

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 7513**

DATE COMPLAINT FILED: Oct. 15, 2018

DATE OF NOTIFICATION: Oct. 17, 2018

DATE OF LAST RESPONSE: Nov. 5, 2018

DATE ACTIVATED: Mar. 19, 2019

**EXPIRATION OF SOL:**

Oct. 2, 2023 (earliest) / Nov. 6, 2023 (latest)

**ELECTION CYCLE:** 2018**COMPLAINANT:**

James E. Barton II

**RESPONDENT:**

Community Issues Project

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(4)(A)	11 C.F.R. § 100.17
52 U.S.C. § 30101(17), (22), (23), (24)	11 C.F.R. § 100.22
52 U.S.C. § 30102	11 C.F.R. § 100.26
52 U.S.C. § 30103	11 C.F.R. § 100.27
52 U.S.C. § 30104	11 C.F.R. § 100.28
52 U.S.C. § 30120(a)	11 C.F.R. § 104.4
11 C.F.R. § 100.5	11 C.F.R. § 109.10
11 C.F.R. § 100.16	11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:** FEC Filing Statements**FEDERAL AGENCIES CHECKED:****STATE AGENCIES CHECKED:****I. INTRODUCTION**

The Community Issues Project, a 501(c)(4) organization, made robocalls, sent mailers, and promoted social media advertisements criticizing Greg Stanton and supporting Steve Ferrara, candidates in the 2018 general election in Arizona's 9th Congressional District. The Complaint alleges that Community Issues Project failed to register as a political committee, report

independent expenditures, and include proper disclaimers on these communications, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). For the reasons discussed below, we recommend that the Commission (1) find reason to believe that the Community Issues Project failed to organize, register, and report as a political committee, (2) find reason to believe that the Community Issues Project failed to properly report independent expenditures, and (3) exercise its prosecutorial discretion to dismiss the allegations that the Community Issues Project failed to include proper disclaimers on its communications and send a letter of caution.

## **II. FACTUAL BACKGROUND**

The Community Issues Project (“CIP”) is a 501(c)(4) social welfare organization registered with the Internal Revenue Service.<sup>1</sup> CIP describes itself as a Phoenix social welfare organization focusing on the issues of homelessness, budget and fiscal responsibility, and local government accountability.<sup>2</sup> The Complaint attaches three CIP communications the Complainant received in October 2018 regarding Stanton and referring to his tenure as Phoenix’s mayor.<sup>3</sup>

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<sup>1</sup> Community Issues Project Resp. at 1 (Nov. 5, 2018) (“CIP Resp.”). CIP is not registered with the Commission or the State of Arizona. *See Search*, ARIZ. CORPORATION COMMISSION, <https://ecorp.azcc.gov/EntitySearch/Index> (search in “Entity Name” field for “Community Issues Project”) (last visited Sept. 17, 2019).

<sup>2</sup> *See* CIP Resp. at 1; *see also* COMMUNITY ISSUES PROJECT, <http://www.communityissuesproject.com/> (last visited Sept. 17, 2019) [hereinafter CIP Website].

<sup>3</sup> Compl. at 1 (Oct. 15, 2018); *see also* FEC Form 2, Greg Stanton Amended Statement of Candidacy (Dec. 14, 2018). Greg Stanton’s principal campaign committee is Stanton for Congress. FEC Form 1, Stanton for Congress Amended Statement of Organization, Stanton for Congress (Dec. 21, 2018). Stanton resigned as Phoenix mayor on May 29, 2018, to run for Congress. *See* Jessica Boehm, *It’s Official: Phoenix Mayor Greg Stanton Resigns to Run for Congress*, ARIZ. REPUBLIC (May 29, 2018, 3:41PM), <https://www.azcentral.com/story/news/local/phoenix/2018/05/29/phoenix-mayor-greg-stanton-resigns-thelda-williams-interim-mayor/652079002/>. He defeated Ferrara in the Nov. 6, 2018 general election.

The first communication is a mailer the Complainant received around October 4, 2018.<sup>4</sup>

The front of the mailer depicts Stanton riding a bicycle past a homeless man with a cardboard sign that reads “Work 4 Food,” and states “THANK YOU, GREG STANTON!” The back of the mailer states “ARIZONA DESERVES BETTER: GREG STANTON HAS LET US DOWN” and “GREG STANTON PROMISED TO BE A MAYOR FOR EVERYONE, BUT ONLY DELIVERED FOR HIS MILLIONAIRE FRIENDS.” In a box inset on the back of the mailer under the headline “\$1.5 BILLION IN GIVEAWAYS,” text reads “We thought he was different, but Greg Stanton has proven to be just another selfish politician: Big on promises. Knows how to line the pockets of his friends. Bad at getting the job done. Now he wants to ride away from the mess he made.” The mailer includes a boxed disclaimer that reads “Paid for by the Community Issues Project. Not authorized by or coordinated with any candidate or candidate’s committee.”

The second communication is an Instagram video the Complainant viewed shortly before October 4, 2018.<sup>5</sup> The video runs approximately 15 seconds with the following content:

The Instagram Video		
Narration	On-Screen Text	Visual
Greg Stanton promised to end chronic homelessness in Phoenix.	GREG STANTON PROMISED TO END CHRONIC HOMELESSNESS IN PHOENIX	Stanton’s face.
A homeless camp that’s growing in the heart of downtown Phoenix.		Newscaster narrating with footage of law enforcement and restrained individuals.
But during his tenure as Mayor, homelessness rose 149%.	HOMELESSNESS ROSE 149%!	Stanton on a bicycle, riding “up” an increasing bar graph.

<sup>4</sup> Compl. at 1. A copy of the mailer is attached to this Report as Attachment 1. CIP states in its Response that there were two mailers, “both focused exclusively on skyrocketing homelessness in Phoenix.” CIP Resp. at 3. The mailer attached to the Complaint appears to be one of the two mailers CIP referenced.

<sup>5</sup> Compl. at 1.

Don't let Mayor Greg Stanton ride away from his mess.	PAID FOR BY THE COMMUNITY ISSUES PROJECT. THE CIP IS A NONPROFIT SOCIAL WELFARE ORGANIZATION OPERATING PURSUANT TO SECTION 501c4 OF THE IRC OF 1986, AS AMENDED.	Stanton on a bicycle riding down the street next to a homeless man with a sign that reads "Work 4 Food."
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1 The video was labeled as "Sponsored" and "Paid for by Community Issues Project."<sup>6</sup> CIP  
 2 acknowledges it promoted an additional, six-second video on Instagram, which appears to be the  
 3 six-second video available on CIP's YouTube page entitled "Riding Away."<sup>7</sup>

4 The third communication is a robocall the Complainant received on October 2, 2018.<sup>8</sup>

5 The robocall was approximately 45 seconds long and stated:

6 This is the Community Issues Project. Are you concerned about the increased homeless  
 7 population you see in our community? While he was Mayor, Greg Stanton promised to  
 8 help end homelessness in Phoenix. Instead, our homelessness increased 149%. In just a  
 9 few years, Greg Stanton let us down. Don't let Greg Stanton bike off into the sunset and  
 10 leave us to clean up his mess. Paid for by the Community Issues Project. Not authorized  
 11 by or coordinated with any candidate or candidate's committee. 765-560-3781.

12 The available information demonstrates CIP made additional communications in October  
 13 and November 2018—beyond those identified in the Complaint—that reference Ferrara,  
 14 Stanton's opponent in the November 2018 election. CIP paid to promote these videos on  
 15 Facebook and Instagram and also posted them to its YouTube channel.<sup>9</sup>

<sup>6</sup> A copy of this video is also available through the Facebook Ad Library. *See Community Issues Project*, FACEBOOK: AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=Community%20Issues%20Project&view\\_all\\_page\\_id=2301047003461649](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=Community%20Issues%20Project&view_all_page_id=2301047003461649) (last visited Sept. 17, 2019) [hereinafter CIP Ad Library Profile] (video active on Facebook Oct. 2-Oct. 15, 2018).

<sup>7</sup> *See* CIP Resp. at 3; *see also* Community Issues Project, *Riding Away*, YOUTUBE (Oct. 4, 2018), <https://www.youtube.com/watch?v=jnfInQMs638> [hereinafter Riding Away Ad]. "Riding Away" is identical to the last seven seconds of the Instagram video with two minor differences: (1) the narration says "Phoenix homelessness is up 149%;" and (2) the on-screen text includes "DON'T LET MAYOR GREG STANTON RIDE AWAY FROM HIS MESS" alongside the "Paid for" disclaimer. *See id.*

<sup>8</sup> Compl. at 1.

<sup>9</sup> *See* CIP Ad Library Profile; *Community Issues Project*, YOUTUBE, <https://www.youtube.com/channel/UCuE3tVZWCI4X8gNzh9vuraA> (last visited Sept. 17, 2019).

1 One, entitled "Real Solutions,"<sup>10</sup> had the following content:

<b>"Real Solutions"</b>		
<b>Narration</b>	<b>On-Screen Text</b>	<b>Visual</b>
Dr. Steve Ferrara is not a career politician.	DOCTOR STEVE FERRARA	Ferrara's military photo and Ferrara in military fatigues.
He has gained the respect and support of many leaders in Arizona, including Senator Jon Kyl.	SUPPORTED BY SENATOR JON KYL	U.S. Senator Jon Kyl
Like Senator Kyl, he is concerned about the ever-expanding problem of homelessness.		Homeless men.
And he will seek a sensible, common-sense solution to our homelessness problem.	STEVE FERRARA HAS REAL SOLUTIONS  PAID FOR BY THE COMMUNITY ISSUES PROJECT. THE CIP IS A NON-PROFIT SOCIAL WELFARE ORGANIZATION OPERATING PURSUANT TO SECTION 501c4 OF THE IRC OF 1986, AS AMENDED. WWW.COMMUNITYISSUESPROJECT.COM.	Ferrara's face superimposed on a cityscape.

