

ELW edits 8/4/22

**THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.****FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS****RESPONDENTS:** True the Vote, Inc. **MUR 7894**
Catherine Engelbrecht**I. INTRODUCTION**

The Complaint alleges that True the Vote, Inc., a 501(c)(3) non-profit corporation, along with its president and founder, Catherine Engelbrecht violated the corporate contribution prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”), when Engelbrecht caused True the Vote to make in-kind contributions to the the Georgia Republican Party and Joseph Brannan in his official capacity as treasurer (the “Georgia GOP”), along with its chairman, David Shafer, in the form of various services including a voter hotline, ballot-curing support, signature verification training, absentee ballot drop box monitoring, and other election integrity initiatives in connection with the 2021 Senate runoff election in Georgia. The Complaint, citing to public statements from officials at both organizations, contends that the expenditures by True the Vote for these services were made at the request of and in partnership with the Georgia GOP and therefore should be treated as in-kind contributions subject to the Act’s source prohibitions and reporting requirements.

True the Vote and Engelbrecht (collectively “Respondents” or “True the Vote”) contend that True the Vote did not make any expenditures as that term is defined under the Act because protecting election integrity is a non-partisan activity and its efforts were not undertaken for the purpose of influencing a federal election. True the Vote further contends that because its election training and resource materials are publicly available, nothing of value was provided to the Georgia GOP. Finally, True the Vote argues that it did not coordinate with the Georgia GOP because the partnership between the two entities was not official, there were no substantial

1 discussions between the groups, and the Georgia GOP did not exercise control over True the
2 Vote's activity.

3 As explained below, the available information indicates that True the Vote did more than
4 offer publicly available resources. It worked on a variety of projects involving data collection,
5 investigation and research, analytics, media production, and software development, acquiring
6 teams of data miners, analysts, investigators, and subject-matter experts in connection with those
7 projects. There is detailed information about True the Vote's activities in Georgia in documents
8 filed as part of a civil lawsuit in Texas. Moreover, the available record suggests that True the
9 Vote coordinated its efforts with the Georgia GOP. For instance, True the Vote wrote in an
10 email announcement that it received a "request" from the Georgia GOP for True the Vote's
11 assistance in providing various services related to election protection. A subsequent press
12 release characterized the request from the Georgia GOP as resulting in a "partnership" and
13 contained statements attributed to the chairman of the Georgia GOP acknowledging the
14 partnership and thanking True the Vote for providing resources. Although True the Vote
15 downplays its interactions with the Georgia GOP, its Response acknowledges a meeting between
16 the two groups to discuss its operations in Georgia during which the Georgia GOP indicated that
17 it should continue with its activities. It also appears that True the Vote spent a portion of a \$2.5
18 million donation it received on its efforts related to the Georgia runoff.

19 In summary, it appears that True the Vote provided services to the Georgia GOP by
20 researching and implementing ballot challenges at the request of and in partnership with the
21 Georgia GOP. The unrebutted public statements from True the Vote and Georgia GOP officials
22 as well as True the Vote's own explanation of a meeting with the Georgia GOP indicate that
23 these services should have been treated like services from any other vendor and reported as in-

kind contributions or else paid for in an amount equal to the fair market value and reported as disbursements. Accordingly, the Commission finds reason to believe that True the Vote and Engelbrecht violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) and (e) by making and consenting to make prohibited corporate in-kind contributions.

II. FACTUAL BACKGROUND

True the Vote is a non-profit corporation that was founded in 2009 and organized under section 501(c)(3) of the tax code.¹ On its website, True the Vote describes itself as “the country’s largest voters’ rights organization and well known for our ability to lead unified national plans to protect election integrity.”²

According to the Complaint, True the Vote’s founder and president Catherine Engelbrecht wrote in an email announcement that the organization had received a “request from the Georgia Republican Party to provide publicly available nonpartisan signature verification training, a 24x7 vote hotline, ballot-curing support, and more.”³ The email announcement, when referencing True the Vote’s efforts in Georgia, further described “leading webinars and FAQ sessions for government leaders in support of their constituents who are understandably angry about what happened in November.”⁴

¹ Compl. at 3 (Mar. 31, 2021); *see* IRS Form 990, True the Vote Inc., 2017 Return of Organization Exempt from Income Tax at 1 (Nov. 15, 2018).

² Compl. at 3.

³ *Id.* at 3-4 (quoting email from True the Vote with the subject line “Weekly Update | Validate the Vote GA | 12.13.20,” sent December 14, 2020 and archived at *Weekly Update | Validate the Vote GA | 12.13.20*, ARCHIVE OF POL. EMAILS, <https://politicalemails.org/messages/318884> (last visited Dec. 8, 2021) (“True the Vote Email Announcement”). Complainant appears to have accessed the email through the Archive of Political Emails, a publicly searchable database of emails sent to individuals signed up to receive communications from “political candidates, elected officials, PACs, non-profits, NGOs and other entities that shape the political debate.” *About the Archive*, ARCHIVE OF POL. EMAILS, <https://politicalemails.org/about> (last accessed Dec. 8, 2021).

⁴ True the Vote Email Announcement.

Subsequently, True the Vote announced in a press release “its partnership with the Georgia Republican Party to assist with the Senate runoff election process, including publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.”⁵ The same press release attributes a quote to the Georgia GOP Chairman David Shafer: “We are grateful for the help of the True the Vote team in the fight for election integrity. . . . The resources of True the Vote will help us to organize and implement the most comprehensive ballot security initiative in Georgia history.”⁶

Three days after announcing its partnership with the Georgia GOP, True the Vote challenged the eligibility of 364,541 registered Georgia voters,⁷ which required that it locate a Georgia resident in each of Georgia’s 159 counties to challenge the ballots identified by True the Vote for his or her county.⁸ In a press release, True the Vote thanked several Georgia residents

⁵ Compl. at 4 (quoting Press Release, True the Vote, True the Vote Partners With Georgia GOP to Ensure Transparent, Secure Ballot Effort for Senate Runoff Elections (Dec. 14, 2020), <https://truethevote.org/true-the-vote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/> [<https://web.archive.org/web/20201214222722/https://truethevote.org/true-the-vote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/>] (“True the Vote Press Release”)).

⁶ True the Vote Press Release.

⁷ In Georgia, a voter is able to challenge the eligibility of any other voter in his or her county to vote in a given election by filing a challenge in writing identifying the basis for the challenge. Georgia Code Ann. § 21-2-230(a). Such a challenge does not necessarily remove a voter from the state’s registry but results in a requirement that the Georgia Board of Registrars consider the challenge to determine whether probable cause exists to sustain the challenge. *Id.* § 21-2-230(b). If the board of registrars finds probable cause, poll officers are notified, and the challenged voter will either need to appear before the board of registrars and answer the grounds of the challenge through a hearing at the polls or have their ballot treated as challenged pursuant to section 21-2-386 of the Georgia code until the registrars can conduct a hearing. If the challenged voter does not cast a ballot and the challenge relates to the voter’s eligibility to vote in general, the registrars will hear the challenge pursuant to section 21-2-229, which addresses challenges that contest whether an individual is entitled to be registered to vote in Georgia. *See also Majority Forward v. Ben Hill County Board of Elections*, 512 F. Supp. 3d 1354, 1357-1366 (M.D. Ga. 2021) (summarizing the experiences of challenged voters from mass challenges in Ben Hill and Muscogee counties during the 2021 run-off election and granting a preliminary injunction to enjoin the defendants from upholding voter challenges based solely on change of address information).

