



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 3, 2023

VIA ELECTRONIC MAIL

Vincent Russo, Esq.
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RE: MUR 7894R

Dear Mr. Russo:

On August 15, 2022, you were notified that the Federal Election Commission was evenly divided on a vote to find reason to believe that your client, the Georgia Republican Party, Inc., and its treasurer in their official capacity, violated the Federal Election Campaign Act of 1971, as amended (“the Act”), in MUR 7894. Consequently, the Commission closed the file in that matter.

The complainants in MUR 7894 subsequently filed suit against the Commission pursuant to 52 U.S.C. § 30109(a)(8) for judicial review of the dismissal of their administrative complaint. *See Common Cause Virginia v. FEC*, civil action No. 22-3067 (DLF), United States District Court for the District of Columbia. After various proceedings in that case, the district court remanded the matter to the Commission to reconsider its decision to dismiss the administrative complaint in MUR 7894.

Upon reconsideration, the Commission, on October 17, 2023, voted to find reason to believe that the Georgia Republican Party, Inc., and Laurie L. McClain in her official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report receipts and disbursements to the Commission. The Factual and Legal Analysis, which forms the basis of the Commission’s determination, is attached.

In order to expedite the resolution of these matters, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations but is a voluntary step in the enforcement process that the Commission is offering to your client as a way

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to resolve these matters at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

Enclosed is a conciliation agreement for your consideration [REDACTED]

[REDACTED]

Please note that your client has a legal obligation to preserve all documents, records and materials relating to these matters until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you are interested in engaging in pre-probable cause conciliation, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or at arabinowitz@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in these matters or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission’s “Guidebook for Complainants and Respondents on the FEC Enforcement Process,” which is available on the Commission’s website at https://www.fec.gov/resources/cms-content/documents/policy-guidance/respondent_guide.pdf.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,


Sean J. Cooksey
Vice Chair

Enclosures:

Factual and Legal Analysis

[REDACTED]

FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Georgia Republican Party, Inc., and Laurie L. McClain in her official capacity as treasurer

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I. INTRODUCTION

6 The Complaint alleges that the Georgia Republican Party, Inc., and Laurie L. McClain in
7 her official capacity as treasurer (the “Georgia GOP”), knowingly accepted and failed to report
8 prohibited corporate in-kind contributions from True the Vote, Inc., a 501(c)(3) non-profit
9 corporation, in the form of various services including a voter hotline, ballot-curing support,
10 signature verification training, absentee ballot drop box monitoring, and other election integrity
11 initiatives in connection with the 2021 Senate runoff election in Georgia. The Complaint, citing
12 to public statements from officials at both organizations, contends that the expenditures by True
13 the Vote for these services were made at the request of and in partnership with the Georgia GOP
14 and therefore should be treated as in-kind contributions subject to the source prohibitions and
15 reporting requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”).

16 The Commission previously considered the Complaint in MUR 7894 (*True the Vote, et*
17 *al.*) but there were an insufficient number of votes to find reason to believe that the Georgia GOP
18 violated 52 U.S.C. § 30118(a) (accepting prohibited contributions from a corporation) or § 30104
19 (failing to report contributions). Accordingly, the Commission closed its file in MUR 7894. The
20 Commission’s action in that matter was challenged in *Common Cause Georgia v. FEC*, No. 22-
21 cv-3067 (D.D.C. Sept. 29, 2023). On September 29, 2023, the U.S. District Court for the District
22 of Columbia held that the Commission’s dismissal of the disclosure allegations was contrary to

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1 law and remanded the matter for proceedings consistent with that opinion.¹ Pursuant to the
2 court's remand, this matter was reopened and numbered MUR 7894R.

3 As explained below, and consistent with the court's opinion, the Commission finds
4 reason to believe that the Georgia GOP violated 52 U.S.C. § 30104(b) and 11 C.F.R.
5 § 104.3(a), (b) by failing to report the in-kind contributions it received from True the Vote in the
6 form of the various expenditures that True the Vote made in coordination with the Georgia GOP
7 regarding the 2021 Senate runoff election in Georgia.