2 The other, entitled "Proven Leader,"<sup>11</sup> had the following content:

<b>"Proven Leader"</b>		
<b>Narration</b>	<b>On-Screen Text</b>	<b>Visual</b>
Phoenix leaders have neglected the rampant homelessness and out of control budget for too long.	PHOENIX LEADERS HAVE NEGLECTED OUR PROBLEMS FOR TOO LONG	Homeless men.
Doctor Steve Ferrara is a proven leader.	DOCTOR STEVE FERRARA	Ferrara's military photo and Ferrara in military fatigues.
He is a Navy combat veteran, not a career politician.	NOT A CAREER POLITICIAN	Ferrara performing medical procedure on child in Navy uniform.
True leaders like Jon Kyl support Steve	JON KYL SUPPORTS STEVE FERRARA	U.S. Senator Jon Kyl.
because he has real solutions for Phoenix.	PAID FOR BY THE COMMUNITY ISSUES PROJECT. THE CIP IS A NON-PROFIT SOCIAL WELFARE ORGANIZATION OPERATING PURSUANT TO SECTION 501c4 OF THE IRC OF 1986, AS AMENDED. WWW.COMMUNITYISSUESPROJECT.COM.	Ferrara and another man.

<sup>10</sup> Community Issues Project, *Real Solutions*, YouTube (Oct. 31, 2018), <https://www.youtube.com/watch?v=4cgqlCwPrm8> [hereinafter Real Solutions Ad].

<sup>11</sup> Community Issues Project, *Proven Leader*, YouTube (Nov. 1, 2018), [https://www.youtube.com/watch?v=0MuiE\\_wr-Lg](https://www.youtube.com/watch?v=0MuiE_wr-Lg) [hereinafter Proven Leader Ad].

The Complaint alleges the communications in the Complaint expressly advocate the defeat of Stanton, and therefore CIP violated the Act by failing to register as a political committee, report its spending on the communications as independent expenditures, and include appropriate disclaimers on the communications.<sup>12</sup> CIP responds it is not a political committee, and the communications were not independent expenditures because they did not expressly advocate the election or defeat of identified candidates.<sup>13</sup> Instead, CIP contends its communications are “public policy messages” focused on homelessness, fiscal responsibility, and local government accountability.<sup>14</sup> Finally, CIP argues that it included identifying information on all relevant communications even though it was not required to include disclaimers.<sup>15</sup>

Neither the Complaint nor CIP's Response identify the costs associated with any of CIP's communications.<sup>16</sup> There are no Form 990s available to date for CIP on the IRS website.<sup>17</sup> Nevertheless, CIP estimated that it would report approximately \$200,000 in 2018 revenues, and “a bit less” than that in expenditures, including 25% (approximately \$50,000) on administrative and overhead expenses, 70% (approximately \$140,000) on “programmatic activities[,]” and 5%

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<sup>12</sup> Compl. at 1-2.

<sup>13</sup> CIP Resp. at 1-2.

<sup>14</sup> *Id.* at 1-3.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> The Complaint speculates that it “seems likely” the aggregate expenditures exceeded \$10,000 “given the three separate professionally produced media pieces.” Compl. at 2.

<sup>17</sup> See *Results for Tax Exempt Organization Search*, IRS (search for “Community Issues Project” in “Search Term” field with “Organization Name” filter) <https://apps.irs.gov/app/eos/allSearch.do?ein1=&names=Community+Issues+Project&resultsPerPage=25&indexOfFirstRow=0&dispatchMethod=searchAll&city=&state=All+States&country=US&postDateFrom=&postDateTo=&exemptTypeCode=al&deductibility=all&sortColumn=orgName&isDescending=false> (last visited Sept. 17, 2019). CIP had not yet prepared a Form 990 for 2018 when it responded to the Complaint but stated it would file a Form 990 with the IRS “on or about May 15, 2019.” CIP Resp. at 2.

(approximately \$10,000) retained as reserves.<sup>18</sup> Finally, Facebook's Ad Library indicates CIP paid \$26,238 to promote three ads on Facebook's platforms: it spent between \$10,000 and \$50,000 each to promote the 15-second Instagram video between October 2 and October 15, 2018, and "Real Solutions" between October 31 and November 6, 2018, and between \$1,000 and \$5,000 to promote "Proven Leader" between November 1 and November 6, 2018.<sup>19</sup>

### III. LEGAL ANALYSIS

#### A. Political Committee Status

Political committees must register with the Commission and periodically disclose their receipts and disbursements.<sup>20</sup> The Act and Commission regulations define a "political committee" as "any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year."<sup>21</sup> In *Buckley v. Valeo*,<sup>22</sup> the Supreme Court held that defining political committee status "only in terms of [the] amount of annual 'contributions' and 'expenditures'" might be overbroad, reaching "groups engaged purely in issue discussion."<sup>23</sup> To cure that infirmity, the Court concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the

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<sup>18</sup> CIP Resp. at 2. CIP also represents its reserve account held \$5,000 at the time of its Response. *Id.*

<sup>19</sup> *See* CIP Ad Library Profile.

<sup>20</sup> 52 U.S.C. §§ 30102, 30103, 30104.

<sup>21</sup> *Id.* § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>22</sup> 424 U.S. 1 (1976).

<sup>23</sup> *Id.* at 79.

1 *major purpose of which is the nomination or election of a candidate.”*<sup>24</sup> Accordingly, under the  
 2 statute as thus construed, an organization that is not controlled by a candidate must register as a  
 3 political committee only if it (1) crosses the \$1,000 threshold and (2) has as its “major purpose”  
 4 the nomination or election of federal candidates. To assess whether an organization has made an  
 5 “expenditure,” the Commission analyzes whether spending on any of an organization’s  
 6 communications made independently of a candidate constitute express advocacy under 11 C.F.R.  
 7 § 100.22.<sup>25</sup>

8 Commission regulations found at 11 C.F.R. § 100.22(a) provide that a communication  
 9 expressly advocates the election or defeat of a clearly identified candidate when it uses certain  
 10 phrases or uses campaign slogans or individual words, “which in context can have no other  
 11 reasonable meaning than to urge the election or defeat of one or more clearly identified  
 12 candidate(s).”<sup>26</sup> Under 11 C.F.R. § 100.22(b), a communication constitutes express advocacy if  
 13 “[w]hen taken as a whole and with limited reference to external events, such as the proximity to  
 14 the election, [the communication] could only be interpreted by a reasonable person as containing  
 15 advocacy of the election or defeat of one or more clearly identified candidate(s) because—  
 16 (1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of  
 17 only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages

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<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> Political Committee Status, 72 Fed. Reg. 5596 (Feb. 7, 2007) (Supplemental Explanation and Justification) [hereinafter Supplemental E&J].

<sup>26</sup> 11 C.F.R. § 100.22(a). The term “clearly identified” means “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or the ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for Senate in the State of Georgia.’” 11 C.F.R. § 100.17.



1 actions to elect or defeat one or more clearly identified candidate(s) or encourages some other  
2 kind of action.”<sup>27</sup>

3 The second prong under the *Buckley* test is whether the organization’s “major purpose” is  
4 the nomination or election of federal candidates. The Commission’s Supplemental E&J  
5 explained that “the major purpose doctrine requires fact-intensive analysis of a group’s campaign  
6 activities compared to its activities unrelated to campaigns.”<sup>28</sup> To determine an entity’s “major  
7 purpose,” the Commission explained that it considers a group’s “overall conduct,” including  
8 public statements about its mission, organizational documents, government filings (*e.g.*, IRS  
9 notices), the proportion of spending related to “Federal campaign activity (*i.e.*, the nomination of  
10 a Federal candidate),” and the extent to which fundraising solicitations indicate funds raised will  
11 be used to support or oppose specific candidates.<sup>29</sup> The Commission compares how much of an  
12 organization’s spending is for “*federal campaign activity*” relative to “activities that [a]re not  
13 campaign related.”<sup>30</sup> In 2016, the United States District Court for the District of Columbia in  
14 *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”) instructed the  
15 Commission, when examining an organization’s major purpose, to look beyond express  
16 advocacy and consider whether other communications at issue indicate a “campaign-related

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<sup>27</sup> 11 C.F.R. § 100.22(b).

<sup>28</sup> Supplemental E&J at 5601-02.

<sup>29</sup> *Id.* at 5597, 5605.

<sup>30</sup> *Id.* at 5601, 5605 (emphasis added).

purpose.”<sup>31</sup>

## 1. Statutory Threshold

It appears that CIP exceeded the \$1,000 statutory threshold to trigger political committee status because we conclude its communications contain express advocacy under 11 C.F.R. § 100.22(b), making the amounts CIP spent on them expenditures.<sup>32</sup> All of CIP's communications in the record clearly identify congressional candidates Stanton or Ferrara. The mailer states prominently in large font that “Arizona Deserves Better” and “Greg Stanton has let us down,” effecting a message that “Arizona deserves better” than Stanton, or, in other words, Arizona could get “better” than Stanton if voters elect his opponent.<sup>33</sup> Under these facts, this interpretation is the only reasonable one because, at the relevant times, Stanton was a private citizen, not a sitting official. CIP argues it intended to encourage the public to contact the mayor's office, but that explanation strains credulity because the communications do not provide contact information for the mayor's office and Stanton was no longer mayor.<sup>34</sup> In fact, the mailer

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<sup>31</sup> 209 F. Supp. 3d 77, 93 (D.D.C. 2016). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose, but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

<sup>32</sup> None of the communications constitute express advocacy under 11 C.F.R. § 100.22(a).

<sup>33</sup> See F&LA at 15, MUR 5024R (Council for Responsible Government) (“[T]he only thing a reader can do to ensure that New Jersey has [the type of leader the advertisement praises] is to vote against [the candidate].”).

<sup>34</sup> CIP Resp. at 3; see F&LA at 13, MUR 6538R (Americans for Job Security, *et al.*) (finding commentary on issue positions has “no nexus with the legislative process” where individuals in ads were not officeholders at the time and thus were “in no position to affect the federal political activities, issues or programs mentioned in the ads”).