⁸ Press Release, True the Vote, True the Vote Partners with Georgians in Every County to Preemptively Challenge 364,541 Potentially Ineligible Voters (Dec. 18, 2020), <https://www.truethevote.org/true-the-vote-partners-with-georgians-in-every-county-to-preemptively-challenge-364541-potentially-ineligible-voters/> (“Voter Challenge Press Release”).

for their assistance in filing the voter challenges, including Ron Johnson of Jackson County and James Cooper of Walton County, both of whom appear to have held county-level leadership roles in the Georgia GOP.⁹

True the Vote was involved in several other self-described election security efforts during the 2020 election cycle. It sought more than \$7 million to file lawsuits in connection with the presidential election, and received a donation of \$2.5 million shortly after the conclusion of the 2020 general election.¹⁰ The donor who contributed \$2.5 million later filed suit against True the Vote contending that his donation was solely intended to investigate the 2020 presidential election, and not for other election integrity efforts.¹¹ In connection with that litigation, True the Vote's founder and president, Catherine Engelbrecht, submitted a declaration attaching many communications and documents concerning True the Vote's activities, including a section of materials that related to its election protection activities in Georgia.¹² Those materials included

⁹ Voter Challenge Press Release. Ron Johnson is the former chairman of the Jackson County Republican. See William Douglas & Maggie Lee, *Trump Adds Fire to Already Hot Georgia Governor's Race*, MCCLATCHY (July 22, 2018), <https://www.mcclatchydc.com/news/politics-government/article215174645.html> (identifying Ron Johnson as the chairman of Georgia's Jackson County Republican Party). James Cooper was a 2020 delegate to the 2020 Republican National Convention and was elected chairman of the Georgia Republican Party for the 10th Congressional District in May 2021. See David Clemons, *Cooper to lead 10th District GOP*, WALTON TRIBUNE (May 25, 2021), https://www.waltontribune.com/news/article_ce64d75e-bd73-11eb-9de3-afc8f597bf37.html; The Walton Tribune, FACEBOOK (May 25, 2021), <https://facebook.com/waltontribune/posts/4111603758889173> (announcing James Cooper's election to Chair of the 10th District Georgia GOP); Greg Bluestein, *Meet the Georgia Delegates to the 2020 Republican National Convention*, ATLANTA J. CONST. (June 22, 2020) <https://www.ajc.com/blog/politics/meet-the-georgia-delegates-the-2020-republican-national-convention/5eO1UKle6DRiBud6amO1hM/>.

¹⁰ Shawn Boburg & Jon Swaine, *A GOP Donor Gave \$2.5 Million for a Voter Fraud Investigation. Now He Wants His Money Back*, WASH. POST (Feb. 15, 2021), https://www.washingtonpost.com/investigations/true-vote-lawsuit-fraud-eshelman/2021/02/15/a7017adc-6724-11eb-886d-5264d4ceb46d_story.html.

¹¹ *Id.*; see also Pl.'s Consolidated Reply in Supp. of his Verified Emergency Appl. for TRO as to Defs. True the Vote, Inc., Catherine Engelbrecht, Gregg Phillips and His Verified Mot. for Prelim. Inj. as to All Defs. at 2, *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 25, 2021), ECF No. 4 ("Even after TTV abandoned its Validate the Vote efforts, TTV spent his money to pursue ineffective efforts in connection with the Georgia Senate runoffs, which TTV never told Eshelman his money would be used to help fund.").

¹² See Resp. of True the Vote and Catherine Engelbrecht to Mot. for Temporary and Prelim. Inj., *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 21, 2021), ECF No. 47; Decl. of Catherine Engelbrecht in Supp. of Defs.' Resps. in Opp'n to Pl.'s Verified Emergency Appl. for TRO and Verified Mot. for Prelim. Inj. and

1 conversations among True the Vote’s donors discussing requests for involvement in the Georgia
 2 Senate runoff elections.¹³

3 Engelbrecht’s declaration explained that, in addition to providing publicly available
 4 trainings, True the Vote worked on a variety of non-public activities in connection with the
 5 Georgia Runoff. As Engelbrecht stated:

6 [True the Vote] worked with [co-defendant OpSec, LLC]
 7 throughout 2020 on a variety of projects involving data collection,
 8 investigation and research, analytics, media production, and
 9 software development. They were specifically tasked with
 10 overseeing research related to litigation and challenges, and the
 11 development and support of the “Election Integrity Hotline,” with
 12 extensive responsibility for the arduous task of vetting the
 13 information received. That requires interviewing witnesses,
 14 examining documents, and uncovering supporting evidence
 15 sufficient to open investigations, secure indictments, and support
 16 litigation, as necessary. OpSec assembled teams of data miners,
 17 analysts, investigators, and subject matter experts. In Texas,
 18 Georgia, Pennsylvania, Nevada, Arizona, Michigan, and
 19 Wisconsin, [True the Vote], through OpSec, supported
 20 ‘whistleblower’ investigations and implemented a variety of
 21 complex regression analyses using public and commercially
 22 sourced data to determine whether or not voters were truly eligible
 23 based on their residency, identity, and other factors, as appropriate
 24 on a state-specific basis.¹⁴

Exs. 1-7 Thereto, *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 21, 2021), ECF No. 47-1 (“Engelbrecht TX Decl.”). The Engelbrecht TX Declaration included several exhibits, including an exhibit titled “Exhibit 7: Validate the Vote Project Continues in Georgia”); *see also* Decl. of Gregg Phillips in Opp. to Pl.’s Appl. for TRO and Mot. for Prelim. Inj., *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 21, 2021), ECF No. 47-2 (“Phillips TX Decl.”) (describing the work OpSec completed on behalf of True the Vote).

¹³ *See* Engelbrecht TX Decl., Ex. 7 at 1 (attaching a November 5, 2020 email from Tom Crawford to Fred Eshelman stating “Don’t shoot me...Republicans now reaching out to ask if we will play in GA Senate run-off. What we did with LPVs in NC, MI, WI, NV is getting a ton of attention and seen as having saved NC (and May deliver a margin in NV) and increased turnout in each state we played in with the rare cohort of fresh votes”).

¹⁴ Engelbrecht TX Decl. ¶ 8; *see also* Phillips TX Decl. (describing OpSec’s work as involving the acquisition of hundreds of thousands of dollars of data purchases, proprietary software products, litigation support, communications support, and advisory and consulting services).

1 The declaration further explains that, “we helped voter challenges of over 364,000 people
2 in Georgia whose current residence make them potentially ineligible to vote in the runoff
3 election We are now in the process of evaluating if these people voted in the Georgia
4 Senate runoffs.”¹⁵ OpSec’s founder describes the efforts in Georgia as follows: “We have been
5 able to design a methodology that will provide challenges with the data necessary to challenge
6 elections by identifying specific unqualified voters on a county by county basis. We also
7 successfully helped submit the largest pre-election set of challenges in American history in
8 Georgia.”¹⁶

9 The Complaint alleges that True the Vote made illegal corporate contributions to the
10 Georgia GOP in the form of coordinated expenditures.¹⁷ It points to True the Vote’s statements
11 concerning the Georgia GOP’s request for assistance and the ensuing “partnership” as evidence
12 of coordination.¹⁸ The Complaint further compares True the Vote’s activity to get-out-the-vote
13 (“GOTV”) activity coordinated between a corporation and a committee, which Commission
14 regulations prohibit.¹⁹

15 Focusing primarily on True the Vote’s publicly available trainings, in their Response,
16 which includes a declaration from Engelbrecht, Respondents contend that nothing of value was
17 provided to the Georgia GOP because its trainings were made public, and as a result there were

¹⁵ Engelbrecht TX Decl. ¶ 24.

¹⁶ Phillips TX Decl. ¶ 7.

¹⁷ Compl. at 10-11.

¹⁸ *Id.*

¹⁹ *Id.* at 7-8 (citing 11 C.F.R. § 114.4(c) (providing that a corporation or labor organization may make voter registration or get-out-the-vote communications to the general public without making a contribution or expenditure provided that “[t]he preparation and distribution of voter registration and get-out-the-vote communications is not coordinated with any candidate(s) or political party”).

no expenditures, coordinated or otherwise.²⁰ Alternatively, True the Vote contends that even if its efforts are found to have value, they are not expenditures because True the Vote: (1) “did not engage in express advocacy;” (2) did not make “expenditures that were unambiguously campaign[-]related;” (3) “did not espouse any public positions on any candidate or political party;” and (4) “did not seek the election of any particular candidate or party.”²¹ True the Vote denies that its efforts are similar to get-out-the-vote and voter registration activity because “election integrity and election procedures” are not regulated in the same manner.²²

In its Response, True the Vote describes the meeting with the Georgia GOP as having occurred “in December 2020” and as having involved a discussion of True the Vote’s efforts to “promote election integrity” where Engelbrecht explained that True the Vote “was already engaging in numerous election integrity efforts and that all of our trainings and information were publicly available online.”²³ Following the meeting, True the Vote acknowledges that it issued a press release and sent an email “detailing the request from [the Georgia GOP] that [True the Vote] provide their publicly available nonpartisan signature verification training, a 24x7 voter hotline, ballot-curing support, and more” and “stating that we were ‘thrilled to partner with the Georgia Republican Party, Chairman Shafer, and his team to ensure that the law is upheld and law-abiding voters have their voices heard.’”²⁴ True the Vote denies that these statements and efforts indicate coordination between True the Vote and the Georgia GOP. True the Vote

²⁰ True the Vote & Engelbrecht Resp. at 3, 8 (June 9, 2021) (contending that True the Vote “simply directed [the Georgia GOP] to their website, where all publicly available trainings and materials could be accessed for free”).