8 **II. FACTUAL BACKGROUND**

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

13 According to the Complaint, True the Vote's founder and president, Catherine
14 Engelbrecht, wrote in an email announcement that the organization had received a "request from
15 the Georgia Republican Party to provide publicly available nonpartisan signature verification
16 training, a 24x7 vote hotline, ballot-curing support, and more."⁴ The email announcement, when

¹ *Common Cause v. FEC*, No. 22-cv-3067, 2023 WL 6388883 at *11 (D.D.C. Sept. 29, 2023) ("Opinion"). The court found that plaintiffs established standing to challenge the Commission's dismissal of the disclosure violations but that they did not establish Article III standing to challenge the dismissal of the prohibited contribution allegations. *Id.* at *4.

² Compl. at 3, MUR 7894 (True the Vote, *et al.*) (Mar. 31, 2021) ("Compl."); see IRS Form 990, True the Vote, Inc., 2017 Return of Organization Exempt from Income Tax at 1 (Nov. 15, 2018).

³ Compl. at 3.

⁴ *Id.* at 3-4 (quoting Email from True the Vote, Inc., re: Weekly Update | Validate the Vote GA | 12.13.20 (Dec. 14, 2020) (archived at *Weekly Update | Validate the Vote GA | 12.13.20*, ARCHIVE OF POL. EMAILS, <https://politcalemails.org/messages/318884> (last visited Oct. 25, 2023)) ("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

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1 referencing True the Vote's efforts in Georgia, further described "leading webinars and FAQ
 2 sessions for government leaders in support of their constituents who are understandably angry
 3 about what happened in November."⁵

4 Subsequently, True the Vote announced in a press release "its partnership with the
 5 Georgia Republican Party to assist with the Senate runoff election process, including publicly
 6 available signature verification training, a statewide voter hotline, monitoring absentee ballot
 7 drop boxes, and other election integrity initiatives."⁶ The same press release attributes a quote to
 8 Georgia GOP Chairman David Shafer: "We are grateful for the help of the True the Vote team
 9 in the fight for election integrity. . . . The resources of True the Vote will help us to organize and
 10 implement the most comprehensive ballot security initiative in Georgia history."⁷

11 Three days after announcing its partnership with the Georgia GOP, True the Vote
 12 challenged the eligibility of 364,541 registered Georgia voters,⁸ which required that it locate a

officials, PACs, non-profits, NGOs and other entities that shape the political debate." *About the Archive*, ARCHIVE OF POL. EMAILS, <https://politicailemails.org/about> (last visited Oct. 23, 2023).

5 True the Vote Email Announcement.

6 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://truthevote.org/truthevote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/> [<https://web.archive.org/web/20201214222722/https://truthevote.org/truthevote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/>] ("True the Vote Press Release")).

7 True the Vote Press Release.

8 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 Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1357-66 (M.D. Ga. 2021) (summarizing the experiences of challenged voters from mass challenges in Ben Hill and Muscogee counties during

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1 Georgia resident in each of Georgia's 159 counties to challenge the ballots identified by True the
 2 Vote for their county.⁹ In a press release, True the Vote thanked several Georgia residents for
 3 their assistance in filing the voter challenges, including Ron Johnson of Jackson County and
 4 James Cooper of Walton County, both of whom appear to have held county-level leadership
 5 roles in the Georgia GOP.¹⁰

6 True the Vote was involved in several other self-described election security efforts during
 7 the 2020 election cycle. It sought more than \$7 million to file lawsuits in connection with the
 8 presidential election, and received a donation of \$2.5 million shortly after the conclusion of the
 9 2020 general election.¹¹ The donor who contributed \$2.5 million later filed suit against True the
 10 Vote, contending that his donation was solely intended to investigate the 2020 presidential
 11 election and not for other election integrity efforts.¹² In connection with that litigation, True the

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).

⁹ 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").

¹⁰ 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 DC (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 TRIB. (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/411160375889173> (announcing James Cooper's election as Chair of the 10th District Georgia GOP).

¹¹ 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.

¹² *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.").

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1 Vote's founder and president, Catherine Engelbrecht, submitted a declaration attaching many
 2 communications and documents concerning True the Vote's activities, including a section of
 3 materials that related to its election protection activities in Georgia.¹³ Those materials included
 4 conversations among True the Vote's donors discussing requests for involvement in the Georgia
 5 Senate runoff elections.¹⁴

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

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

¹³ 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).

¹⁴ 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").