1 was distributed approximately four months after Stanton resigned as mayor, but only one month  
2 before his federal election.<sup>35</sup>

3 CIP's Instagram and robocall communications contain similar messages of express  
4 advocacy. "Don't let Greg Stanton ride away from his mess" (Instagram) and "Don't let Greg  
5 Stanton bike off into the sunset and leave us to clean up his mess" (robocall) appear to refer to  
6 the "mess" of homelessness in Phoenix. However, the exhortations "Don't let Greg Stanton"  
7 resemble those in *FEC v. Furgatch*, in which the Ninth Circuit concluded a newspaper  
8 advertisement insisting "Don't let him [incumbent President Jimmy Carter] do it" constituted  
9 express advocacy.<sup>36</sup> The court reasoned the language "don't let him" was a command that  
10 expressly advocated rejecting Carter electorally because the advertisement mentioned him as a  
11 current officeholder, named his opponent, attacked his character and record, and ran less than one  
12 week before the election.<sup>37</sup>

13 The Instagram video and robocall contain the same type of command as in the *Furgatch*  
14 advertisement: "don't let" Stanton do something. With limited reference to external events, the  
15 only reasonable interpretation of these exhortations is that the reader should not "let" Stanton  
16 escape a "mess" by going to Washington as a Representative. Similarly, the mailer's language  
17 has only one reasonable interpretation: Stanton wants to "ride away" to Congress.

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<sup>35</sup> See *FEC v. Furgatch*, 807 F.2d 857, 864-65 (9th Cir. 1987) ("Timing the appearance of the advertisement less than a week before the election left no doubt of the action proposed."); First Gen. Counsel's Rpt. at 11, MUR 5136 (Gore/Lieberman, Inc.) ("Less than four weeks [before the election] might be comparable to the publication in *Furgatch* (one week).").

<sup>36</sup> 807 F.2d 857, 858 (9th Cir. 1987).

<sup>37</sup> *Id.* at 858-59, 864-65.

1           Finally, CIP's "Real Solutions" and "Proven Leader" communications contain express  
 2   advocacy in support of Ferrara's candidacy. They portray Ferrara as a "proven leader," not a  
 3   "career politician," highlight Arizona leaders' support for him, and promote his "real" and  
 4   "sensible common-sense solutions" to Phoenix's problems (including homelessness).<sup>38</sup> These  
 5   statements can only be interpreted as advocating his election because he was a private citizen at  
 6   the time, was never a public officeholder, and the only way for the target audience to get Ferrara  
 7   to implement such solutions and leadership was to elect him to Congress.<sup>39</sup> CIP's promotion of  
 8   Ferrara's proposals on homelessness stands in stark contrast to its criticism of Stanton's record  
 9   on the issue. Further, the Ferrara advertisements were published less than a week before the  
 10   election, even closer to the election than CIP's anti-Stanton communications.<sup>40</sup> These  
 11   timeframes parallel the timeframe in *Furgatch*, where the Ninth Circuit noted the timing "less  
 12   than a week before the election left no doubt of the action" proposed: to vote against the

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<sup>38</sup>       Proven Leader Ad; Real Solutions Ad.

<sup>39</sup>       In MUR 6538R, the Commission found reason to believe an organization failed to organize, register, and report as a political committee based on advertisements that supported or criticized federal candidates that were not officeholders when the ads ran. F&LA at 13, MUR 6538R. The Commission noted the candidates were thus "in no position to affect the federal political activities, issues, or programs mentioned in the ads," the statements encouraging the candidates to maintain certain positions on issues "have no nexus with the legislative process," the candidates were in "no position to implement . . . their plans unless they were elected," and the candidates' positions on issues "would likely be of minimal significance to legislative activities in Washington unless [they] were first elected" to federal office. *Id.*; see also F&LA at 8, MUR 5831 (Softer Voices) (concluding advertisement contained express advocacy under 11 C.F.R. § 100.22(a) in part because "the use of the word 'leadership' is a reference to [the candidate's] election to the office of Senator, where he would be a leader").

<sup>40</sup>       "Real Solutions" began running on Facebook platforms on October 31, 2018 and "Proven Leader" began on November 1, 2018. Both ran through November 6, 2018. See CIP Ad Library Profile.

criticized candidate.<sup>41</sup> Outside of the electoral context, these videos and their support of Ferrara's "proven leader[ship]" and "solutions" to Phoenix's problems are meaningless.<sup>42</sup>

Overall, CIP spent \$26,238 to promote the 15-second Instagram video and the two Ferrara videos.<sup>43</sup> Because we conclude these communications contain express advocacy, all of the \$26,238 applies to the \$1,000 statutory threshold. Furthermore, while the record does not reflect what CIP spent on the mailer and robocalls—which we conclude also contain express advocacy—they both appear professionally produced and distributed and therefore likely cost at least \$1,000 each to produce and disseminate as well. Thus, the available information demonstrates CIP satisfied the first prong of the political committee test by making expenditures in excess of \$1,000 during calendar year 2018.<sup>44</sup>

## 2. Major Purpose

The available information indicates that CIP's major purpose in 2018 was the nomination or election of federal candidates. CIP denies that its major purpose is the election of candidates and characterizes itself as an issue advocacy organization seeking to educate Arizona taxpayers on specific local issues.<sup>45</sup> While the Commission may consider such statements made by the

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<sup>41</sup> See *Furgatch*, 807 F.2d at 865; see also 11 C.F.R. § 100.22(b) (citing "proximity to the election" as the enumerated example of "external events" permissibly considered in the express advocacy analysis).

<sup>42</sup> Cf. F&LA at 15, MUR 5024R ("[O]utside the context of the upcoming election, the [communications] are virtually meaningless.").

<sup>43</sup> See CIP Ad Library Profile. The record indicates that CIP spent between \$10,000 and \$15,238 to sponsor the Instagram video and between \$11,000 and \$16,238 to promote the two Ferrara videos.

<sup>44</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>45</sup> CIP Resp. at 1-3; CIP Website; *Community Issues Project*, FACEBOOK, <https://www.facebook.com/CommunityIssuesProject/> (last visited Sept. 17, 2019) [hereinafter CIP Facebook] ("About Us"); CIP YouTube ("About").

organization, they are “not necessarily dispositive.”<sup>46</sup> Under the Commission’s case-by-case approach, CIP’s overall conduct, including its disbursements, activities, and statements, indicates the organization’s major purpose was the nomination or election of federal candidates.<sup>47</sup>

As we conclude above, all of the communications in the Complaint and otherwise publicly available expressly advocate the election of Ferrara or the defeat of Stanton.

Alternatively, even if some of these communications do not constitute express advocacy, they all demonstrate campaign-related purposes. In MUR 6538R, the Commission heeded the remanding court’s instructions to “look beyond express advocacy and consider whether the other communications at issue indicate a ‘campaign-related purpose.’”<sup>48</sup> It found reason to believe an organization should have registered as a political committee where a number of communications, “though not necessarily express advocacy, support[ed] a conclusion that there is reason to believe that the group’s major purpose is the nomination or election of federal candidates.”<sup>49</sup> The Commission characterized advertisements as “indicative of a major purpose to nominate or elect a federal candidate” for criticizing a candidate’s record in prior office, suggesting that record was inconsistent with the candidate’s statements on those issues, and favorably contrasting a candidate with Washington even though the candidate was not a federal officeholder and thus in “no position to implement... their plans unless they were elected...”<sup>50</sup>

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<sup>46</sup> F&LA at 11, MUR 6538R (citing Supplemental E&J at 5606); *see also Real Truth About Obama v. FEC*, No. 3:08-CV-483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) (“A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.”), *aff’d*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010).

<sup>47</sup> *See* Supplemental E&J at 5597; F&LA at 11, MUR 6538R (citing Supplemental E&J at 5597).

<sup>48</sup> F&LA at 9, MUR 6538R.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.* at 13-14.

1           The mailer, robocall, and Instagram video all oppose Stanton. The former criticizes him  
 2   by stating that he “let [Phoenix residents] down,” “promised to be a mayor for everyone, but only  
 3   delivered for his millionaire friends,” “has proven to be just another selfish politician,” “[k]nows  
 4   how to line the pockets of his friends,” and is “[b]ad at getting the job done.” The latter two  
 5   criticize Stanton by highlighting the increase in homelessness during his tenure as mayor and  
 6   contrasting that record with his past statements on homelessness.<sup>51</sup> On the other hand, “Real  
 7   Solutions” and “Proven Leader” laud Ferrara’s credentials and “proven leader[ship]” and extol  
 8   his solutions to local problems.<sup>52</sup> Thus, even if these communications do not contain express  
 9   advocacy, they have “campaign-related purpose[s]” and qualify as federal campaign activity in  
 10   assessing CIP’s major purpose.

11           The available information demonstrates CIP’s spending on federal campaign activity is  
 12   substantial relative to its non-campaign related activities.<sup>53</sup> In aggregate, CIP spent \$26,238 to  
 13   promote three campaign-related communications between October 2 and November 6, 2018.<sup>54</sup>  
 14   More broadly, CIP states it spent \$140,000 on “programmatic activities” in 2018, which it  
 15   describes as “public policy education efforts... executed using a variety of... tools,” including a  
 16   website, telephone messaging, internet, and mail.<sup>55</sup> That description aligns with the categories of  
 17   communications at issue here, and it is unlikely that CIP characterized any of those expenditures

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<sup>51</sup>     *See id.* at 13-14 (advertisement criticized candidate’s record in prior office and suggested record was inconsistent with public statements on those issues). “Riding Away” criticizes Stanton’s record as Phoenix mayor much like the 15-second Instagram communication and the robocall.

<sup>52</sup>     *See id.* at 13 (advertisements favorably contrasted the candidate’s background and positions against “activity conducted in Washington” while candidates were not federal officeholders).

<sup>53</sup>     *Cf.* Supplemental E&J at 5601, 5605.

<sup>54</sup>     *See* CIP Ad Library Profile.

