’s “publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.” *Id.* at ¶¶ 22-23.

Just like the GAGOP, TTV did not create any specific trainings for the Democratic Party of Georgia. *Id.* at ¶ 24. TTV simply made known that such election integrity trainings and materials were available and that the Democratic Party of Georgia could take advantage of the free, public resources if they also wanted to pursue election integrity efforts. *Id.* TTV did not receive a response from the Democratic Party of Georgia. *Id.* at ¶ 25. TTV had no further discussions with either GAGOP or the Democratic Party of Georgia, nor did TTV engage in any election integrity efforts with either party. *Id.* at ¶ 26.

TTV does not seek to influence the outcome of political campaigns and elections, and did not seek to influence the outcome of the 2021 Georgia Senate Runoff Election. *Id.* at ¶ 27. TTV never said it was going to do anything to influence the election, nor did it ever engage in any activities to influence the election. *Id.* It follows then, that nowhere in the complaint do Complainants argue or even allege that TTV engaged in any efforts to influence an election or

¹ While the letter was dated December 20, 2020, this was in error. *Id.* at ¶ 23. TTV has confirmed that it mistakenly failed to update the date on the letter and that it was sent to the Democratic Party of Georgia on December 21, 2020. *Id.* While TTV seeks to be transparent, noting the error, the date involved is not material. Complainants attempt to construe the inaccurate date as an intentional misrepresentation; but it was simply a clerical error. *Id.*

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that they engaged in any campaign activities. Instead, TTV engaged solely in election integrity efforts, and provided election integrity resources to anyone who was interested. None of these efforts were coordinated with GAGOP. *Id.* at ¶ 28.

II. Analysis

TTV did not make any expenditures in connection with any election or for the purpose of influencing an election, nor did it coordinate with GAGOP.

FECA prohibits a corporation from making a “contribution or expenditure in connection with any election to any political office, or in connection with any primary election . . . [or] in connection with any election at which presidential and vice presidential electors or a Senator or Representative in . . . Congress are to be voted for[.]” 52 U.S.C.A. § 30118(a); *see also* 11 C.F.R. § 114.2(a) (corporations are prohibited from “making a contribution in connection with any election to any political office” or “from making expenditures . . . as defined in 11 CFR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State, or Federal office.”). Likewise, persons are prohibited from accepting such a contribution. 52 U.S.C.A. § 30118(a); 11 C.F.R. § 114.2(d).

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“Contribution” and “expenditure” are defined in the same way as 52 U.S.C.A. §§ 30101(8)² and 30101(9)³, and also include “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any . . . political party . . . in connection with any election to any of the offices referred to in [section a]. 52 U.S.C.A. § 30118(b). *See also* 11 C.F.R. § 114.1(a) (“The terms contribution and expenditure shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.”).

While the Act does not define the terms “in connection with” or “for the purpose of influencing,” the phrases are terms of arts. They do not include *all* expenses spent during or near an election. In fact, the FEC has made clear that the “for the purpose of influencing” element is a necessary element in determining whether something qualifies as an expenditure. In *In the Matter of American Media, Inc.*, MUR 7324, the FEC stated:

The “purpose” of influencing a federal election is a necessary element in defining whether a payment is a “contribution” or “expenditure” under the Act and Commission regulations. In analyzing whether a payment made by a third party is a “contribution” or “expenditure,” the Commission has concluded that “the question under the Act is whether” the donation, payment, or service was “provided for the purpose of influencing

² “The term ‘contribution’ includes—(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office[.]” 52 U.S.C.A. § 30101(8).

³ An “‘expenditure’ includes— (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office[.]” 52 U.S.C.A. § 30101(9)(A).

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a federal election [and] not whether [it] provided a benefit to [a federal candidate's] campaign.”

FEC Factual and Legal Analysis, MUR 7324, at 12. So it is clear that the Act does not prohibit expenditures that are *not* for the purpose of influencing an election.

Additionally, the D.C. Circuit in *Orlovski v. FEC*, highlighted that in *Buckley*, “the Supreme Court held that under the first amendment, the phrases ‘for purposes of influencing any election’ and ‘in connection with any election’ must be defined as the ‘express advoca[cy] [of] the election or defeat of a clearly-identifiable candidate,’ a definition that was subsequently incorporated into the Act.” 795 F.2d 156, 166-167 (D.C. Cir. 1986) (citations omitted). While the D.C. Circuit noted that the Supreme Court “limited these definitions to those provisions curtailing or prohibiting independent expenditures[,]” similar interpretations “of the same language is logical, reasonable, and consistent with the overall statutory framework.” *Id.*

The same follows here. Any discussion of expenditures “in connection with any election” or “for the purpose of influencing an election” must be limited to expenditures that expressly advocate the election or defeat of a clearly identified candidate, that are unambiguously campaign related, or that “espouse any public positions on any candidate or political party[.]”⁴

A. TTV did not make any expenditures in connection with an election or for the purpose of influencing an election.

As shown above, *see supra* Part II., to be an expenditure, the expense must be “for the purpose of influencing an election” or “in connection with” an election. None of TTV’s efforts

⁴ *See, e.g.*, FEC AO 2019-18 finding that ads did “not constitute expenditures or contributions under the Act and Commission regulations” in part because the ads did “not espouse any public positions on any candidate or political party or contain express advocacy.”