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based on their residency, identity, and other factors, as appropriate on a state-specific basis.¹⁵

The declaration further explains: “[W]e helped voter challenges of over 364,000 people

4 in Georgia whose current residence made them potentially ineligible to vote in the runoff

5 election We are now in the process of evaluating if these people voted in the Georgia

⁶ Senate runoffs.”¹⁶ OpSec’s founder describes the efforts in Georgia as follows: “We have been

⁷ able to design a methodology that will provide challengers with the data necessary to challenge

8 elections by identifying specific unqualified voters on a county[-]by[-]county basis. We also

9 successfully helped submit the largest pre-election set of challenges in American history in

10 Georgia.”¹⁷

The Georgia GOP did not disclose any contributions from True the Vote on either its

¹² 2020 Year-End Report or in its 2021 February Monthly Report.¹⁸ To date, the Georgia GOP has

13 not disclosed any contributions from True the Vote,¹⁹ nor has it disclosed any payments to True

¹⁴ the Vote for services rendered.²⁰

15 The Complaint alleges that the Georgia GOP received illegal corporate contributions

¹⁵ 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).

16 Engelbrecht TX Decl. ¶ 24.

17 Phillips TX Decl. ¶ 7.

¹⁸ Because the Georgia GOP is a committee that files on a monthly basis, the Special Election did not trigger any additional reporting obligations. See David Garr, Commc's Specialist, FEC, , *FEC Record: Reporting, Reporting Guidance for Georgia Runoff Elections (2020)*, FEC.GOV (Nov. 25, 2020), <https://www.fec.gov/updates/reporting-guidance-georgia-runoff-elections-2020/>.

¹⁹ FEC Receipts: Filtered Results, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00150672&contributor_name=true+the+vote (showing zero receipts by the Georgia GOP from “True the Vote”).

²⁰ FEC Disbursements: Filtered Results, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00150672&recipient_name=True+the+Vote (showing zero disbursements by the Georgia GOP to “True the Vote”).

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1 from True the Vote in the form of coordinated expenditures and that the Georgia GOP failed to
 2 report those contributions.²¹ It points to True the Vote’s statements concerning the Georgia
 3 GOP’s request for assistance and the ensuing “partnership” as evidence of coordination.²² The
 4 Complaint further compares True the Vote’s activity to get-out-the-vote (“GOTV”) activity
 5 coordinated between a corporation and a committee, which Commission regulations prohibit.²³
 6 Finally, the Complaint alleges that the Georgia GOP violated the Act’s reporting requirements by
 7 failing to disclose contributions from True the Vote.²⁴

8 In its Response, the Georgia GOP argues that the Complaint bases its allegations on
 9 speculation and innuendo, and contends that the statements contained in the True the Vote email
 10 and press release “do not give reason to believe a violation occurred.”²⁵ The Response further
 11 states that True the Vote’s publicly available resources cannot be considered to be an in-kind
 12 contribution because they were free.²⁶ The Georgia GOP further contends that True the Vote’s
 13 election protection efforts are not akin to get-out-the-vote or voter registration activity.²⁷

²¹ Compl. at 10-11.

²² *Id.*

²³ *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”)).

²⁴ Compl. at 12.

²⁵ Georgia GOP Resp. at 1-2 (July 12, 2021).

²⁶ *Id.* at 3

²⁷ *Id.* at 3 n.15 (noting that Common Cause has averred in a lawsuit 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”).

1 **III. LEGAL ANALYSIS**2 **A. The Georgia GOP Failed to Report Coordinated Expenditures
3 That it Knowingly Accepted From True the Vote in Connection
4 with the 2021 Georgia Senate Runoff Election**5 1. Coordination

6 Under the Act, the terms “contribution” and “expenditure” include “anything of value”
 7 given or made by any person for the purpose of influencing an election.²⁸ Additionally,
 8 “expenditures made by any person (other than a candidate or candidate’s authorized committee)
 9 in cooperation, consultation, or concert with, or at the request or suggestion of a national, State,
 10 or local committee of a political party, shall be considered to be contributions made to such party
 11 committee.”²⁹ “Coordinated” means “made in cooperation, consultation or concert with, or at
 12 the request of suggestion of, a candidate, a candidate’s authorized committee, or a political party
 13 committee.”³⁰

14 The court found that True the Vote’s and the Georgia GOP’s statements gave the
 15 Commission “a concrete and plausible factual basis[] for thinking that True the Vote participated
 16 in the runoff in partnership with or at the request of the Party,”³¹ specifically noting that:

17 True the Vote’s public statements gave the Commission clear
 18 reasons to believe that it coordinated with, or acted at the request
 19 or suggestion of, the Georgia Republican Party during the 2021
 20 runoff. Start with True the Vote’s public statements, which all but
 21 admitted coordination. In a fundraising email, True the Vote

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

²⁹ *Id.* § 30116(a)(7)(B)(ii); 11 C.F.R. § 109.20(b); *see, e.g.*, Factual & Legal Analysis (“F&LA”) at 11, MURs 7324, 7332, 7366 (Am. 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).