<sup>55</sup>     *See* CIP Resp. at 2; *accord* CIP Website.

as administrative expenses, suggesting its “programmatic activities” were composed primarily, if not entirely, of communications with campaign-related purposes. Additionally, it appears that CIP formed in September 2018 shortly before the communications were made.<sup>56</sup> The record does not include any information that CIP spent money in 2018 on communications or other non-administrative activities that do not support Ferrara or criticize Stanton. Further, CIP did not present any information, other than unsupported estimates, rebutting the allegation that it spent significant portions of its budget on federal campaign activity. Thus, it is reasonable to infer that CIP’s \$140,000 budget for “programmatic activities” in 2018 primarily financed communications supporting or criticizing federal candidates.<sup>57</sup>

The Commission has declined to adopt any bright-line rule but has found the major purpose test satisfied where an organization spent more than 50% of its total expenditures on independent expenditures and electioneering communications.<sup>58</sup> Even if not all of the \$140,000 in programmatic activities expenditures were campaign-related, the available information is sufficient to infer that CIP’s major purpose was the nomination or election of federal candidates

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<sup>56</sup> There is no information in the Complaint, CIP’s Response, or otherwise publicly available to indicate that CIP existed before 2018. *See, e.g.*, I.R.S. Determination Ltr. 948 (Mar. 26, 2019), [https://apps.irs.gov/pub/epostcard/dl/FinalLetter\\_83-1865509\\_COMMUNITYISSUESPROJECT\\_09142018\\_01.tif](https://apps.irs.gov/pub/epostcard/dl/FinalLetter_83-1865509_COMMUNITYISSUESPROJECT_09142018_01.tif) (listing September 12, 2018, effective date of exemption); *Showing results for: communityissuesproject.com*, ICANN WHOIS, <https://whois.icann.org/en/lookup?name=communityissuesproject.com> (last visited Sept. 17, 2019) (listing September 20, 2018, as registration date for CIP’s website); CIP Facebook (listing September 20, 2018, as creation date); CIP Ad Library Profile (same). In *Buckley v. Valeo*, the Supreme Court noted that “ad hoc” organizations existing for fewer than six months are more likely than established groups to be composed of individuals seeking to “evad[e] the applicable contribution limitations by labeling themselves committees.” 424 U.S. at 35-36.

<sup>57</sup> It appears that CIP has maintained some level of activity in 2019 related to the runoff election for Mayor of Phoenix, including mailers and robocalls. *See, e.g.*, Jessica Boehm, *Why are there so many negative ads in Phoenix’s mayoral race? Thank dark money*, AZCENTRAL (Mar. 8, 2019, 12:20PM), <https://www.azcentral.com/story/news/local/phoenix/2019/03/08/why-so-many-negative-ads-phoenix-mayor-race-political-action-committees/3061729002/>. The “Open Letter to Taxpayers” on CIP’s Website appears to confirm the content of at least one of the communications described in the article above. *See* CIP Website.

<sup>58</sup> F&LA at 5 & n.27, 15, MUR 6538R (citing proposed rulemakings).



based on CIP's nearly \$200,000 in stated expenditures in 2018.<sup>59</sup> Therefore, we recommend the Commission find reason to believe the Community Issues Project violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

#### **B. Independent Expenditure Reporting**

An "independent expenditure" is an expenditure by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not coordinated with a candidate, a candidate's authorized committee or their agents, or a political party committee or its agents.<sup>60</sup> The Act and Commission regulations require political committees that make independent expenditures to file reports disclosing their independent expenditures.<sup>61</sup> Other persons who make independent expenditures aggregating more than \$250 in a calendar year must also file reports of independent expenditures.<sup>62</sup> Political committees and other persons that make or contract to make independent expenditures at any time during a calendar year—up to and including the 20th day before an election—must disclose the activity within 48 hours each time that the expenditures aggregate \$10,000 or more.<sup>63</sup> The Complaint alleges CIP failed to make the required 48-hour reports disclosing the three communications it identifies.<sup>64</sup>

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<sup>59</sup> In MUR 6538R, the Commission found reason to believe "[w]ithout determining whether it is *necessary* to cross a 50 percent threshold" of spending on campaign-related purposes because there was "*sufficient*" information to believe organization's major purpose was the nomination or election of federal candidates where 52% of documented expenditures were for independent expenditures of electioneering communications. *Id.* at 15.

<sup>60</sup> 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

<sup>61</sup> 52 U.S.C. § 30104(b)(4)(H)(iii).

<sup>62</sup> *Id.* § 30104(c)(1); *see also* 11 C.F.R. §§ 104.4, 109.10(b).

<sup>63</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. §§ 104.4(b), 109.10(c).

<sup>64</sup> Compl. at 1-2.

1           As discussed above, we conclude that CIP is a political committee and all the relevant  
2   communications clearly identify federal candidates and contain express advocacy.<sup>65</sup> The  
3   Complaint does not allege, nor does the record suggest, the communications were coordinated  
4   with a candidate, a candidate's authorized committee, a political party committee, or agents  
5   thereof. Thus, CIP's expenditures on the communications at issue in this matter appear to be  
6   independent expenditures and CIP was required to appropriately report them, but did not do so.  
7   Therefore, we recommend the Commission find reason to believe the Community Issues Project  
8   violated 52 U.S.C. § 30104(b)(4)(H)(iii) for failing to report independent expenditures.

9           Additionally, because the available information indicates CIP spent between \$10,000 and  
10   \$15,238 to distribute the Instagram video and those expenditures were made more than 20 days  
11   before an election, we recommend the Commission find reason to believe the Community Issues  
12   Project violated 52 U.S.C. § 30104(g)(2) for failing to file a 48-hour report with regard to its  
13   expenditures on the Instagram video.<sup>66</sup> Because the available information indicates CIP made  
14   independent expenditures after the 20th day before an election, but more than 24 hours before,  
15   CIP may have been required to make 24-hour reports as well.<sup>67</sup> The available information does  
16   not, however, indicate the timing or precise amount of expenditures spent on the mailer and  
17   robocalls. An investigation of CIP's expenditures will allow us to determine whether CIP should

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<sup>65</sup>       *See supra* Section III.A.1.

<sup>66</sup>       The available information suggests that this communication ran between October 2 and 15, 2018. *See* CIP Ad Library Profile. Therefore, it does not appear that CIP was required to make 24-hour reports for this particular communication. *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R §§ 104.4(c), 109.10(d).

<sup>67</sup>       *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R §§ 104.4(c), 109.10(d). CIP promoted "Real Solutions" and "Proven Leader" on Facebook platforms between October 31 and November 6, 2018, and between November 1 and November 6, 2018, respectively. CIP Ad Library Profile; *see also supra* note 40.

have filed 48-hour or 24-hour reports regarding those independent expenditures under 52 U.S.C. § 30104(g)(1) and (2) and 11 C.F.R §§ 104.4(c) and 109.10(c) and (d).

Even if CIP is not a political committee under the Act, the available information indicates that CIP spent more than \$250 on the relevant communications. Therefore, in the alternative to the above recommendations, we recommend the Commission find reason to believe the Community Issues Project violated 52 U.S.C. § 30104(c)(1) and (g)(2). Under this alternative finding, we would investigate the costs and timing of the communications to determine whether CIP should have filed 48-hour or 24-hour reports regarding the mailer and robocalls under 52 U.S.C. § 30104(g)(1) and (2) and 11 C.F.R §§ 104.4(c) and 109.10(c) and (d).

### **C. Disclaimers**

The Act requires disclaimers on all public communications made by a political committee and on public communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate.<sup>68</sup> “Public communications” include “mass mailings,” which are mailings of more than 500 pieces of mail of an identical or substantially similar nature within any 30-day period,”<sup>69</sup> “telephone bank[s] to the general public,” which are more than 500 identical or substantially similar telephone calls within a 30-day period,<sup>70</sup> and “any other form of general public political advertising.”<sup>71</sup> The term general public political advertising “shall not

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<sup>68</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a).

<sup>69</sup> 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

<sup>70</sup> 52 U.S.C. § 30101(22), (24); 11 C.F.R. §§ 100.26, 100.28. The Commission has found robocall programs to be public communications either as a form of “telephone bank[s] to the general public” or otherwise as general public political advertising. *See* F&LA at 3-4 (Nov. 24, 2004), MURs 5401, 5422 (Texans for Henry Cuellar).

<sup>71</sup> 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26.

1 include communications over the Internet, except for communications placed for a fee on another  
 2 person's Web site."<sup>72</sup>

3 The available information indicates that all of CIP's communications constitute public  
 4 communications for purposes of the Act's disclaimer requirements. The mailer and robocalls  
 5 appear professionally produced, were likely distributed in quantities exceeding 500 units, the  
 6 mailer contained a USPS bulk mail permit, and CIP does not deny the mailer was a mass mailing  
 7 or the robocalls qualified as a telephone bank to the general public, respectively. Nor does CIP  
 8 deny that the Instagram video and the two Ferrara videos were paid communications on another  
 9 person's website. The Act requires CIP to include disclaimers on all public communications  
 10 because it appears that CIP is a political committee.<sup>73</sup> However, regardless of whether CIP is a  
 11 political committee, the Act requires disclaimers on all of the communications at issue here  
 12 because they all appear to contain express advocacy.<sup>74</sup>

13 Where required, disclaimers must be "presented in a clear and conspicuous manner, to  
 14 give the reader, observer, or listener adequate notice of the identity of the person or political  
 15 committee that paid for, and where required, that authorized the communication."<sup>75</sup> Because  
 16 there is no indication the communications were authorized by any candidate's authorized  
 17 committee, the Act requires disclaimers that clearly state the name and permanent address,

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<sup>72</sup> 11 C.F.R. § 100.26.

<sup>73</sup> See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

<sup>74</sup> See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

<sup>75</sup> 11 C.F.R. § 110.11(c). For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. *Id.* § 110.11(c)(2).

1 telephone number, or website address of the person who paid for the communication and state  
 2 that the communication is not authorized by any candidate or candidate's committee.<sup>76</sup>

3 All of CIP's communications contain some form of a disclaimer identifying CIP as the  
 4 sponsor. However, only the robocall includes a disclaimer that fully complies with the Act's  
 5 requirements: the narrator states the robocall was paid for by CIP, not authorized or coordinated  
 6 with a candidate, and provides CIP's telephone number. The remaining communications each  
 7 lack at least one required component of the disclaimer: the mailer fails to include CIP's  
 8 permanent address, telephone number, or website; and the Instagram videos fail to include  
 9 contact information and fail to state that they were not authorized by or coordinated with any  
 10 candidate or candidate's committee. Those omissions notwithstanding, all of the  
 11 communications at issue contained information to indicate that CIP had authorized the  
 12 communications.<sup>77</sup> Consistent with Commission precedent, we recommend the Commission  
 13 dismiss the Complaint's disclaimer allegations as a matter of prosecutorial discretion but caution  
 14 the Community Issues Project against additional disclaimer violations.<sup>78</sup>

#### 15 **IV. PROPOSED INVESTIGATION**

16 We intend to ask CIP to provide information and documentation regarding its  
 17 expenditures, the costs and circumstances of its expenditures on public communications, the  
 18 details of its expenditures on "programmatic activities," and the proportion of its federal  
 19 campaign-related spending compared to its overall budget. Although we plan to utilize informal

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<sup>76</sup> 11 C.F.R. § 110.11(b)(3).