²¹ *Id.* at 8.

²² *Id.* at 9.

²³ *Id.*, Engelbrecht Decl. ¶¶ 9-11 (“Engelbrecht FEC Decl.”).

²⁴ Engelbrecht FEC Decl. ¶ 11-12.

1 contends that the Georgia GOP's request for True the Vote to provide its services in Georgia
 2 only entailed requesting that True the Vote undertake activities that it was already undertaking in
 3 Georgia and asserts that a finding that the entities coordinated would require that the Georgia
 4 GOP either exercised control over True the Vote's efforts or that substantial discussion or
 5 negotiation between True the Vote and the Georgia GOP occurred such that they were partners
 6 or joint venturers.²⁵

7 **III. LEGAL ANALYSIS**

8 **A. The Commission Finds Reason to Believe that True the Vote's Georgia** 9 **Efforts Constituted Coordinated Expenditures, Which Resulted in** 10 **Prohibited In-Kind Contributions to the Georgia GOP**

11 Under the Act, the terms "contribution" and "expenditure" include "anything of value"
 12 made by any person for the purpose of influencing an election.²⁶ Additionally, "expenditures
 13 made by any person (other than a candidate or candidate's authorized committee) in cooperation,
 14 consultation, or concert with, or at the request or suggestion of a national, State, or local
 15 committee of a political party, shall be considered to be contributions made to such party
 16 committee."²⁷ Coordinated means "made in cooperation, consultation or concert with, or at the
 17 request of suggestion of, a candidate, a candidate's authorized committee, or a political party
 18 committee."²⁸

²⁵ True the Vote & Engelbrecht Resp. at 11 (citing *FEC v. Christian Coalition*, 52 F. Supp. 2d 45, 92 (D.D.C. 1999)).

²⁶ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

²⁷ *Id.* § 30116(a)(7)(B)(ii); 11 C.F.R. § 109.20(b); *see, e.g.*, F&LA at 11, MURs 7324, 7332, 7366 (American Media, Inc.); Conciliation Agreement ¶¶ IV.7-11, V.1-2, MUR 6718 (John E. Ensign) (Apr. 18, 2013) (acknowledging that third parties' payment, in coordination with a federal candidate, of severance to a former employee of the candidate's authorized committee and leadership PAC resulted in an excessive, unreported in-kind contribution by the third parties to the candidate and the two political committees).

²⁸ 11 C.F.R. § 109.20(a)

The Act and Commission regulations prohibit corporations, such as True the Vote, from making contributions to federal political committees (other than independent expenditure-only committees and hybrid committees).²⁹ Corporate officers and directors are similarly prohibited from consenting to such contributions.³⁰ The Act and Commission regulations also prohibit political committees or other persons from knowingly accepting or receiving such prohibited contributions.³¹

The prohibition on corporate contributions extends to coordinated expenditures involving a corporation and a candidate or political committee.³² In addressing coordination with corporations, the Commission has noted that: “A corporation or labor organization that engages in election-related activities directed at the general public must avoid most forms of coordination with candidates, as this will generally result in prohibited in-kind contributions, and will compromise the independence of future communications to the public.”³³

²⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

³⁰ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(e) (“No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.”); *see also* F&LA at 21-22, MUR 7248 (Cancer Treatment Centers of America Global, Inc.) (same); *see also* MUR 7027 (MV Transportation, Inc.) (conciliating violations of 52 U.S.C. § 30118 with a corporation and CEO that stemmed from a reimbursement scheme); F&LA at 8-10, MUR 6889 (Eric Byer) (finding reason to believe that a corporation and an executive violated section 30118 through a contribution reimbursement scheme).

³¹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

³² 11 C.F.R. § 114.10(a) (“Corporations and labor organizations are prohibited from making coordinated expenditures as defined in 11 C.F.R. § 109.20”); *see* 11 C.F.R. § 109.1 (explaining that part 109 of the regulations applies to payments coordinated with authorized candidate committees, as well as political party committees, along with their agents). Although some exceptions apply to this general prohibition, none are at issue in this matter.

³³ Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. 64,260, 64,263 (Dec. 14, 1995).

1 1. Coordination

2 The available information indicates that True the Vote’s activities were “coordinated”
 3 with the Georgia GOP because they were undertaken “in cooperation, consultation or concert
 4 with, or at the request or suggestion” of the Georgia GOP.³⁴ True the Vote publicly announced
 5 that the Georgia GOP “requested” that True the Vote “assist” with its own efforts in the Georgia
 6 runoff election and characterized the endeavor as a “partnership.”³⁵ As a result, in True the
 7 Vote’s own words, True the Vote’s activity followed a consultation with and then a request from
 8 a political party committee, and True the Vote agreed to “assist” that political party committee.
 9 True the Vote’s press releases contain statements attributed to the Georgia GOP’s chairman
 10 acknowledging the partnership and expressing gratitude for the “resources” that True the Vote
 11 was providing and referencing a ballot security initiative.³⁶ As a result, True the Vote and the
 12 Georgia GOP’s statements indicate coordination of True the Vote’s activities.

13 True the Vote contends that its use of the words “partner” and “partnership” are
 14 meaningless and appears to consider an official partnership or joint venture to be necessary for a
 15 finding that coordination occurred.³⁷ However, the Commission does not require a formalized
 16 agreement or official partnership structure to find coordination; an informal agreement has been
 17 found to be sufficient in prior matters.³⁸ In MURs 7324, 7332, and 7366 (American Media,

³⁴ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

³⁵ True the Vote Press Release; True the Vote Email Announcement (describing two weeks of meetings in Georgia, work analyzing the voter rolls and its acquisition of new staff which included “investigators, analysts, attorneys”).

³⁶ True the Vote Press Release (quoting Shafer as stating that “We are grateful for the help of the True the Vote team in the fight for election integrity. . . . The resources of True the Vote will help us organize and implement the most comprehensive ballot security initiative in Georgia history”).

³⁷ True the Vote & Engelbrecht Resp. at 11-12.

³⁸ See F&LA at 12-13, MURs 7324, 7332, 7366 (American Media, Inc.); F&LA at 13-14, MUR 5564 (Alaska Democratic Party) (finding the suggestion that “some degree of cooperation or consultation may have occurred” to

Inc.), the Commission found that a single in-person meeting between a corporation’s CEO and an unnamed member of a candidate committee, at which the CEO offered to “help” the committee by assisting the campaign in identifying and purchasing stories that were potentially damaging to the candidate, supported a finding that coordination had occurred.³⁹

Additionally, True the Vote argues that it did not make any expenditures, as that term is defined under the Act, because federal courts have interpreted the Supreme Court’s decision in *Buckley* to limit “for purposes of influencing” and “in connection with” to express advocacy.⁴⁰ However, in *Buckley*, the Court acknowledged that the Act’s definition of “contribution” reached not only express advocacy but also contributions made directly or indirectly to a political party, along with “expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate.”⁴¹ In MURs 7324, 7332, and 7366 (American Media, Inc.), the Commission found reason to believe that a media corporation made a prohibited contribution in the form of a coordinated expenditure by coordinating with a candidate committee to make a payment to purchase and not publish a story to benefit a federal candidate, a practice which the corporation routinely engaged in without relation to federal

support a reason to believe finding based on circumstantial evidence concerning emails concerning requests for interns, overlap of email addresses and salary payments); *cf.* 11 C.F.R. § 109.21(d)-(e) (noting that agreement or formal collaboration is not necessary in the context of coordinated communications and that a “mutual understanding or meeting of the minds” is sufficient); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 440 (Jan. 3, 2003) (“Coordination E&J”) (explaining that “coordination under section 109.21 does not require a mutual understanding or meeting of the minds as to all, or even most, of the material aspects of a communication. . . in the case of a request or suggestion . . . agreement is not required at all”).