³⁰ 11 C.F.R. § 109.20(a).

³¹ *Common Cause*, 2023 WL 6388883 at *7.

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1 described a “request from the Georgia Republican Party” to
 2 participate in the runoff election. Later, in a press release, True the
 3 Vote “announc[ed]” its participation in “partnership with the
 4 Georgia GOP.”³²

5 The Court further noted that, beyond the Respondents’ own statements, the factual record further
 6 supported the conclusion that True the Vote and the Georgia GOP coordinated True the Vote’s
 7 activities in the Georgia runoff election:

8 The context of True the Vote’s comments made the nature of its
 9 activities even clearer. In private emails, a consultant told one of
 10 True the Vote’s donors that “Republicans” had “reach[ed] out to
 11 ask if we will play” in the Georgia runoff election. And when True
 12 the Vote challenged more than 300,000 Georgians’ eligibility to
 13 vote in the runup to Election Day, it partnered with two
 14 Republicans with close ties to the Georgia Republican Party — one
 15 the former chairman of Georgia’s Jackson County Republican
 16 Party, the other a 2020 delegate to the Republican National
 17 Convention and the 2021 chairman of the Georgia Republican
 18 Party for the Tenth Congressional District — who served as
 19 official ballot “challengers” under Georgia law. All this made it
 20 even more plausible that True the Vote participated in the runoff
 21 “in cooperation, consultation, or concert with, or at the request or
 22 suggestion of,” the Georgia Republican Party.³³

23 The available information accordingly indicates that True the Vote’s activities were
 24 “coordinated” with the Georgia GOP because they were undertaken “in cooperation, consultation
 25 or concert with, or at the request or suggestion” of the Georgia GOP.³⁴ True the Vote publicly
 26 announced that the Georgia GOP “requested” that True the Vote “assist” with its own efforts in
 27 the Georgia runoff election and characterized the endeavor as a “partnership.”³⁵ As a result, in

³² *Id.* (internal citations omitted); *see* True the Vote Press Release; True the Vote Email Announcement.

³³ *Id.* (internal citations omitted); *see supra* notes 10 and 14 and accompanying text.

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 ”).

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1 True the Vote's own words, True the Vote's activity followed a consultation with and then a
 2 request from a political party committee, and True the Vote agreed to "assist" that political party
 3 committee. True the Vote's press releases contain statements attributed to the Georgia GOP's
 4 chairman acknowledging the partnership and expressing gratitude for the "resources" that True
 5 the Vote was providing and referencing a ballot security initiative.³⁶ As a result, True the Vote
 6 and the Georgia GOP's statements indicate coordination of True the Vote's activities.

7 The available information also suggests a partnership between True the Vote and the
 8 Georgia GOP for the Georgia GOP to provide access to Georgia county residents willing to serve
 9 as "challengers" to challenge the ballots identified by True the Vote in the counties in which the
 10 challengers resided. Although the Response emphasizes True the Vote's publicly available
 11 trainings, the partnership between the two entities was announced days before True the Vote
 12 implemented a large-scale challenge of Georgia ballots.³⁷ Further, at least two of the individuals
 13 thanked by Engelbrecht in the press release announcing the voter challenge, whom she identified
 14 as having "led the charge in recruiting hundreds of volunteer challengers across the state," have
 15 held prominent county-level roles within the Georgia GOP.³⁸

16 The Georgia GOP argues that True the Vote generally operated in an autonomous manner
 17 and would have performed these activities anyway, and thus its activities were not coordinated.³⁹
 18 However, the definition of "coordination" broadly covers expenditures "made in cooperation,

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 See *supra* note 10 and accompanying text; Voter Challenge Press Release.

³⁸ See *supra* note 10 and accompanying text.

³⁹ See Georgia GOP Resp. at 3.