<sup>77</sup> The Commission has not pursued disclaimer violations in past matters where the disclaimer was incomplete but contained sufficient information to indicate that the sponsor had authorized the communication. *See, e.g.*, F&LA at 4 & n.13, MUR 7095 (RGA Right Direction PAC).

<sup>78</sup> *See, e.g.*, F&LA at 4 & n.15, MUR 7095.

investigative methods, we recommend that the Commission authorize the use of compulsory process, as necessary.

## **V. RECOMMENDATIONS**

1. Find reason to believe that Community Issues Project violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee;
2. Find reason to believe that Community Issues Project violated 52 U.S.C. § 30104(b)(4)(H)(iii) and (g)(2) by failing to properly report its independent expenditures as a political committee; in the alternative, find reason to believe that Community Issues Project violated 52 U.S.C. § 30104(c)(1) and (g)(2) by failing to properly report its independent expenditures as a person other than a political committee;
3. Dismiss the allegation that Community Issues Project violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by failing to include proper disclaimers on public communications, and send a letter of caution;
4. Approve the attached Factual and Legal Analysis;
5. Authorize the use of compulsory process; and

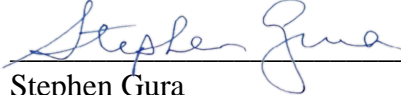
MUR 7513 (Community Issues Project)  
First General Counsel's Report  
Page 23 of 23


6. Approve the appropriate letter.


Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel for Enforcement

September 18, 2019  
Date

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

  
Mark Allen  
Assistant General Counsel

  
Thaddeus H. Ewald  
Attorney

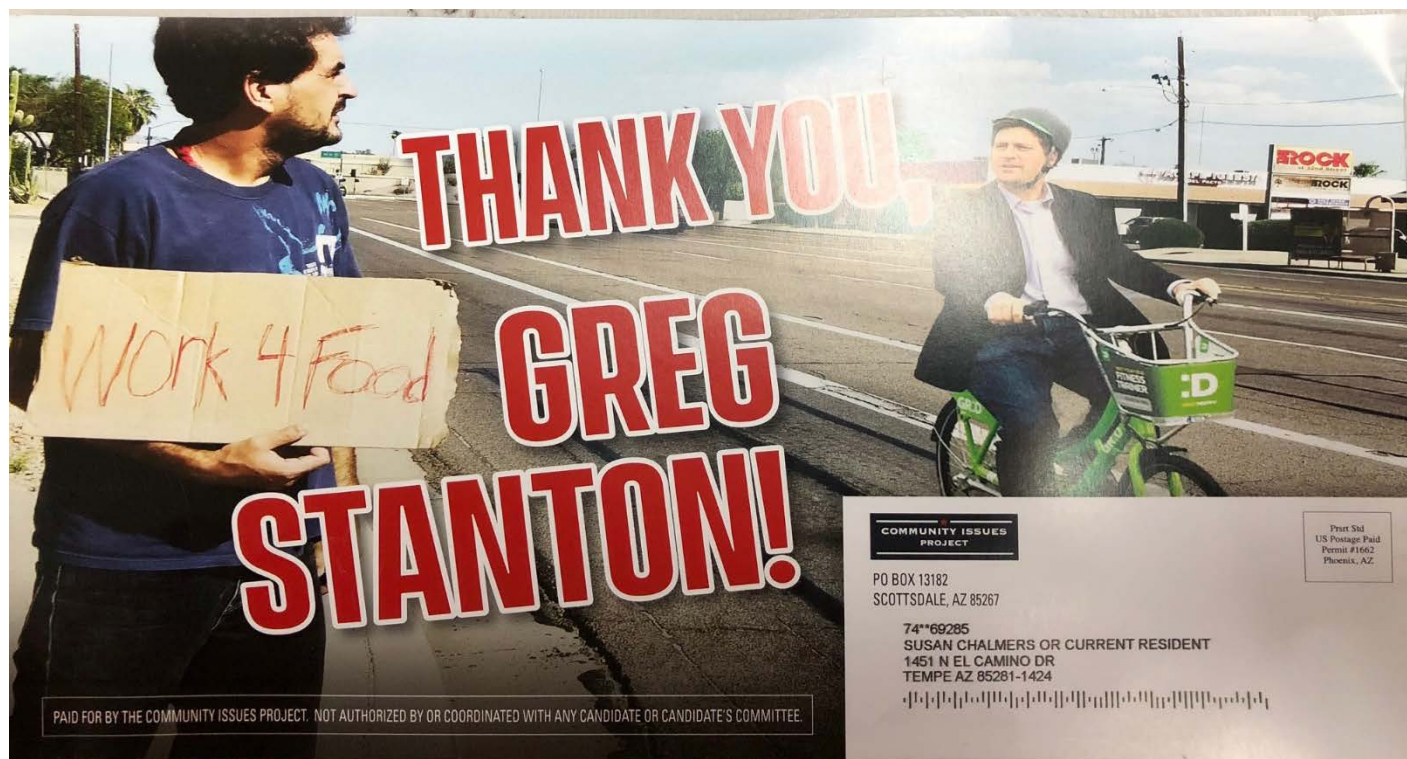
Attachments:

1. Mailer
2. Factual and Legal Analysis

MUR 7513 (Community Issues Project)

Attachment 1

Page 1 of 1



**THANK YOU, GREG STANTON!**

PAID FOR BY THE COMMUNITY ISSUES PROJECT. NOT AUTHORIZED BY OR COORDINATED WITH ANY CANDIDATE OR CANDIDATE'S COMMITTEE.

COMMUNITY ISSUES PROJECT  
PO BOX 13182  
SCOTTSDALE, AZ 85267

74\*\*69285  
SUSAN CHALMERS OR CURRENT RESIDENT  
1451 N EL CAMINO DR  
TEMPE AZ 85281-1424

Print Std  
US Postage Paid  
Permit #1662  
Phoenix, AZ



**ARIZONA DESERVES BETTER**  
**GREG STANTON HAS LET US DOWN**

**\$1.5 BILLION IN GIVEAWAYS**  
—AZ CENTRAL, APRIL 21, 2017

*We thought he was different, but Greg Stanton has proven to be just another selfish politician: Big on promises. Knows how to line the pockets of his friends. Bad at getting the job done. Now he wants to ride away from the mess he made.*

**UNHELMETED HOMELESS UP 149%**  
—MARICOPA ASSOCIATION OF GOVERNMENTS

**GREG STANTON PROMISED TO BE A MAYOR FOR EVERYONE, BUT ONLY DELIVERED FOR HIS MILLIONAIRE FRIENDS**

PHOTO: AZFAMILY.COM



**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Community Issues Project

MUR 7513

**I. INTRODUCTION**

The Community Issues Project, a 501(c)(4) organization, made robocalls, sent mailers, and promoted social media advertisements criticizing Greg Stanton and supporting Steve Ferrara, candidates in the 2018 general election in Arizona’s 9th Congressional District. The Complaint alleges that Community Issues Project failed to register as a political committee, report independent expenditures, and include proper disclaimers on these communications, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). For the reasons discussed below, the Commission (1) finds reason to believe that the Community Issues Project failed to organize, register, and report as a political committee, (2) finds reason to believe that the Community Issues Project failed to properly report independent expenditures, and (3) exercises its prosecutorial discretion to dismiss the allegations that the Community Issues Project failed to include proper disclaimers on its communications and send a letter of caution.

**II. FACTUAL BACKGROUND**

The Community Issues Project (“CIP”) is a 501(c)(4) social welfare organization registered with the Internal Revenue Service.<sup>1</sup> CIP describes itself as a Phoenix social welfare organization focusing on the issues of homelessness, budget and fiscal responsibility, and local government accountability.<sup>2</sup> The Complaint attaches three CIP communications the

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<sup>1</sup> Community Issues Project Resp. at 1 (Nov. 5, 2018) (“CIP Resp.”). CIP is not registered with the Commission or the State of Arizona. *See Search*, ARIZ. CORPORATION COMMISSION, <https://ecorp.azcc.gov/EntitySearch/Index> (search in “Entity Name” field for “Community Issues Project”) (last visited Sept. 17, 2019).

<sup>2</sup> *See* CIP Resp. at 1; *see also* COMMUNITY ISSUES PROJECT, <http://www.communityissuesproject.com/> (last visited Sept. 17, 2019) [hereinafter CIP Website].

Complainant received in October 2018 regarding Stanton and referring to his tenure as Phoenix's mayor.<sup>3</sup>

The first communication is a mailer the Complainant received around October 4, 2018.<sup>4</sup> The front of the mailer depicts Stanton riding a bicycle past a homeless man with a cardboard sign that reads "Work 4 Food," and states "THANK YOU, GREG STANTON!" The back of the mailer states "ARIZONA DESERVES BETTER: GREG STANTON HAS LET US DOWN" and "GREG STANTON PROMISED TO BE A MAYOR FOR EVERYONE, BUT ONLY DELIVERED FOR HIS MILLIONAIRE FRIENDS." In a box inset on the back of the mailer under the headline "\$1.5 BILLION IN GIVEAWAYS," text reads "We thought he was different, but Greg Stanton has proven to be just another selfish politician: Big on promises. Knows how to line the pockets of his friends. Bad at getting the job done. Now he wants to ride away from the mess he made." The mailer includes a boxed disclaimer that reads "Paid for by the Community Issues Project. Not authorized by or coordinated with any candidate or candidate's committee."

The second communication is an Instagram video the Complainant viewed shortly before October 4, 2018.<sup>5</sup> The video runs approximately 15 seconds with the following content:

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<sup>3</sup> Compl. at 1 (Oct. 15, 2018); *see also* FEC Form 2, Greg Stanton Amended Statement of Candidacy (Dec. 14, 2018). Greg Stanton's principal campaign committee is Stanton for Congress. FEC Form 1, Stanton for Congress Amended Statement of Organization, Stanton for Congress (Dec. 21, 2018). Stanton resigned as Phoenix mayor on May 29, 2018, to run for Congress. *See* Jessica Boehm, *It's Official: Phoenix Mayor Greg Stanton Resigns to Run for Congress*, ARIZ. REPUBLIC (May 29, 2018, 3:41PM), <https://www.azcentral.com/story/news/local/phoenix/2018/05/29/phoenix-mayor-greg-stanton-resigns-the-ldawilliams-interim-mayor/652079002/>. He defeated Ferrara in the Nov. 6, 2018 general election.