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were for the purpose of influencing an election or in connection with an election. Indeed, all efforts were dedicated to ensuring compliance with election procedures and ensuring election integrity for all parties and all voters.

As a preliminary matter, none of TTV's efforts constitute "expenditures" because nothing of value was provided to GAGOP. All trainings and materials were publicly available on TTV's website. TTV did not provide anything directly to GAGOP. Instead, TTV simply directed GAGOP to their website, where all publicly available trainings and materials could be accessed for free. This is the same access that all other persons have.

Even if TTV's efforts had value, TTV did not make any expenditures. Instead, all of their efforts were related to election integrity and voting procedures. TTV did not make any expenditures to influence an election. TTV did not engage in express advocacy. It did not make any expenditures that were unambiguously campaign related. It did not espouse any public positions on any candidate or political party. TTV did not seek the election of any particular candidate or party. It did not engage in get-out-the-vote or voter registration drives. It did not seek to influence any persons vote. TTV only sought to ensure a free, fair, and secure election for all Georgia voters irrespective of political party. It sought to ensure that all voting procedures were followed and that all legal votes were counted. TTV sought election integrity efforts for Republicans, Democrats, and all in between.

Finally, Complainants conflate efforts like get-out-the-vote activities and voter registrations with TTV's election integrity efforts. Complaint, at 7-11. However, none of TTV's efforts

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qualify as “federal election activity” and are not regulated in the same manner, making Complainants arguments irrelevant.

“Federal election activity” includes voter registration activity, get-out-the-vote activities, voter identification, and campaign activity. 11 § C.F.R. 100.24. These “federal election activities” are considered “in connection with” any election if they occur within a certain time period before an election. 11 C.F.R. § 100.24(a)(1). This definition of “in connection with” is limited to these specific activities, thus it is not relevant to determining whether TTV’s election integrity efforts were “in connection with any election”. *Id.* Likewise, “federal election activity” has specific coordination rules. However, those coordination rules are not relevant here because TTV did not engage in any “federal election activity.”

As a result, all sections of the Complaint which focus on voter registration or get-out-the-vote efforts must be disregarded as irrelevant. *See* Complaint, at 7-11. TTV’s efforts were focused solely on election integrity and election procedures, not on voter registration, get-out-the-vote, voter identification, or campaign activities, and are not regulated in the same manner.

In sum, no expenditures were made. TTV’s efforts were not for the purpose of influencing an election. None of TTV’s efforts expressly advocated the election or defeat of a clearly identified candidate, were unambiguously campaign related, nor espoused any public positions on any candidate or political party, so none were expenditures. Moreover, all efforts were nonpartisan and publicly available to all parties.

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B. TTV did not coordinate with GAGOP.

TTV's election integrity efforts were not coordinated. Complainants allege that TTV coordinated with GAGOP. Complaint, at 7-11. In support of this, Complainants argue that TTV received a "request" from GAGOP. *Id.* at 10-11. But to be a "coordinated expenditure," there must be an expenditure. As shown above, there was no expenditure, so TTV did not engage in any coordinated expenditures with GAGOP. *See supra* Part II.A. But even if there was an expenditure, no coordination occurred.

According to the Act, "[c]oordinated means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. 109.20. A coordinated expenditure "is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted. . . ." *Id.*; *see also* 52 U.S.C.A. § 30116(7)(B)(ii) ("expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee[.]").

Not every request or suggestion qualifies as coordination. For example, a party may request that a person attend their fundraiser. Such a request is not coordination. Instead, to qualify as a "coordinated expenditure," GAGOP must have requested that TTV make an expenditure to influence an election.

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This is where the Complaint misses the mark. Complainants seem to allege that *any* request from GAGOP automatically makes all subsequent actions “coordinated.” But here, GAGOP did not request that TTV do *anything* to influence the election or in connection with an election (as properly defined). There was no request to make any expenditure. There was no request to make a coordinated communication. There was no request to advocate for a particular candidate or party. Instead, the GAGOP simply requested that TTV provide their publicly available nonpartisan signature verification training, voter hotline, ballot-curing support, and any other publicly available trainings to those interested in ensuring that election procedures and laws were being followed in the 2021 Georgia Senate Runoff election. Something that TTV was already doing in Georgia and continued to do. Indeed, none of TTV’s efforts in Georgia were for the purpose of influencing an election or in connection with an election. All efforts were strictly related to election procedures and election integrity.