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1 consultation or concert with, or at the request or suggestion of . . . a political party committee”
 2 and thus does not require that the coordinating party be the proximate cause of the relevant
 3 expenditure.⁴⁰ Further, in reviewing the factual record before it, the district court also rejected
 4 the idea that True the Vote would have undoubtedly participated in the Georgia Special Election
 5 absent the Georgia GOP’s request or encouragement.⁴¹ Without deciding whether the Act and
 6 its implementing regulations require a but-for causal link between a request and an expenditure,
 7 the District Court found that nevertheless, “the record gave the Commission ample reasons to
 8 believe that the Republican Party’s encouragement was a but-for cause of True the Vote’s
 9 participation in the Georgia runoff.”⁴²

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

13 2. For the Purpose of Influencing an Election

14 The coordinated efforts that True the Vote undertook with the Georgia GOP would
 15 constitute in-kind contributions from True the Vote to the Georgia GOP, provided that they were
 16 “expenditures” as that term is defined by the Act, meaning that they were made for the purpose
 17 of influencing the Georgia Senate runoff election. In determining that the expenditures at issue
 18 in this matter were for the purpose of influencing an election, the district court noted that:

⁴⁰ 11 C.F.R. § 109.20(a).

⁴¹ *Common Cause*, 2023 WL 6388883 at *8 (internal citations omitted); *see also* True the Vote Email Announcement; True the Vote Press Release.

⁴² *Common Cause*, 2023 WL 6388883 at *8 (“If the Party had not ‘request[ed]’ True the Vote’s presence in Georgia, local Republicans might not have cooperated with True the Vote’s voter eligibility challenges. If Republicans had not ‘reach[ed] out’ to see if True the Vote’s donors might ‘play’ in the runoff, True the Vote might have spent its time and money elsewhere. And so on and so forth.” (internal citations omitted)).

1 Influencing means affecting or altering. Thus, expenditures seek
 2 to influence an election when they aim to affect or alter its result
 3 — for instance, when they target the election or defeat of a clearly
 4 identified [political] candidate.

5 Here, the Commission had compelling reason to believe that True
 6 the Vote sought to alter or affect the result of the 2021 Georgia
 7 runoff. True the Vote “partnered” with the Georgia Republican
 8 Party, an entity “whose fundamental purpose is to help
 9 Republicans win elections,” in pursuing its election-related aims in
 10 Georgia. And in discussing the 2020 Presidential election, True
 11 the Vote’s leadership emphasized that “[m]ost . . . illegal votes”
 12 were “counted in Democrat counties” and “suppress[ed] legitimate
 13 results.” At least one of its donors was more candid still,
 14 describing efforts — in the aftermath of the 2020 election — to
 15 “win [the election for President Trump] by eliminating votes and
 16 changing the count.” This evidence provides compelling reasons
 17 to believe that True the Vote participated in the Georgia runoff
 18 election to help elect Republicans rather than Democrats.⁴³

19 Consistent with that opinion, the expenditures at issue in this matter appear to have been
 20 made for the purpose of influencing a federal election. In analyzing whether a payment made by
 21 a third party is a “contribution” or “expenditure,”⁴⁴ the Commission has concluded that “the
 22 question under the Act is whether” the donation, payment, or service was “provided for the
 23 purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal
 24 candidate’s] campaign.”⁴⁵ The electoral purpose of a payment may be clear on its face, as in
 25 payments to solicit contributions or for communications that expressly advocate for the election
 26 or defeat of a specific candidate, or inferred from the surrounding circumstances.⁴⁶

⁴³ *Common Cause*, 2023 WL 6388883 at *9 (internal citations omitted); *see infra* note 49 and accompanying text.

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

⁴⁵ F&LA at 6, MUR 7024 (Van Hollen for Senate).

⁴⁶ *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 a federal candidate’s company newsletter featuring discussion of the campaign resulted in contributions); Advisory Opinion 1988-22 at 5 (San Joaquin Valley Republican Assocs.)