<sup>4</sup> Compl. at 1. A copy of the mailer is attached to this Report as Attachment 1. CIP states in its Response that there were two mailers, "both focused exclusively on skyrocketing homelessness in Phoenix." CIP Resp. at 3. The mailer attached to the Complaint appears to be one of the two mailers CIP referenced.

<sup>5</sup> Compl. at 1.

The Instagram Video		
Narration	On-Screen Text	Visual
Greg Stanton promised to end chronic homelessness in Phoenix.	GREG STANTON PROMISED TO END CHRONIC HOMELESSNESS IN PHOENIX	Stanton's face.
A homeless camp that's growing in the heart of downtown Phoenix.		Newscaster narrating with footage of law enforcement and restrained individuals.
But during his tenure as Mayor, homelessness rose 149%.	HOMELESSNESS ROSE 149%!	Stanton on a bicycle, riding "up" an increasing bar graph.
Don't let Mayor Greg Stanton ride away from his mess.	PAID FOR BY THE COMMUNITY ISSUES PROJECT. THE CIP IS A NONPROFIT SOCIAL WELFARE ORGANIZATION OPERATING PURSUANT TO SECTION 501c4 OF THE IRC OF 1986, AS AMENDED.	Stanton on a bicycle riding down the street next to a homeless man with a sign that reads "Work 4 Food."

1 The video was labeled as "Sponsored" and "Paid for by Community Issues Project."<sup>6</sup> CIP  
2 acknowledges it promoted an additional, six-second video on Instagram, which appears to be the  
3 six-second video available on CIP's YouTube page entitled "Riding Away."<sup>7</sup>

4 The third communication is a robocall the Complainant received on October 2, 2018.<sup>8</sup>

5 The robocall was approximately 45 seconds long and stated:

6 This is the Community Issues Project. Are you concerned about the increased homeless  
7 population you see in our community? While he was Mayor, Greg Stanton promised to  
8 help end homelessness in Phoenix. Instead, our homelessness increased 149%. In just a  
9 few years, Greg Stanton let us down. Don't let Greg Stanton bike off into the sunset and  
10 leave us to clean up his mess. Paid for by the Community Issues Project. Not authorized  
11 by or coordinated with any candidate or candidate's committee. 765-560-3781.

<sup>6</sup> A copy of this video is also available through the Facebook Ad Library. *See Community Issues Project*, FACEBOOK: AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=Community%20Issues%20Project&view\\_all\\_page\\_id=2301047003461649](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=Community%20Issues%20Project&view_all_page_id=2301047003461649) (last visited Sept. 17, 2019) [hereinafter CIP Ad Library Profile] (video active on Facebook Oct. 2-Oct. 15, 2018).

<sup>7</sup> *See* CIP Resp. at 3; *see also* Community Issues Project, *Riding Away*, YOUTUBE (Oct. 4, 2018), <https://www.youtube.com/watch?v=jnfInQMs638> [hereinafter *Riding Away* Ad]. "Riding Away" is identical to the last seven seconds of the Instagram video with two minor differences: (1) the narration says "Phoenix homelessness is up 149%;" and (2) the on-screen text includes "DON'T LET MAYOR GREG STANTON RIDE AWAY FROM HIS MESS" alongside the "Paid for" disclaimer. *See id.*

<sup>8</sup> Compl. at 1.

The available information demonstrates CIP made additional communications in October and November 2018—beyond those identified in the Complaint—that reference Ferrara, Stanton’s opponent in the November 2018 election. CIP paid to promote these videos on Facebook and Instagram and also posted them to its YouTube channel.<sup>9</sup>

One, entitled “Real Solutions,”<sup>10</sup> had the following content:

“Real Solutions”		
Narration	On-Screen Text	Visual
Dr. Steve Ferrara is not a career politician.	DOCTOR STEVE FERRARA	Ferrara’s military photo and Ferrara in military fatigues.
He has gained the respect and support of many leaders in Arizona, including Senator Jon Kyl.	SUPPORTED BY SENATOR JON KYL	U.S. Senator Jon Kyl
Like Senator Kyl, he is concerned about the ever-expanding problem of homelessness.		Homeless men.
And he will seek a sensible, common-sense solution to our homelessness problem.	STEVE FERRARA HAS REAL SOLUTIONS  PAID FOR BY THE COMMUNITY ISSUES PROJECT. THE CIP IS A NON-PROFIT SOCIAL WELFARE ORGANIZATION OPERATING PURSUANT TO SECTION 501c4 OF THE IRC OF 1986, AS AMENDED. WWW.COMMUNITYISSUESPROJECT.COM.	Ferrara’s face superimposed on a cityscape.

<sup>9</sup> See CIP Ad Library Profile; *Community Issues Project*, YOUTUBE, <https://www.youtube.com/channel/UCuE3tVZWCi4X8gNzh9vuraA> (last visited Sept. 17, 2019).

<sup>10</sup> Community Issues Project, *Real Solutions*, YOUTUBE (Oct. 31, 2018), <https://www.youtube.com/watch?v=4cgqICwPrm8> [hereinafter Real Solutions Ad].

1 The other, entitled “Proven Leader,”<sup>11</sup> had the following content:

“Proven Leader”		
Narration	On-Screen Text	Visual
Phoenix leaders have neglected the rampant homelessness and out of control budget for too long.	PHOENIX LEADERS HAVE NEGLECTED OUR PROBLEMS FOR TOO LONG	Homeless men.
Doctor Steve Ferrara is a proven leader.	DOCTOR STEVE FERRARA	Ferrara’s military photo and Ferrara in military fatigues.
He is a Navy combat veteran, not a career politician.	NOT A CAREER POLITICIAN	Ferrara performing medical procedure on child in Navy uniform.
True leaders like Jon Kyl support Steve	JON KYL SUPPORTS STEVE FERRARA	U.S. Senator Jon Kyl.
because he has real solutions for Phoenix.	PAID FOR BY THE COMMUNITY ISSUES PROJECT. THE CIP IS A NON-PROFIT SOCIAL WELFARE ORGANIZATION OPERATING PURSUANT TO SECTION 501c4 OF THE IRC OF 1986, AS AMENDED. WWW.COMMUNITYISSUESPROJECT.COM.	Ferrara and another man.

2 The Complaint alleges the communications in the Complaint expressly advocate the  
3 defeat of Stanton, and therefore CIP violated the Act by failing to register as a political  
4 committee, report its spending on the communications as independent expenditures, and include  
5 appropriate disclaimers on the communications.<sup>12</sup> CIP responds it is not a political committee,  
6 and the communications were not independent expenditures because they did not expressly  
7 advocate the election or defeat of identified candidates.<sup>13</sup> Instead, CIP contends its  
8 communications are “public policy messages” focused on homelessness, fiscal responsibility, and

<sup>11</sup> Community Issues Project, *Proven Leader*, YOUTUBE (Nov. 1, 2018), [https://www.youtube.com/watch?v=0MuiE\\_wr-Lg](https://www.youtube.com/watch?v=0MuiE_wr-Lg) [hereinafter Proven Leader Ad].

<sup>12</sup> Compl. at 1-2.

<sup>13</sup> CIP Resp. at 1-2.

1 local government accountability.<sup>14</sup> Finally, CIP argues that it included identifying information  
 2 on all relevant communications even though it was not required to include disclaimers.<sup>15</sup>

3 Neither the Complaint nor CIP's Response identify the costs associated with any of CIP's  
 4 communications.<sup>16</sup> There are no Form 990s available to date for CIP on the IRS website.<sup>17</sup>  
 5 Nevertheless, CIP estimated that it would report approximately \$200,000 in 2018 revenues, and  
 6 "a bit less" than that in expenditures, including 25% (approximately \$50,000) on administrative  
 7 and overhead expenses, 70% (approximately \$140,000) on "programmatic activities[.]" and 5%  
 8 (approximately \$10,000) retained as reserves.<sup>18</sup> Finally, Facebook's Ad Library indicates CIP  
 9 paid \$26,238 to promote three ads on Facebook's platforms: it spent between \$10,000 and  
 10 \$50,000 each to promote the 15-second Instagram video between October 2 and October 15,  
 11 2018, and "Real Solutions" between October 31 and November 6, 2018, and between \$1,000 and  
 12 \$5,000 to promote "Proven Leader" between November 1 and November 6, 2018.<sup>19</sup>

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<sup>14</sup> *Id.* at 1-3.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> The Complaint speculates that it "seems likely" the aggregate expenditures exceeded \$10,000 "given the three separate professionally produced media pieces." Compl. at 2.

<sup>17</sup> See *Results for Tax Exempt Organization Search*, IRS (search for "Community Issues Project" in "Search Term" field with "Organization Name" filter) <https://apps.irs.gov/app/eos/allSearch.do?ein1=&names=Community+Issues+Project&resultsPerPage=25&indexOfFirstRow=0&dispatchMethod=searchAll&city=&state=All+States&country=US&postDateFrom=&postDateTo=&exemptTypeCode=all&deductibility=all&sortColumn=orgName&isDescending=false> (last visited Sept. 17, 2019). CIP had not yet prepared a Form 990 for 2018 when it responded to the Complaint but stated it would file a Form 990 with the IRS "on or about May 15, 2019." CIP Resp. at 2.

<sup>18</sup> CIP Resp. at 2. CIP also represents its reserve account held \$5,000 at the time of its Response. *Id.*

<sup>19</sup> See CIP Ad Library Profile.

### 1     **III.     LEGAL ANALYSIS**

#### 2             **A. Political Committee Status**

3             Political committees must register with the Commission and periodically disclose their  
 4     receipts and disbursements.<sup>20</sup> The Act and Commission regulations define a “political  
 5     committee” as “any committee, club, association or other group of persons which receives  
 6     contributions aggregating in excess of \$1,000 during a calendar year or which makes  
 7     expenditures aggregating in excess of \$1,000 during a calendar year.”<sup>21</sup> In *Buckley v. Valeo*,<sup>22</sup>  
 8     the Supreme Court held that defining political committee status “only in terms of [the] amount of  
 9     annual ‘contributions’ and ‘expenditures’” might be overbroad, reaching “groups engaged purely  
 10    in issue discussion.”<sup>23</sup> To cure that infirmity, the Court concluded that the term “political  
 11    committee” “need only encompass organizations that are under the control of a candidate or the  
 12    *major purpose of which is the nomination or election of a candidate.*”<sup>24</sup> Accordingly, under the  
 13    statute as thus construed, an organization that is not controlled by a candidate must register as a  
 14    political committee only if it (1) crosses the \$1,000 threshold and (2) has as its “major purpose”  
 15    the nomination or election of federal candidates. To assess whether an organization has made an  
 16    “expenditure,” the Commission analyzes whether spending on any of an organization’s

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<sup>20</sup>       52 U.S.C. §§ 30102, 30103, 30104.