Absent a request to make an expenditure to influence an election, the question is whether GAGOP exercised control over TTV’s efforts, or whether substantial discussion or negotiation between TTV and GAGOP took place regarding the expenditure, such that they were partners or joint venturers. *See FEC v. Christian Coalition*, 52 F.Supp.2d 45, 92 (D.D.C. 1999).

While TTV mentioned a “partnership” with GAGOP, TTV was not referring to the word “partner” in an official sense or indicating that TTV’s efforts were now joint ventures. Instead, TTV referred to all persons who were also pursuing election integrity as “partners.” TTV’s “partners” included parties, voters, other organizations, individuals, and others who were pursuing election integrity through their own efforts.

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TTV and GAGOP did not participate in a joint venture. They were not partners in an official sense. GAGOP did not have any control over TTV's efforts. There was no substantial discussion or negotiation about the election integrity efforts. TTV and GAGOP did not engage in any joint election integrity efforts.

In sum, none of TTV's efforts were coordinated with GAGOP.

C. Even if TTV and GAGOP are deemed to have coordinated, no further actions were taken.

Even assuming *arguendo* that TTV and GAGOP coordinated, no coordinated expenditures were made by either party.

First, no expenditures were made for the purpose of influencing an election or in connection with an election. *See supra* Part II.A. Nothing of value was given.

Second, TTV did not make any expenditures in response to GAGOP's request. All election integrity trainings and materials were already publicly available, on their website, free of charge.

Third, no steps were taken by either party to engage in any joint expenditures or efforts. After the initial meeting and press release, TTV did not take any steps with GAGOP to work on election integrity efforts. While TTV continued to allow the public access to their trainings and information, they did not participate in any efforts with GAGOP.

TTV and GAGOP did not jointly provide access to the voter hotline. Only TTV provided that access. TTV and GAGOP did not jointly provide signature verification training. Only TTV provided that training. TTV and GAGOP did not jointly provide access ballot drop box

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monitoring. Only TTV provided that monitoring. The same is true for all of TTV's other election integrity efforts.⁵

In sum, no further actions were taken after TTV and GAGOP's initial meeting, and no coordinated expenditures were made.

III. Conclusion

TTV did not make any expenditures in connection with the 2021 Georgia Senate Runoff Election, nor did they coordinate with GAGOP. As a result, TTV did not violate 52 U.S.C.A. § 30118 and did not make any prohibited in-kind contributions to GAGOP. Likewise, GAGOP did not violate 52 U.S.C.A. § 30118 or 52 U.S.C.A. § 30104(b)(3)(a) because there were no contributions received from TTV and therefore no contributions to report.

Because neither TTV nor GAGOP violated FECA, the Commission should find that there is no reason to believe and dismiss the Complaint..

Sincerely,

THE BOPP LAW FIRM, PC



James Bopp, Jr.

Courtney Turner Milbank

⁵ If GAGOP separately engaged in any similar activities, it was done so completely separate and independently of TTV. Because there were no other discussions after their initial meeting, TTV does not know whether or not GAGOP subsequently engaged in any election integrity efforts on their own.

Declaration of Catherine Engelbrecht

I, Catherine Engelbrecht, declare as follows:

1. I am President of True the Vote, Inc. (“TTV”).

2. As President of TTV, I am knowledgeable about TTV’s mission, plans, and efforts.

3. TTV is the country’s largest voters’ rights organization and is well known for its ability to lead unified national plans to protect election integrity. Since its founding in 2009, TTV has been on the front lines of election fraud prevention by building action-oriented election integrity movements in key states, counties, and precincts.

4. TTV’s mission is to empower and equip citizens to ensure that election processes are protected from fraud and exploitation. To do so, TTV serves as a network hub, working together with other organizations to implement targeted election integrity initiatives to expose and deter election fraud.

5. Protecting election integrity is a non-partisan activity. TTV does not have an interest in which candidates are elected, nor do they advocate for particular candidates. Instead, TTV focuses its efforts on free and fair elections for Republicans, Democrats, and everyone in between.

6. TTV engaged in a significant, nationwide election integrity efforts prior to the 2020 general election and in the 2021 Senate Runoff Election in Georgia. This election integrity effort was named “Validate the Vote.”

7. I have direct knowledge of TTV’s efforts prior to the 2020 General Election and the 2021 Senate Runoff Election in Georgia.