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1 As described above, the available information indicates an electoral purpose for True the
 2 Vote's activities in connection with the 2021 Georgia Senate runoff. The court noted that "True
 3 the Vote 'partnered' with the Georgia Republican Party, an entity 'whose fundamental purpose is
 4 to help Republicans win elections' in pursuing its election-related aims in Georgia."⁴⁷
 5 Documents and statements indicate that True the Vote undertook its activities in Georgia in order
 6 to "assist with the Senate runoff election process," and that such actions were motivated by
 7 "what happened in November."⁴⁸ True the Vote has further stated that voter fraud occurs in
 8 "Democrat counties" and is "suppressing legitimate results."⁴⁹ Finally, emails summarizing
 9 conversations between True the Vote's legal counsel and donors link True the Vote's efforts to
 10 "win by eliminating votes and changing the count."⁵⁰ As the district court noted, this

(concluding that 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 Mgmt. Servs., Inc.) (finding reason to believe a 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).

⁴⁷ *Common Cause*, 2023 WL 6388883 at *9.

⁴⁸ True the Vote Press Release; True the Vote Email Announcement; *see also* *Common Cause*, 2023 WL 6388883 at *2.

⁴⁹ 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 [sic] deliberate effort to radically expand mail-in balloting creating myriad opportunities for voter fraud that does not exist with in-person voting."); *see also* *Common Cause*, 2023 WL 6388883 at *9.

⁵⁰ 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."); *see also* *Common Cause*, 2023 WL 6388883 at *17 ("At least one of its donors was more candid still, describing efforts — in the aftermath of the 2020 election — to 'win [the election for President Trump] by eliminating votes and changing the count.'").

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1 information, “provides compelling reasons to believe that True the Vote participated in the
 2 Georgia runoff election to help elect Republicans rather than Democrats.”⁵¹

3 As a result, the available information suggests that True the Vote’s activities in Georgia
 4 were undertaken for the purpose of influencing the runoff election.

5 * * *

6 In conclusion, it appears that True the Vote provided services to the Georgia GOP in the
 7 form of various services including a state-wide ballot challenge, voter hotline, ballot-curing
 8 support, signature verification training, absentee ballot drop box monitoring, and other election
 9 integrity initiatives in connection with the 2021 Senate runoff election in Georgia. Public
 10 statements from True the Vote and Georgia GOP officials as well as True the Vote’s own
 11 explanation of a meeting with the Georgia GOP indicate that these services were coordinated and
 12 therefore should have been treated like services from any other vendor and reported as in-kind
 13 contributions or else paid for at their fair market value and reported as disbursements.

14 **B. The Commission Finds Reason to Believe That the Georgia GOP Failed to**
 15 **Disclose the In-Kind Contributions It Received from True the Vote**

16 As the district court stated, “FECA requires disclosure of ‘[a]ny expenditure . . . made in
 17 cooperation, consultation, or concert with, or at the request or suggestion of . . . a political
 18 party.’”⁵² Specifically, the Act and Commission regulations require political committees to file
 19 periodic reports accurately disclosing all of their receipts, disbursements, and debts and
 20 obligations, including coordinated expenditures.⁵³ These disclosure requirements serve

⁵¹ *Common Cause*, 2023 WL 6388883 at *9.

⁵² *Common Cause*, 2023 WL 6388883 at *7 (quoting 11 C.F.R. § 109.20).

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

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1 important transparency and anticorruption interests, as they “provide the electorate with
 2 information as to where political campaign money comes from and how it is spent[,] . . . [and]
 3 deter actual corruption and avoid the appearance of corruption by exposing large contributions
 4 and expenditures to the light of publicity.”⁵⁴ Political committees must report the total amount
 5 of all receipts and disbursements for the reporting period;⁵⁵ itemize the name and address of each
 6 person from whom the committee received contributions aggregating in excess of \$200 in a
 7 calendar year along with the dates and amounts of the contributions;⁵⁶ and itemize the name and
 8 address of each person to whom the committee made expenditures exceeding, in aggregate
 9 amount or value, \$200 per calendar year as well as the date, amount, and purpose of the
 10 expenditures.⁵⁷ A coordinated expenditure must be reported as both a contribution received by,
 11 and an expenditure made by, the political committee with whom the expenditure was
 12 coordinated.⁵⁸

13 The available information indicates that the Georgia GOP failed to disclose any
 14 contribution or expenditure information in connection with its self-described partnership with
 15 True the Vote, including the dates, amounts, and purposes of the in-kind contributions.
 16 Accordingly, the Commission finds reason to believe that the Georgia GOP violated 52 U.S.C.

⁵⁴ *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976); *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. 421, 422 (Jan. 3, 2003) (explaining that committees must report coordinated expenditures in this manner in order to not overstate cash-on-hand balances).

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1 § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report required information in its

2 Commission filings.