<sup>21</sup>       *Id.* § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>22</sup>       424 U.S. 1 (1976).

<sup>23</sup>       *Id.* at 79.

<sup>24</sup>       *Id.* (emphasis added).

communications made independently of a candidate constitute express advocacy under 11 C.F.R. § 100.22.<sup>25</sup>

Commission regulations found at 11 C.F.R. § 100.22(a) provide that a communication expressly advocates the election or defeat of a clearly identified candidate when it uses certain phrases or uses campaign slogans or individual words, “which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s).”<sup>26</sup> Under 11 C.F.R. § 100.22(b), a communication constitutes express advocacy if “[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, [the communication] could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

(1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”<sup>27</sup>

The second prong under the *Buckley* test is whether the organization’s “major purpose” is the nomination or election of federal candidates. The Commission’s Supplemental E&J explained that “the major purpose doctrine requires fact-intensive analysis of a group’s campaign

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<sup>25</sup> Political Committee Status, 72 Fed. Reg. 5596 (Feb. 7, 2007) (Supplemental Explanation and Justification) [hereinafter Supplemental E&J].

<sup>26</sup> 11 C.F.R. § 100.22(a). The term “clearly identified” means “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or the ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for Senate in the State of Georgia.’” 11 C.F.R. § 100.17.

<sup>27</sup> 11 C.F.R. § 100.22(b).



activities compared to its activities unrelated to campaigns.”<sup>28</sup> To determine an entity’s “major purpose,” the Commission explained that it considers a group’s “overall conduct,” including public statements about its mission, organizational documents, government filings (*e.g.*, IRS notices), the proportion of spending related to “Federal campaign activity (*i.e.*, the nomination of a Federal candidate),” and the extent to which fundraising solicitations indicate funds raised will be used to support or oppose specific candidates.<sup>29</sup> The Commission compares how much of an organization’s spending is for “*federal campaign activity*” relative to “activities that [a]re not campaign related.”<sup>30</sup> In 2016, the United States District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”) instructed the Commission, when examining an organization’s major purpose, to look beyond express advocacy and consider whether other communications at issue indicate a “campaign-related purpose.”<sup>31</sup>

### 1. Statutory Threshold

It appears that CIP exceeded the \$1,000 statutory threshold to trigger political committee status because its communications contain express advocacy under 11 C.F.R. § 100.22(b),

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<sup>28</sup> Supplemental E&J at 5601-02.

<sup>29</sup> *Id.* at 5597, 5605.

<sup>30</sup> *Id.* at 5601, 5605 (emphasis added).

<sup>31</sup> 209 F. Supp. 3d 77, 93 (D.D.C. 2016). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose, but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

1 making the amounts CIP spent on them expenditures.<sup>32</sup> All of CIP’s communications in the  
 2 record clearly identify congressional candidates Stanton or Ferrara. The mailer states  
 3 prominently in large font that “Arizona Deserves Better” and “Greg Stanton has let us down,”  
 4 effecting a message that “Arizona deserves better” than Stanton, or, in other words, Arizona  
 5 could get “better” than Stanton if voters elect his opponent.<sup>33</sup> Under these facts, this  
 6 interpretation is the only reasonable one because, at the relevant times, Stanton was a private  
 7 citizen, not a sitting official. CIP argues it intended to encourage the public to contact the  
 8 mayor’s office, but that explanation strains credulity because the communications do not provide  
 9 contact information for the mayor’s office and Stanton was no longer mayor.<sup>34</sup> In fact, the mailer  
 10 was distributed approximately four months after Stanton resigned as mayor, but only one month  
 11 before his federal election.<sup>35</sup>

12 CIP’s Instagram and robocall communications contain similar messages of express  
 13 advocacy. “Don’t let Greg Stanton ride away from his mess” (Instagram) and “Don’t let Greg  
 14 Stanton bike off into the sunset and leave us to clean up his mess” (robocall) appear to refer to  
 15 the “mess” of homelessness in Phoenix. However, the exhortations “Don’t let Greg Stanton”  
 16 resemble those in *FEC v. Furgatch*, in which the Ninth Circuit concluded a newspaper

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<sup>32</sup> None of the communications constitute express advocacy under 11 C.F.R. § 100.22(a).

<sup>33</sup> See F&LA at 15, MUR 5024R (Council for Responsible Government) (“[T]he only thing a reader can do to ensure that New Jersey has [the type of leader the advertisement praises] is to vote against [the candidate].”).

<sup>34</sup> CIP Resp. at 3; see F&LA at 13, MUR 6538R (Americans for Job Security, *et al.*) (finding commentary on issue positions has “no nexus with the legislative process” where individuals in ads were not officeholders at the time and thus were “in no position to affect the federal political activities, issues or programs mentioned in the ads”).

<sup>35</sup> See *FEC v. Furgatch*, 807 F.2d 857, 864-65 (9th Cir. 1987) (“Timing the appearance of the advertisement less than a week before the election left no doubt of the action proposed.”); First Gen. Counsel’s Rpt. at 11, MUR 5136 (Gore/Lieberman, Inc.) (“Less than four weeks [before the election] might be comparable to the publication in *Furgatch* (one week).”).

1 advertisement insisting “Don’t let him [incumbent President Jimmy Carter] do it” constituted  
2 express advocacy.<sup>36</sup> The court reasoned the language “don’t let him” was a command that  
3 expressly advocated rejecting Carter electorally because the advertisement mentioned him as a  
4 current officeholder, named his opponent, attacked his character and record, and ran less than one  
5 week before the election.<sup>37</sup>

6 The Instagram video and robocall contain the same type of command as in the *Furgatch*  
7 advertisement: “don’t let” Stanton do something. With limited reference to external events, the  
8 only reasonable interpretation of these exhortations is that the reader should not “let” Stanton  
9 escape a “mess” by going to Washington as a Representative. Similarly, the mailer’s language  
10 has only one reasonable interpretation: Stanton wants to “ride away” to Congress.

11 Finally, CIP’s “Real Solutions” and “Proven Leader” communications contain express  
12 advocacy in support of Ferrara’s candidacy. They portray Ferrara as a “proven leader,” not a  
13 “career politician,” highlight Arizona leaders’ support for him, and promote his “real” and  
14 “sensible common-sense solutions” to Phoenix’s problems (including homelessness).<sup>38</sup> These  
15 statements can only be interpreted as advocating his election because he was a private citizen at  
16 the time, was never a public officeholder, and the only way for the target audience to get Ferrara

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<sup>36</sup> 807 F.2d 857, 858 (9th Cir. 1987).

<sup>37</sup> *Id.* at 858-59, 864-65.

<sup>38</sup> Proven Leader Ad; Real Solutions Ad.

1 to implement such solutions and leadership was to elect him to Congress.<sup>39</sup> CIP’s promotion of  
 2 Ferrara’s proposals on homelessness stands in stark contrast to its criticism of Stanton’s record  
 3 on the issue. Further, the Ferrara advertisements were published less than a week before the  
 4 election, even closer to the election than CIP’s anti-Stanton communications.<sup>40</sup> These  
 5 timeframes parallel the timeframe in *Furgatch*, where the Ninth Circuit noted the timing “less  
 6 than a week before the election left no doubt of the action” proposed: to vote against the  
 7 criticized candidate.<sup>41</sup> Outside of the electoral context, these videos and their support of  
 8 Ferrara’s “proven leader[ship]” and “solutions” to Phoenix’s problems are meaningless.<sup>42</sup>

9 Overall, CIP spent \$26,238 to promote the 15-second Instagram video and the two  
 10 Ferrara videos.<sup>43</sup> Because these communications contain express advocacy, all of the \$26,238  
 11 applies to the \$1,000 statutory threshold. Furthermore, while the record does not reflect what  
 12 CIP spent on the mailer and robocalls—which also contain express advocacy—they both appear

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<sup>39</sup> In MUR 6538R, the Commission found reason to believe an organization failed to organize, register, and report as a political committee based on advertisements that supported or criticized federal candidates that were not officeholders when the ads ran. F&LA at 13, MUR 6538R. The Commission noted the candidates were thus “in no position to affect the federal political activities, issues, or programs mentioned in the ads,” the statements encouraging the candidates to maintain certain positions on issues “have no nexus with the legislative process,” the candidates were in “no position to implement . . . their plans unless they were elected,” and the candidates’ positions on issues “would likely be of minimal significance to legislative activities in Washington unless [they] were first elected” to federal office. *Id.*; see also F&LA at 8, MUR 5831 (Softer Voices) (concluding advertisement contained express advocacy under 11 C.F.R. § 100.22(a) in part because “the use of the word ‘leadership’ is a reference to [the candidate’s] election to the office of Senator, where he would be a leader”).

<sup>40</sup> “Real Solutions” began running on Facebook platforms on October 31, 2018 and “Proven Leader” began on November 1, 2018. Both ran through November 6, 2018. See CIP Ad Library Profile.

<sup>41</sup> See *Furgatch*, 807 F.2d at 865; see also 11 C.F.R. § 100.22(b) (citing “proximity to the election” as the enumerated example of “external events” permissibly considered in the express advocacy analysis).

<sup>42</sup> Cf. F&LA at 15, MUR 5024R (“[O]utside the context of the upcoming election, the [communications] are virtually meaningless.”).