³⁹ F&LA at 4, 12-13, MURs 7324, 7332, 7366.

⁴⁰ True the Vote & Engelbrecht Resp. at 6-7 (citing *Orloski v. FEC*, 795 F.2d 156, 166-67 (D.C. Cir. 1986); F&LA at 12, MURs 7324, 7332, 7366 (American Media, Inc.)).

⁴¹ See *Buckley v. Valeo*, 424 U.S. 1, 78 (1976).

elections and which was unrelated to express advocacy.⁴² In MUR 5645 (America’s Foundation, *et al.*), the Commission found reason to believe that a committee had accepted prohibited contributions where there were indications that the committee was aware, or should have been aware, that a corporation was making expenditures for its benefit in connection with certain fundraisers.⁴³ As such, the definition of coordination is not as restrictive as Respondents contend.

Respondents argue that True the Vote generally operated in an autonomous manner and would have performed these activities anyway, and thus its activities were not coordinated.⁴⁴ However, the definition of “coordination” broadly covers expenditures “made in cooperation, consultation or concert with, or at the request or suggestion of . . . a political party committee” and thus does not require a loss of autonomy.⁴⁵ As described above, True the Vote’s email announcement described a “partnership . . . to assist with the Senate runoff election process.”⁴⁶ A statement from the chairman of the Georgia GOP in True the Vote’s press release thanked True the Vote for its help “in the fight for election integrity,” and stated that “[t]he resources of True the Vote will help us organize and implement the most comprehensive ballot security initiative in Georgia history.”⁴⁷ And a True the Vote press release indicates that it worked with

⁴² See F&LA at 12-14, MURs 7324, 7332, 7366. Additionally, the Commission found that coordinated communications occurred where a candidate committee created materials that did not discuss the candidate, his campaign, or his party, and were simply designed to warn of the legal consequences of a non-U.S. citizen voting, which were then printed and mailed by a friend of the candidate and committee volunteer, who did not seek reimbursement. F&LA at 5-6, MUR 5924 (Tan Nguyen for Congress).

⁴³ F&LA at 9, MUR 5645 (America’s Foundation, *et al.*).

⁴⁴ See True the Vote & Engelbrecht Resp. at 12-13, Engelbrecht FEC Decl. ¶¶ 16-20.

⁴⁵ 11 C.F.R. § 109.20(a).

⁴⁶ True the Vote Email Announcement.

⁴⁷ True the Vote Press Release.

members of the Georgia GOP to recruit volunteers, suggesting active cooperation between the two groups beyond their initial discussions.⁴⁸ As a result, the available information indicates the presence of both a request from the Georgia GOP and subsequent cooperation between the two entities.

Furthermore, True the Vote's declaration indicates that it consulted the Georgia GOP in connection with its intended activity in Georgia. Specifically, the declaration submitted by True the Vote's president acknowledges that True the Vote met with the Georgia GOP and discussed its operations in Georgia, and that the Georgia GOP indicated to True the Vote that it should continue with its activities.⁴⁹ This would appear to satisfy the meaning of consultation because True the Vote asked and received the Georgia GOP's input concerning its operation in Georgia, thus rendering that activity coordinated.⁵⁰

The available information also suggests a partnership between True the Vote and the Georgia GOP for the Georgia GOP to provide access to Georgia county residents willing to serve as "challengers" and challenge the ballots identified by True the Vote in the counties in which the challengers resided. Although the Responses emphasize True the Vote's publicly available trainings, the partnership between the two entities was announced days before True the Vote implemented a large-scale challenge of Georgia ballots.⁵¹ Further, at least two of the individuals

⁴⁸ See *supra* notes 7-9 and accompanying text; but see Bill Barrow, *GOP Activist's Voter Challenges Raise Questions in Georgia*, ASSOC. PRESS (Dec. 22, 2020), <https://apnews.com/article/Georgia-elections-political-organizations-voter-registration-atlanta-3a8989df44c323ce798e0a5d34eb9876> ("[Engelbrecht] insisted the voter challenges are separate from True the Vote operations that might overlap with the GOP's election-security program. She said neither Shafer nor any of his subordinates played any role in corralling the Georgia voters who filed the challenges with local election officials.").

⁴⁹ Engelbrecht FEC Decl. ¶¶ 9-12; see also True the Vote & Engelbrecht Resp. at 3.

⁵⁰ Cf. 11 C.F.R. § 109.21(d).

⁵¹ See *supra* note 9; Voter Challenge Press Release.

1 thanked by Engelbrecht in the press release announcing the voter challenge, whom she identified
 2 as having “led the charge in recruiting hundreds of volunteer challengers across the state,” have
 3 held prominent county-level roles within the Georgia GOP.⁵²

4 As such, the available information indicates that True the Vote and the Georgia GOP
 5 coordinated their activities, and we turn to whether any payments were made for the purpose of
 6 influencing an election.

7 2. For the Purpose of Influencing an Election

8 The coordinated efforts that True the Vote undertook with the Georgia GOP would
 9 constitute in-kind contributions from True the Vote to the Georgia GOP, provided that they were
 10 “expenditures” as that term is defined by the Act, meaning that they were made for the purpose
 11 of influencing the Georgia Senate runoff election. In analyzing whether a payment made by a
 12 third party is a “contribution” or “expenditure,”⁵³ the Commission has concluded that “the
 13 question under the Act is whether” the donation, payment, or service was “provided for the
 14 purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal
 15 candidate’s] campaign.”⁵⁴ The electoral purpose of a payment may be clear on its face, as in
 16 payments to solicit contributions or for communications that expressly advocate for the election
 17 or defeat of a specific candidate, or inferred from the surrounding circumstances.⁵⁵

⁵² *Id.*

⁵³ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

⁵⁴ F&LA at 6, MUR 7024 (Van Hollen for Senate).

⁵⁵ *See, e.g.*, Advisory Opinion 1990-05 at 4 (Mueller) (“AO 1990-05”) (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that federal candidate’s company newsletter featuring discussion of campaign resulted in contributions); Advisory Opinion 1988-22 at 5 (San Joaquin Valley Republican Associates) (concluding third party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because “the financing of a communication to the general public, not within the ‘press exemption,’ that discusses or mentions a candidate in an election-related context and is

True the Vote’s efforts were undertaken in partnership with the Georgia GOP, a committee whose fundamental purpose is to help Republicans win elections in Georgia, and it appears that a goal of these particular efforts was to influence the election by challenging absentee voter registrations. For instance, documents and statements that Engelbrecht has made in this matter and in separate litigation indicate that True the Vote undertook its activities in Georgia in order to “assist with the Senate runoff election process,” and that such actions were motivated by “what happened in November.”⁵⁶ True the Vote has further stated that voter fraud occurs in “Democrat counties” and is “suppressing legitimate results.”⁵⁷ Finally, emails summarizing conversations between True the Vote’s legal counsel and donors link True the Vote’s efforts to “win by eliminating votes and changing the count.”⁵⁸

As a result, the available information supports a finding that there is reason to believe True the Vote’s activities in Georgia were undertaken for the purpose of influencing the runoff election.

undertaken in coordination with the candidate or his campaign is ‘for the purpose of influencing a federal election’); F&LA at 17-20, MURs 4568, 4633, 4634 (Triad Management Services, Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with “uncompensated fundraising and campaign management assistance” and “advertising assistance[,]” including spending “several million dollars” on coordinated advertisements).

⁵⁶ True the Vote Press Release; True the Vote Email Announcement.

⁵⁷ Engelbrecht TX Decl., Ex. 3 at 4 (“There is significant evidence that there are numerous instances of illegal ballots being cast and counted in the 2020 general election. Most of these illegal votes are being counted in Democrat counties and are suppressing legitimate results. This is a result of Democrat officials’ refusal to obey state election laws and counting illegal votes. It is also the result of deliberate election fraud. This situation has been aided by the Democrat’s deliberate effort to radically expand mail-in balloting creating myriad opportunities for voter fraud that does not exist with in-person voting.”); *see also id.* at 7 (providing email from James Bopp to Karl Gallant copying Engelbrecht and making the identical statement).