8. In support of these election integrity efforts in Georgia and across the nation, TTV en-

gaged in a number of activities: TTV ran a statewide election integrity hotline to support voters and election workers, TTV hosted election worker training and signature verification courses, and TTV provided the data and research to preemptively challenge potentially ineligible voters, etc. All of these activities were pursued in a non-partisan manner.

9. In December 2020, it was suggested that I meet with the Georgia Republican Party (“GAGOP”) who were also interested in election integrity.

10. In that meeting we discussed TTV’s efforts promoting election integrity. I explained that TTV was already engaging in numerous election integrity efforts and that all of our trainings and information were publicly available online.

11. Following this meeting, TTV issued a press release stating that we were “thrilled to partner with the Georgia Republican Party, Chairman Shafer, and his team *to ensure the law is upheld and law-abiding voters have their voices heard.*” We further indicated that we were already engaging in efforts to ensure a free, fair, and secure election for all Georgia voters irrespective of political party.

12. We also sent an e-mail detailing the request from GAGOP that TTV provide their publicly available nonpartisan signature training verification, a 24x7 voter hotline, ballot-curing support, and more, which TTV was already providing and continued to provide.

13. TTV did not communicate again with GAGOP after that initial meeting. TTV continued to separately and independently engage in its election integrity efforts in Georgia.

14. I am unaware of whether GAGOP also engaged in election integrity efforts or if they used any of TTV’s publicly available trainings and information.

15. The “partnership” mentioned in our press release was not referring to the word “partner”

in an official sense, nor indicating that TTV's efforts were now joint ventures. Instead, TTV referred to all persons who were also pursuing election integrity as "partners." TTV's "partners" included parties, voters, other organizations, individuals, and others who were pursuing election integrity through their own efforts.

16. TTV and GAGOP did not participate in a joint venture.

17. TTV and GAGOP were not partners in an official sense.

18. GAGOP did not have any control over TTV's efforts.

19. TTV and GAGOP did not have any substantial discussions or negotiations about their election integrity efforts.

20. TTV and GAGOP did not engage in any joint election integrity efforts.

21. Nothing of value was provided to GAGOP. TTV did not make a contribution to or coordinated expenditure with GAGOP.

22. Despite all of TTV's election integrity trainings and information being publicly available on their website, TTV wanted to maintain their commitment to engaging in only nonpartisan efforts, and wanted to ensure that both political parties were aware of and had access to such resources. In light of these goals, TTV sent a letter to State Senator Williams from the Democratic Party of Georgia, the letter read as follows:

Dear Senator Williams -

I'm writing today on behalf of True the Vote, a nonpartisan national organization committed to helping stakeholders carry out free and fair elections. We would like to offer our assistance to the Democratic Party of Georgia for the Senate runoff, including publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.

With many Americans raising questions about the integrity of our elections, we feel it's essential to our democracy to restore faith in our processes. We believe that we can address concerns about fraud by following existing Georgia laws and carrying out a public,

transparent effort to ensure that all ballots counted are cast by legal voters.

Georgia is Ground Zero in the fight to begin restoring integrity to America's election process. That's why True the Vote is working around the clock to engage volunteers from all across the state to participate in this important effort with the goal of preventing a repetition of the uncertainties that arose from the November general election. To accomplish this goal, we are ready, willing and able to work with anyone who is working to ensure the law is upheld and all legal voters have their voices heard.

I would welcome the opportunity to discuss ways in which we can partner over the coming weeks.

Please feel free to contact me at your convenience, either by email at catherine@truethevote.org or by phone at 713.401.6017.

For America -

Catherine Engelbrecht

True the Vote, Founder

23. This letter was e-mailed on December 21, 2020, at 11:43 AM. While the letter was dated December 20, 2020, this was in error. I have confirmed that this was simply a clerical error.

24. Just like the GAGOP, TTV did not create any specific trainings for the Democratic Party of Georgia. TTV simply made known that such election integrity trainings and materials were available and that the Democratic Party of Georgia could take advantage of the free, public resources if they also wanted to pursue election integrity efforts.

25. TTV did not receive a response from the Democratic Party of Georgia.

26. TTV had no further discussions with either GAGOP or the Democratic Party of Georgia, nor did TTV engage in any election integrity efforts with either party.

27. TTV does not seek to influence the outcome of political campaigns and elections, and did not seek to influence the outcome of the 2021 Georgia Senate Runoff Election.

28. TTV engaged solely in election integrity efforts, and provided election integrity resources to anyone who was interested. None of these efforts were coordinated with GAGOP.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding. 28 U.S.C. § 1746.

Executed on June 8th, 2021.



Catherine Engelbrecht