⁵⁸ Engelbrecht TX Decl., Ex. 4 at 5 (providing November 12, 2020 email from Tom Crawford to Fred Eshelman discussing a call with True the Vote’s counsel stating “The path to win by eliminating votes and changing the count is clear. We also have the other avenues if needed (go to House, etc.). . . . We are arranging for Senator Graham’s investigative staff to hear the stories and view evidence this evening. If they are good we will hand the whistleblowers to them to get sworn and start talking to government officials and law enforcement. We are providing legal representation and resources to whistleblowers.”).

In conclusion, it appears that True the Vote provided services to the Georgia GOP by researching and implementing ballot challenges in partnership with the Georgia GOP. Public statements from True the Vote and Georgia GOP officials as well as True the Vote's own explanation of a meeting with the Georgia GOP indicate that these services should have been treated like services from any other vendor and reported as in-kind contributions or else paid for at their fair market value and reported as disbursements.

Therefore, the Commission finds reason to believe that True the Vote and Engelbrecht, violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2 (b) and (e) by making and consenting to prohibited corporate in-kind contributions.⁵⁹

Attachment 1
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ELW edits 8/4/22

**THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.**

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Georgia Republican Party, Inc. and Joseph
Brannan in his official capacity as treasurer

MUR 7894

I. INTRODUCTION

The Complaint alleges that the Georgia Republican Party, Inc., and Joseph Brannan in his official capacity as treasurer (the “Georgia GOP”), violated the corporate contribution prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”), when the Georgia GOP, through its chairman David Shafer, accepted in-kind contributions from True the Vote, Inc., a 501(c)(3) non-profit corporation, in the form of various services including a voter hotline, ballot-curing support, signature verification training, absentee ballot drop box monitoring, and other election integrity initiatives in connection with the 2021 Senate runoff election in Georgia. The Complaint, citing to public statements from officials at both organizations, contends that the expenditures by True the Vote for these services were made at the request of and in partnership with the Georgia GOP and therefore should be treated as in-kind contributions subject to the Act’s source prohibitions and reporting requirements.

The Georgia GOP contends that the election integrity efforts referenced in the Complaint involved free, publicly available resources and, as a result, True the Vote did not provide anything of value to the Georgia GOP. The Georgia GOP also argues that True the Vote’s activities cannot be considered get-out-the-vote efforts or voter registration efforts, and therefore should not be subject to the same prohibitions and requirements.

As explained below, the available information indicates that True the Vote did more than offer publicly available resources. It worked on a variety of projects involving data collection, investigation and research, analytics, media production, and software development, acquiring

1 teams of data miners, analysts, investigators, and subject-matter experts in connection with those
2 projects. There is detailed information about True the Vote's activities in Georgia in documents
3 filed as part of a civil lawsuit in Texas. Moreover, the available record suggests that True the
4 Vote coordinated its efforts with the Georgia GOP. For instance, True the Vote wrote in an
5 email announcement that it received a "request" from the Georgia GOP for True the Vote's
6 assistance in providing various services related to election protection. A subsequent press
7 release characterized the request from the Georgia GOP as resulting in a "partnership" and
8 contained statements attributed to the chairman of the Georgia GOP acknowledging the
9 partnership and thanking True the Vote for providing resources. It also appears that True the
10 Vote spent a portion of a \$2.5 million donation it received on its efforts related to the Georgia
11 runoff.

12 In summary, it appears that True the Vote provided services to the Georgia GOP by
13 researching and implementing ballot challenges at the request of and in partnership with the
14 Georgia GOP. The un rebutted public statements from True the Vote and Georgia GOP officials
15 indicate that these services should have been treated like services from any other vendor and
16 reported as in-kind contributions or else paid for in an amount equal to the fair market value and
17 reported as disbursements. Accordingly, the Commission finds reason to believe that the
18 Georgia GOP violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting
19 prohibited corporate in-kind contributions and that the Georgia GOP failed to report receiving
20 these contributions in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3.

21 **II. FACTUAL BACKGROUND**

22 True the Vote is a non-profit corporation that was founded in 2009 and organized under

section 501(c)(3) of the tax code.¹ On its website, True the Vote describes itself as “the country’s largest voters’ rights organization and well known for our ability to lead unified national plans to protect election integrity.”²

According to the Complaint, True the Vote’s founder and president Catherine Engelbrecht wrote in an email announcement that the organization had received a “request from the Georgia Republican Party to provide publicly available nonpartisan signature verification training, a 24x7 vote hotline, ballot-curing support, and more.”³ The email announcement, when referencing True the Vote’s efforts in Georgia, further described “leading webinars and FAQ sessions for government leaders in support of their constituents who are understandably angry about what happened in November.”⁴

Subsequently, True the Vote announced in a press release “its partnership with the Georgia Republican Party to assist with the Senate runoff election process, including publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.”⁵ The same press release attributes a quote to

¹ Compl. at 3 (Mar. 31, 2021); see IRS Form 990, True the Vote Inc., 2017 Return of Organization Exempt from Income Tax at 1 (Nov. 15, 2018).

² Compl. at 3.

³ *Id.* at 3-4 (quoting email from True the Vote with the subject line “Weekly Update | Validate the Vote GA | 12.13.20,” sent December 14, 2020 and archived at *Weekly Update | Validate the Vote GA | 12.13.20*, ARCHIVE OF POL. EMAILS, <https://politicalemails.org/messages/318884> (last visited Dec. 8, 2021) (“True the Vote Email Announcement”). Complainant appears to have accessed the email through the Archive of Political Emails, a publicly searchable database of emails sent to individuals signed up to receive communications from “political candidates, elected officials, PACs, non-profits, NGOs and other entities that shape the political debate.” *About the Archive*, ARCHIVE OF POL. EMAILS, <https://politicalemails.org/about> (last accessed Dec. 8, 2021).

⁴ True the Vote Email Announcement.

⁵ Compl. at 4 (quoting Press Release, True the Vote, True the Vote Partners With Georgia GOP to Ensure Transparent, Secure Ballot Effort for Senate Runoff Elections (Dec. 14, 2020), <https://truethevote.org/true-the-vote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/> [<https://web.archive.org/web/20201214222722/https://truethevote.org/true-the-vote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/>] (“True the Vote Press Release”)).

the Georgia GOP Chairman David Shafer: “We are grateful for the help of the True the Vote team in the fight for election integrity. . . . The resources of True the Vote will help us to organize and implement the most comprehensive ballot security initiative in Georgia history.”⁶

Three days after announcing its partnership with the Georgia GOP, True the Vote challenged the eligibility of 364,541 registered Georgia voters,⁷ which required that it locate a Georgia resident in each of Georgia’s 159 counties to challenge the ballots identified by True the Vote for his or her county.⁸ In a press release, True the Vote thanked several Georgia residents for their assistance in filing the voter challenges, including Ron Johnson of Jackson County and James Cooper of Walton County, both of whom appear to have held county-level leadership roles in the Georgia GOP.⁹

⁶ True the Vote Press Release.

⁷ In Georgia, a voter is able to challenge the eligibility of any other voter in his or her county to vote in a given election by filing a challenge in writing identifying the basis for the challenge. Georgia Code Ann. § 21-2-230(a). Such a challenge does not necessarily remove a voter from the state’s registry but results in a requirement that the Georgia Board of Registrars consider the challenge to determine whether probable cause exists to sustain the challenge. *Id.* § 21-2-230(b). If the board of registrars finds probable cause, poll officers are notified, and the challenged voter will either need to appear before the board of registrars and answer the grounds of the challenge through a hearing at the polls or have their ballot treated as challenged pursuant to section 21-2-386 of the Georgia code until the registrars can conduct a hearing. If the challenged voter does not cast a ballot and the challenge relates to the voter’s eligibility to vote in general, the registrars will hear the challenge pursuant to section 21-2-229, which addresses challenges that contest whether an individual is entitled to be registered to vote in Georgia. *See also Majority Forward v. Ben Hill County Board of Elections*, 512 F. Supp. 3d 1354, 1357-1366 (M.D. Ga. 2021) (summarizing the experiences of challenged voters from mass challenges in Ben Hill and Muscogee counties during the 2021 run-off election and granting a preliminary injunction to enjoin the defendants from upholding voter challenges based solely on change of address information).

⁸ Press Release, True the Vote, True the Vote Partners with Georgians in Every County to Preemptively Challenge 364,541 Potentially Ineligible Voters (Dec. 18, 2020), <https://www.truethevote.org/true-the-vote-partners-with-georgians-in-every-county-to-preemptively-challenge-364541-potentially-ineligible-voters/> (“Voter Challenge Press Release”).

⁹ Voter Challenge Press Release. Ron Johnson is the former chairman of the Jackson County Republican. *See William Douglas & Maggie Lee, Trump Adds Fire to Already Hot Georgia Governor’s Race*, MCCLATCHY (July 22, 2018), <https://www.mcclatchydc.com/news/politics-government/article215174645.html> (identifying Ron Johnson as the chairman of Georgia’s Jackson County Republican Party). James Cooper was a 2020 delegate to the 2020 Republican National Convention and was elected chairman of the Georgia Republican Party for the 10th Congressional District in May 2021. *See David Clemons, Cooper to lead 10th District GOP*, WALTON TRIBUNE (May 25, 2021), https://www.waltontribune.com/news/article_ce64d75e-bd73-11eb-9de3-afc8f597bf37.html; The Walton Tribune, FACEBOOK (May 25, 2021), <https://facebook.com/waltontribune/posts/4111603758889173>

True the Vote was involved in several other self-described election security efforts during the 2020 election cycle. It sought more than \$7 million to file lawsuits in connection with the presidential election, and received a donation of \$2.5 million shortly after the conclusion of the 2020 general election.¹⁰ The donor who contributed \$2.5 million later filed suit against True the Vote contending that his donation was solely intended to investigate the 2020 presidential election, and not for other election integrity efforts.¹¹ In connection with that litigation, True the Vote's founder and president, Catherine Engelbrecht, submitted a declaration attaching many communications and documents concerning True the Vote's activities, including a section of materials that related to its election protection activities in Georgia.¹² Those materials included conversations among True the Vote's donors discussing requests for involvement in the Georgia Senate runoff elections.¹³

(announcing James Cooper's election to Chair of the 10th District Georgia GOP); Greg Bluestein, *Meet the Georgia Delegates to the 2020 Republican National Convention*, ATLANTA J. CONST. (June 22, 2020) <https://www.ajc.com/blog/politics/meet-the-georgia-delegates-the-2020-republican-national-convention/5eO1UKle6DRiBud6amO1hM/>.

¹⁰ Shawn Boburg & Jon Swaine, *A GOP Donor Gave \$2.5 Million for a Voter Fraud Investigation. Now He Wants His Money Back*, WASH. POST (Feb. 15, 2021), https://www.washingtonpost.com/investigations/true-vote-lawsuit-fraud-eselman/2021/02/15/a7017adc-6724-11eb-886d-5264d4ceb46d_story.html.

¹¹ *Id.*; see also Pl.'s Consolidated Reply in Supp. of his Verified Emergency Appl. for TRO as to Defs. True the Vote, Inc., Catherine Engelbrecht, Gregg Phillips and His Verified Mot. for Prelim. Inj. as to All Defs. at 2, *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 25, 2021), ECF No. 4 ("Even after TTV abandoned its Validate the Vote efforts, TTV spent his money to pursue ineffective efforts in connection with the Georgia Senate runoffs, which TTV never told Eshelman his money would be used to help fund.").

¹² See Resp. of True the Vote and Catherine Engelbrecht to Mot. for Temporary and Prelim. Inj., *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 21, 2021), ECF No. 47; Decl. of Catherine Engelbrecht in Supp. of Defs.' Resps. in Opp'n to Pl.'s Verified Emergency Appl. for TRO and Verified Mot. for Prelim. Inj. and Exs. 1-7 Thereto, *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 21, 2021), ECF No. 47-1 ("Engelbrecht TX Decl."). The Engelbrecht TX Declaration included several exhibits, including an exhibit titled "Exhibit 7: Validate the Vote Project Continues in Georgia"; see also Decl. of Gregg Phillips in Opp. to Pl.'s Appl. for TRO and Mot. for Prelim. Inj., *Eshelman v. True the Vote, Inc.*, No. 4:20-cv-04034 (S.D. Tex. Jan. 21, 2021), ECF No. 47-2 ("Phillips TX Decl.") (describing the work OpSec completed on behalf of True the Vote).

¹³ See Engelbrecht TX Decl., Ex. 7 at 1 (attaching a November 5, 2020 email from Tom Crawford to Fred Eshelman stating "Don't shoot me...Republicans now reaching out to ask if we will play in GA Senate run-off. What we did with LPVs in NC, MI, WI, NV is getting a ton of attention and seen as having saved NC (and May deliver a margin in NV) and increased turnout in each state we played in with the rare cohort of fresh votes").

Engelbrecht's declaration explained that, in addition to providing publicly available trainings, True the Vote worked on a variety of non-public activities in connection with the Georgia Runoff. As Engelbrecht stated:

[True the Vote] worked with [co-defendant OpSec, LLC] throughout 2020 on a variety of projects involving data collection, investigation and research, analytics, media production, and software development. They were specifically tasked with overseeing research related to litigation and challenges, and the development and support of the "Election Integrity Hotline," with extensive responsibility for the arduous task of vetting the information received. That requires interviewing witnesses, examining documents, and uncovering supporting evidence sufficient to open investigations, secure indictments, and support litigation, as necessary. OpSec assembled teams of data miners, analysts, investigators, and subject matter experts. In Texas, Georgia, Pennsylvania, Nevada, Arizona, Michigan, and Wisconsin, [True the Vote], through OpSec, supported 'whistleblower' investigations and implemented a variety of complex regression analyses using public and commercially sourced data to determine whether or not voters were truly eligible based on their residency, identity, and other factors, as appropriate on a state-specific basis.¹⁴

The declaration further explains that, "we helped voter challenges of over 364,000 people in Georgia whose current residence make them potentially ineligible to vote in the runoff election We are now in the process of evaluating if these people voted in the Georgia Senate runoffs."¹⁵ OpSec's founder describes the efforts in Georgia as follows: "We have been able to design a methodology that will provide challenges with the data necessary to challenge elections by identifying specific unqualified voters on a county by county basis. We also successfully helped submit the largest pre-election set of challenges in American history in

¹⁴ Engelbrecht TX Decl. ¶ 8; *see also* Phillips TX Decl. (describing OpSec's work as involving the acquisition of hundreds of thousands of dollars of data purchases, proprietary software products, litigation support, communications support, and advisory and consulting services).

¹⁵ Engelbrecht TX Decl. ¶ 24.

Georgia.”¹⁶

The Complaint alleges that the Georgia GOP received illegal corporate contributions from True the Vote in the form of coordinated expenditures.¹⁷ It points to True the Vote’s statements concerning the Georgia GOP’s request for assistance and the ensuing “partnership” as evidence of coordination.¹⁸ The Complaint further compares True the Vote’s activity to get-out-the-vote (“GOTV”) activity coordinated between a corporation and a committee, which Commission regulations prohibit.¹⁹

In its Response, the Georgia GOP argues that the Complaint bases its allegations on speculation and innuendo, and contends that the statements contained in the True the Vote email and press release “do not give reason to believe a violation occurred.”²⁰ The Response further states that True the Vote’s publicly available resources cannot be considered to be an in-kind contribution because they were free.²¹ The Georgia GOP further contends that True the Vote’s election protection efforts are not akin to get-out-the-vote or voter registration activity.²²

¹⁶ Phillips TX Decl. ¶ 7.

¹⁷ Compl. at 10-11.

¹⁸ *Id.*

¹⁹ *Id.* at 7-8 (citing 11 C.F.R. § 114.4(c) (providing that a corporation or labor organization may make voter registration or get-out-the-vote communications to the general public without making a contribution or expenditure provided that “[t]he preparation and distribution of voter registration and get-out-the-vote communications is not coordinated with any candidate(s) or political party”)).

²⁰ Georgia GOP Resp. at 1-2 (July 12, 2021).

²¹ *Id.* at 3

²² *Id.* at 3 n.15 (noting that Common Cause has averred in a Complaint that it, “alongside other partners in Georgia, created a program to help recruit volunteers to monitor local board of elections meetings” and further noting that “Common Cause also provides food and drinks to voters to encourage them to vote”).

III. LEGAL ANALYSIS

A. The Commission Finds Reason to Believe that True the Vote's Georgia Efforts Constituted Coordinated Expenditures, Which Resulted in Prohibited In-Kind Contributions Received by the Georgia GOP

Under the Act, the terms “contribution” and “expenditure” include “anything of value” made by any person for the purpose of influencing an election.²³ Additionally, “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.”²⁴ Coordinated means “made in cooperation, consultation or concert with, or at the request of suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”²⁵

The Act and Commission regulations prohibit corporations, such as True the Vote, from making contributions to federal political committees (other than independent expenditure-only committees and hybrid committees).²⁶ Corporate officers and directors are similarly prohibited from consenting to such contributions.²⁷ The Act and Commission regulations also prohibit

²³ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

²⁴ *Id.* § 30116(a)(7)(B)(ii); 11 C.F.R. § 109.20(b); *see, e.g.*, F&LA at 11, MURs 7324, 7332, 7366 (American Media, Inc.); Conciliation Agreement ¶¶ IV.7-11, V.1-2, MUR 6718 (John E. Ensign) (Apr. 18, 2013) (acknowledging that third parties’ payment, in coordination with a federal candidate, of severance to a former employee of the candidate’s authorized committee and leadership PAC resulted in an excessive, unreported in-kind contribution by the third parties to the candidate and the two political committees).

²⁵ 11 C.F.R. § 109.20(a)

²⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

²⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(e) (“No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.”); *see also* F&LA at 21-22, MUR 7248 (Cancer Treatment Centers of America Global, Inc.); MUR 7027 (MV Transportation, Inc.) (conciliating violations of 52 U.S.C. § 30118 with a corporation and CEO that stemmed from a reimbursement scheme); F&LA at 8-10, MUR

political committees or other persons from knowingly accepting or receiving such prohibited contributions.²⁸

The prohibition on corporate contributions extends to coordinated expenditures involving a corporation and a candidate or political committee.²⁹ In addressing coordination with corporations, the Commission has noted that: “A corporation or labor organization that engages in election-related activities directed at the general public must avoid most forms of coordination with candidates, as this will generally result in prohibited in-kind contributions, and will compromise the independence of future communications to the public.”³⁰

1. Coordination

The available information indicates that True the Vote’s activities were “coordinated” with the Georgia GOP because they were undertaken “in cooperation, consultation or concert with, or at the request or suggestion” of the Georgia GOP.³¹ True the Vote publicly announced that the Georgia GOP “requested” that True the Vote “assist” with its own efforts in the Georgia runoff election and characterized the endeavor as a “partnership.”³² As a result, in True the Vote’s own words, True the Vote’s activity followed a consultation with and then a request from

6889 (Eric Byer) (finding reason to believe that a corporation and an executive violated section 30118 through a contribution reimbursement scheme).

²⁸ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

²⁹ 11 C.F.R. § 114.10(a) (“Corporations and labor organizations are prohibited from making coordinated expenditures as defined in 11 C.F.R. § 109.20”); *see* 11 C.F.R. § 109.1 (explaining that part 109 of the regulations applies to payments coordinated with authorized candidate committees, as well as political party committees, along with their agents). Although some exceptions apply to this general prohibition, none are at issue in this matter.

³⁰ Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. 64,260, 64,263 (Dec. 14, 1995).

³¹ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

³² True the Vote Press Release; True the Vote Email Announcement (describing two weeks of meetings in Georgia, work analyzing the voter rolls and its acquisition of new staff which included “investigators, analysts, attorneys”).

1 a political party committee, and True the Vote agreed to “assist” that political party committee.
 2 True the Vote’s press releases contain statements attributed to the Georgia GOP’s chairman
 3 acknowledging the partnership and expressing gratitude for the “resources” that True the Vote
 4 was providing and referencing a ballot security initiative.³³ As a result, True the Vote and the
 5 Georgia GOP’s statements indicate coordination of True the Vote’s activities.

6 The Commission does not require a formalized agreement or official partnership structure
 7 to find coordination; an informal agreement has been found to be sufficient in prior matters.³⁴ In
 8 MURs 7324, 7332, and 7366 (American Media, Inc.), the Commission found that a single in-
 9 person meeting between a corporation’s CEO and an unnamed member of a candidate
 10 committee, at which the CEO offered to “help” the committee by assisting the campaign in
 11 identifying and purchasing stories that were potentially damaging to the candidate, supported a
 12 finding that coordination had occurred.³⁵

13 In *Buckley*, the Court acknowledged that the Act’s definition of “contribution” reached
 14 not only express advocacy but also contributions made directly or indirectly to a political party,
 15 along with “expenditures placed in cooperation with or with the consent of a candidate, his

³³ True the Vote Press Release (quoting Shafer as stating that “We are grateful for the help of the True the Vote team in the fight for election integrity. . . . The resources of True the Vote will help us organize and implement the most comprehensive ballot security initiative in Georgia history”).

³⁴ See F&LA at 12-13, MURs 7324, 7332, 7366 (American Media, Inc.); F&LA at 13-14, MUR 5564 (Alaska Democratic Party) (finding the suggestion that “some degree of cooperation or consultation may have occurred” to support a reason to believe finding based on circumstantial evidence concerning emails concerning requests for interns, overlap of email addresses and salary payments); *cf.* 11 C.F.R. § 109.21(d)-(e) (noting that agreement or formal collaboration is not necessary in the context of coordinated communications and that a “mutual understanding or meeting of the minds” is sufficient); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 440 (Jan. 3, 2003) (“Coordination E&J”) (explaining that “coordination under section 109.21 does not require a mutual understanding or meeting of the minds as to all, or even most, of the material aspects of a communication. . . in the case of a request or suggestion . . . agreement is not required at all”).

³⁵ F&LA at 4, 12-13, MURs 7324, 7332, 7366.

agents, or an authorized committee of the candidate.”³⁶ In MURs 7324, 7332, and 7366 (American Media, Inc.), the Commission found reason to believe that a media corporation made a prohibited contribution in the form of a coordinated expenditure by coordinating with a candidate committee to make a payment to purchase and not publish a story to benefit a federal candidate, a practice which the corporation routinely engaged in without relation to federal elections and which was unrelated to express advocacy.³⁷ In MUR 5645 (America’s Foundation, *et al.*), the Commission found reason to believe that a committee had accepted prohibited contributions where there were indications that the committee was aware, or should have been aware, that a corporation was making expenditures for its benefit in connection with certain fundraisers.³⁸

The Georgia GOP argues that True the Vote generally operated in an autonomous manner and would have performed these activities anyway, and thus its activities were not coordinated.³⁹ However, the definition of “coordination” broadly covers expenditures “made in cooperation, consultation or concert with, or at the request or suggestion of . . . a political party committee” and thus does not require a loss of autonomy.⁴⁰ As described above, True the Vote’s email announcement described a “partnership . . . to assist with the Senate runoff election process.”⁴¹

³⁶ See *Buckley v. Valeo*, 424 U.S. 1, 78 (1976).

³⁷ See F&LA at 12-14, MURs 7324, 7332, 7366. Additionally, the Commission found that coordinated communications occurred where a candidate committee created materials that did not discuss the candidate, his campaign, or his party, and were simply designed to warn of the legal consequences of a non-U.S. citizen voting, which were then printed and mailed by a friend of the candidate and committee volunteer, who did not seek reimbursement. F&LA at 5-6, MUR 5924 (Tan Nguyen for Congress).

³⁸ F&LA at 9, MUR 5645 (America’s Foundation, *et al.*).

³⁹ See Georgia GOP Resp. at 3.

⁴⁰ 11 C.F.R. § 109.20(a).

⁴¹ True the Vote Email Announcement.

1 A statement from the chairman of the Georgia GOP in True the Vote's press release thanked
 2 True the Vote for its help "in the fight for election integrity," and stated that "[t]he resources of
 3 True the Vote will help us organize and implement the most comprehensive ballot security
 4 initiative in Georgia history."⁴² And a True the Vote press release indicates that it worked with
 5 members of the Georgia GOP to recruit volunteers, suggesting active cooperation between the
 6 two groups beyond their initial discussions.⁴³ As a result, the available information indicates the
 7 presence of both a request from the Georgia GOP and subsequent cooperation between the two
 8 entities.

9 Furthermore, information available to the Commission indicates that True the Vote
 10 consulted the Georgia GOP in connection with its intended activity in Georgia. It appears that
 11 when True the Vote met with the Georgia GOP and discussed its operations in Georgia that the
 12 Georgia GOP indicated to True the Vote that it should continue with its activities. This would
 13 appear to satisfy the meaning of consultation because True the Vote asked and received the
 14 Georgia GOP's input concerning its operation in Georgia, thus rendering that activity
 15 coordinated.⁴⁴

16 The available information also suggests a partnership between True the Vote and the
 17 Georgia GOP for the Georgia GOP to provide access to Georgia county residents willing to serve
 18 as "challengers" and challenge the ballots identified by True the Vote in the counties in which

⁴² True the Vote Press Release.

⁴³ See *supra* notes 7-9 and accompanying text; but see Bill Barrow, *GOP Activist's Voter Challenges Raise Questions in Georgia*, ASSOC. PRESS (Dec. 22, 2020), <https://apnews.com/article/Georgia-elections-political-organizations-voter-registration-atlanta-3a8989df44c323ce798e0a5d34eb9876> ("[Engelbrecht] insisted the voter challenges are separate from True the Vote operations that might overlap with the GOP's election-security program. She said neither Shafer nor any of his subordinates played any role in corralling the Georgia voters who filed the challenges with local election officials.").

⁴⁴ Cf. 11 C.F.R. § 109.21(d).

the challengers resided. Although the Response emphasizes True the Vote’s publicly available trainings, the partnership between the two entities was announced days before True the Vote implemented a large-scale challenge of Georgia ballots.⁴⁵ Further, at least two of the individuals thanked by Engelbrecht in the press release announcing the voter challenge, whom she identified as having “led the charge in recruiting hundreds of volunteer challengers across the state,” have held prominent county-level roles within the Georgia GOP.⁴⁶

As such, the available information indicates that True the Vote and the Georgia GOP coordinated their activities, and we turn to whether any payments were made for the purpose of influencing an election.

2. For the Purpose of Influencing an Election

The coordinated efforts that True the Vote undertook with the Georgia GOP would constitute in-kind contributions from True the Vote to the Georgia GOP, provided that they were “expenditures” as that term is defined by the Act, meaning that they were made for the purpose of influencing the Georgia Senate runoff election. In analyzing whether a payment made by a third party is a “contribution” or “expenditure,”⁴⁷ the Commission has concluded that “the question under the Act is whether” the donation, payment, or service was “provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”⁴⁸ The electoral purpose of a payment may be clear on its face, as in

⁴⁵ See *supra* note 9; Voter Challenge Press Release.

⁴⁶ *Id.*

⁴⁷ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

⁴⁸ F&LA at 6, MUR 7024 (Van Hollen for Senate).

1 payments to solicit contributions or for communications that expressly advocate for the election
 2 or defeat of a specific candidate, or inferred from the surrounding circumstances.⁴⁹

3 True the Vote's efforts were undertaken in partnership with the Georgia GOP, a
 4 committee whose fundamental purpose is to help Republicans win elections in Georgia, and it
 5 appears that the goal of these particular efforts was to influence the election by challenging
 6 absentee voter registrations. For instance, documents and statements indicate that True the Vote
 7 undertook its activities in Georgia in order to "assist with the Senate runoff election process,"
 8 and that such actions were motivated by "what happened in November."⁵⁰ True the Vote has
 9 further stated that voter fraud occurs in "Democrat counties" and is "suppressing legitimate
 10 results."⁵¹ Finally, emails summarizing conversations between True the Vote's legal counsel and
 11 donors link True the Vote's efforts to "win by eliminating votes and changing the count."⁵²

⁴⁹ See, e.g., Advisory Opinion 1990-05 at 4 (Mueller) ("AO 1990-05") (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that federal candidate's company newsletter featuring discussion of campaign resulted in contributions); Advisory Opinion 1988-22 at 5 (San Joaquin Valley Republican Associates) (concluding third party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because "the financing of a communication to the general public, not within the 'press exemption,' that discusses or mentions a candidate in an election-related context and is undertaken in coordination with the candidate or his campaign is 'for the purpose of influencing a federal election'"); F&LA at 17-20, MURs 4568, 4633, 4634 (Triad Management Services, Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with "uncompensated fundraising and campaign management assistance" and "advertising assistance[.]" including spending "several million dollars" on coordinated advertisements).

⁵⁰ True the Vote Press Release; True the Vote Email Announcement.

⁵¹ Engelbrecht TX Decl., Ex. 3 at 4 ("There is significant evidence that there are numerous instances of illegal ballots being cast and counted in the 2020 general election. Most of these illegal votes are being counted in Democrat counties and are suppressing legitimate results. This is a result of Democrat officials' refusal to obey state election laws and counting illegal votes. It is also the result of deliberate election fraud. This situation has been aided by the Democrat's deliberate effort to radically expand mail-in balloting creating myriad opportunities for voter fraud that does not exist with in-person voting."); see also *id.* at 7 (providing email from James Bopp to Karl Gallant copying Engelbrecht and making the identical statement).

⁵² Engelbrecht TX Decl., Ex. 4 at 5 (providing November 12, 2020 email from Tom Crawford to Fred Eshelman discussing a call with True the Vote's counsel stating "The path to win by eliminating votes and changing the count is clear. We also have the other avenues if needed (go to House, etc.). . . . We are arranging for Senator Graham's investigative staff to hear the stories and view evidence this evening. If they are good we will hand the

As a result, the available information supports a finding that there is reason to believe True the Vote's activities in Georgia were undertaken for the purpose of influencing the runoff election.

* * *

In conclusion, it appears that True the Vote provided services to the Georgia GOP by researching and implementing ballot challenges in partnership with the Georgia GOP. Public statements from True the Vote and Georgia GOP officials as well as True the Vote's own explanation of a meeting with the Georgia GOP indicate that these services should have been treated like services from any other vendor and reported as in-kind contributions or else paid for at their fair market value and reported as disbursements.

Therefore, the Commission finds reason to believe that the Georgia GOP violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by accepting prohibited corporate in-kind contributions.

B. The Commission Finds Reason to Believe that the Georgia GOP Failed to Disclose the In-Kind Contributions it Received from True the Vote

The Act and Commission regulations require political committees to file periodic reports accurately disclosing all of their receipts, disbursements, and debts and obligations, including coordinated expenditures.⁵³ These disclosure requirements serve important transparency and anticorruption interests, as they “provide the electorate with information as to where political campaign money comes from and how it is spent[,] . . . [and] deter actual corruption and avoid

whistleblowers to them to get sworn and start talking to government officials and law enforcement. We are providing legal representation and resources to whistleblowers.”).

⁵³ 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”⁵⁴ Political committees must report the total amount of all receipts and disbursements for the reporting period;⁵⁵ itemize the name and address of each person from whom the committee received contributions aggregating in excess of \$200 in a calendar year along with the dates and amounts of the contributions;⁵⁶ and itemize the name and address of each person to whom the committee made expenditures exceeding, in aggregate amount or value, \$200 per calendar year as well as the date, amount, and purpose of the expenditures.⁵⁷ A coordinated expenditure must be reported as both a contribution received by, and an expenditure made by, the political committee with whom the expenditure was coordinated.⁵⁸

The available information indicates that the Georgia GOP failed to disclose any contribution or expenditure information in connection with its self-described partnership with True the Vote, including the dates, amounts, and purposes of the in-kind contributions. Accordingly, the Commission finds reason to believe that the Georgia GOP violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report required information in its Commission filings.

⁵⁴ *Buckley*, 424 U.S. at 66-67; *see Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁵⁵ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(2), (b)(1).

⁵⁶ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

⁵⁷ 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(3)(i).

⁵⁸ 11 C.F.R. § 104.13(a)(2); *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. at 422 (explaining that committees must report coordinated expenditures in this manner in order to not overstate cash-on-hand balances).