<sup>43</sup> See CIP Ad Library Profile. The record indicates that CIP spent between \$10,000 and \$15,238 to sponsor the Instagram video and between \$11,000 and \$16,238 to promote the two Ferrara videos.

professionally produced and distributed and therefore likely cost at least \$1,000 each to produce and disseminate as well. Thus, the available information demonstrates CIP satisfied the first prong of the political committee test by making expenditures in excess of \$1,000 during calendar year 2018.<sup>44</sup>

## 2. Major Purpose

The available information indicates that CIP's major purpose in 2018 was the nomination or election of federal candidates. CIP denies that its major purpose is the election of candidates and characterizes itself as an issue advocacy organization seeking to educate Arizona taxpayers on specific local issues.<sup>45</sup> While the Commission may consider such statements made by the organization, they are "not necessarily dispositive."<sup>46</sup> Under the Commission's case-by-case approach, CIP's overall conduct, including its disbursements, activities, and statements, indicates the organization's major purpose was the nomination or election of federal candidates.<sup>47</sup>

All of the communications in the Complaint and otherwise publicly available expressly advocate the election of Ferrara or the defeat of Stanton. Alternatively, even if some of these communications do not constitute express advocacy, they all demonstrate campaign-related purposes. In MUR 6538R, the Commission heeded the remanding court's instructions to "look beyond express advocacy and consider whether the other communications at issue indicate a

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<sup>44</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>45</sup> CIP Resp. at 1-3; CIP Website; *Community Issues Project*, FACEBOOK, <https://www.facebook.com/CommunityIssuesProject/> (last visited Sept. 17, 2019) [hereinafter CIP Facebook] ("About Us"); CIP YouTube ("About").

<sup>46</sup> F&LA at 11, MUR 6538R (citing Supplemental E&J at 5606); *see also Real Truth About Obama v. FEC*, No. 3:08-CV-483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) ("A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive."), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010).

<sup>47</sup> *See* Supplemental E&J at 5597; F&LA at 11, MUR 6538R (citing Supplemental E&J at 5597).

1 ‘campaign-related purpose.’”<sup>48</sup> It found reason to believe an organization should have registered  
 2 as a political committee where a number of communications, “though not necessarily express  
 3 advocacy, support[ed] a conclusion that there is reason to believe that the group’s major purpose  
 4 is the nomination or election of federal candidates.”<sup>49</sup> The Commission characterized  
 5 advertisements as “indicative of a major purpose to nominate or elect a federal candidate” for  
 6 criticizing a candidate’s record in prior office, suggesting that record was inconsistent with the  
 7 candidate’s statements on those issues, and favorably contrasting a candidate with Washington  
 8 even though the candidate was not a federal officeholder and thus in “no position to implement...  
 9 their plans unless they were elected....”<sup>50</sup>

10 The mailer, robocall, and Instagram video all oppose Stanton. The former criticizes him  
 11 by stating that he “let [Phoenix residents] down,” “promised to be a mayor for everyone, but only  
 12 delivered for his millionaire friends,” “has proven to be just another selfish politician,” “[k]nows  
 13 how to line the pockets of his friends,” and is “[b]ad at getting the job done.” The latter two  
 14 criticize Stanton by highlighting the increase in homelessness during his tenure as mayor and  
 15 contrasting that record with his past statements on homelessness.<sup>51</sup> On the other hand, “Real  
 16 Solutions” and “Proven Leader” laud Ferrara’s credentials and “proven leader[ship]” and extol  
 17 his solutions to local problems.<sup>52</sup> Thus, even if these communications do not contain express

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<sup>48</sup> F&LA at 9, MUR 6538R.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.* at 13-14.

<sup>51</sup> *See id.* at 13-14 (advertisement criticized candidate’s record in prior office and suggested record was inconsistent with public statements on those issues). “Riding Away” criticizes Stanton’s record as Phoenix mayor much like the 15-second Instagram communication and the robocall.

<sup>52</sup> *See id.* at 13 (advertisements favorably contrasted the candidate’s background and positions against “activity conducted in Washington” while candidates were not federal officeholders).

1 advocacy, they have “campaign-related purpose[s]” and qualify as federal campaign activity in  
 2 assessing CIP’s major purpose.

3 The available information demonstrates CIP’s spending on federal campaign activity is  
 4 substantial relative to its non-campaign related activities.<sup>53</sup> In aggregate, CIP spent \$26,238 to  
 5 promote three campaign-related communications between October 2 and November 6, 2018.<sup>54</sup>  
 6 More broadly, CIP states it spent \$140,000 on “programmatic activities” in 2018, which it  
 7 describes as “public policy education efforts... executed using a variety of... tools,” including a  
 8 website, telephone messaging, internet, and mail.<sup>55</sup> That description aligns with the categories of  
 9 communications at issue here, and it is unlikely that CIP characterized any of those expenditures  
 10 as administrative expenses, suggesting its “programmatic activities” were composed primarily, if  
 11 not entirely, of communications with campaign-related purposes. Additionally, it appears that  
 12 CIP formed in September 2018 shortly before the communications were made.<sup>56</sup> The record  
 13 does not include any information that CIP spent money in 2018 on communications or other non-  
 14 administrative activities that do not support Ferrara or criticize Stanton. Further, CIP did not  
 15 present any information, other than unsupported estimates, rebutting the allegation that it spent

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<sup>53</sup> Cf. Supplemental E&J at 5601, 5605.

<sup>54</sup> See CIP Ad Library Profile.

<sup>55</sup> See CIP Resp. at 2; *accord* CIP Website.

<sup>56</sup> There is no information in the Complaint, CIP’s Response, or otherwise publicly available to indicate that CIP existed before 2018. See, e.g., I.R.S. Determination Ltr. 948 (Mar. 26, 2019), [https://apps.irs.gov/pub/epostcard/dl/FinalLetter\\_83-1865509\\_COMMUNITYISSUESPROJECT\\_09142018\\_01.tif](https://apps.irs.gov/pub/epostcard/dl/FinalLetter_83-1865509_COMMUNITYISSUESPROJECT_09142018_01.tif) (listing September 12, 2018, effective date of exemption); *Showing results for: communityissuesproject.com*, ICANN WHOIS, <https://whois.icann.org/en/lookup?name=communityissuesproject.com> (last visited Sept. 17, 2019) (listing September 20, 2018, as registration date for CIP’s website); CIP Facebook (listing September 20, 2018, as creation date); CIP Ad Library Profile (same). In *Buckley v. Valeo*, the Supreme Court noted that “ad hoc” organizations existing for fewer than six months are more likely than established groups to be composed of individuals seeking to “evad[e] the applicable contribution limitations by labeling themselves committees.” 424 U.S. at 35-36.

significant portions of its budget on federal campaign activity. Thus, it is reasonable to infer that CIP’s \$140,000 budget for “programmatic activities” in 2018 primarily financed communications supporting or criticizing federal candidates.<sup>57</sup>

The Commission has declined to adopt any bright-line rule but has found the major purpose test satisfied where an organization spent more than 50% of its total expenditures on independent expenditures and electioneering communications.<sup>58</sup> Even if not all of the \$140,000 in programmatic activities expenditures were campaign-related, the available information is sufficient to infer that CIP’s major purpose was the nomination or election of federal candidates based on CIP’s nearly \$200,000 in stated expenditures in 2018.<sup>59</sup> Therefore, the Commission finds reason to believe the Community Issues Project violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

## **B. Independent Expenditure Reporting**

An “independent expenditure” is an expenditure by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not coordinated with a candidate, a candidate’s authorized committee or their agents, or a political party committee or its agents.<sup>60</sup>

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<sup>57</sup> It appears that CIP has maintained some level of activity in 2019 related to the runoff election for Mayor of Phoenix, including mailers and robocalls. *See, e.g.,* Jessica Boehm, *Why are there so many negative ads in Phoenix’s mayoral race? Thank dark money*, AZCENTRAL (Mar. 8, 2019, 12:20PM), <https://www.azcentral.com/story/news/local/phoenix/2019/03/08/why-so-many-negative-ads-phoenix-mayor-race-political-action-committees/3061729002/>. The “Open Letter to Taxpayers” on CIP’s Website appears to confirm the content of at least one of the communications described in the article above. *See* CIP Website.

<sup>58</sup> F&LA at 5 & n.27, 15, MUR 6538R (citing proposed rulemakings).

<sup>59</sup> In MUR 6538R, the Commission found reason to believe “[w]ithout determining whether it is *necessary* to cross a 50 percent threshold” of spending on campaign-related purposes because there was “*sufficient*” information to believe organization’s major purpose was the nomination or election of federal candidates where 52% of documented expenditures were for independent expenditures of electioneering communications. *Id.* at 15.

<sup>60</sup> 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.



The Act and Commission regulations require political committees that make independent expenditures to file reports disclosing their independent expenditures.<sup>61</sup> Other persons who make independent expenditures aggregating more than \$250 in a calendar year must also file reports of independent expenditures.<sup>62</sup> Political committees and other persons that make or contract to make independent expenditures at any time during a calendar year—up to and including the 20th day before an election—must disclose the activity within 48 hours each time that the expenditures aggregate \$10,000 or more.<sup>63</sup> The Complaint alleges CIP failed to make the required 48-hour reports disclosing the three communications it identifies.<sup>64</sup>

As discussed above, CIP is a political committee and all the relevant communications clearly identify federal candidates and contain express advocacy.<sup>65</sup> The Complaint does not allege, nor does the record suggest, the communications were coordinated with a candidate, a candidate's authorized committee, a political party committee, or agents thereof. Thus, CIP's expenditures on the communications at issue in this matter appear to be independent expenditures and CIP was required to appropriately report them, but did not do so. Therefore, the Commission finds reason to believe the Community Issues Project violated 52 U.S.C. § 30104(b)(4)(H)(iii) for failing to report independent expenditures. Even if CIP is not a political committee under the Act, the available information indicates that CIP spent more than \$250 on

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<sup>61</sup> 52 U.S.C. § 30104(b)(4)(H)(iii).

<sup>62</sup> *Id.* § 30104(c)(1); *see also* 11 C.F.R. §§ 104.4, 109.10(b).

<sup>63</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. §§ 104.4(b), 109.10(c).

<sup>64</sup> Compl. at 1-2.

<sup>65</sup> *See supra* Section III.A.1.

the relevant communications. Therefore, in the alternative, the Commission finds reason to believe the Community Issues Project violated 52 U.S.C. § 30104(c)(1) and (g)(2).

Additionally, because the available information indicates CIP spent between \$10,000 and \$15,238 to distribute the Instagram video and those expenditures were made more than 20 days before an election, the Commission finds reason to believe the Community Issues Project violated 52 U.S.C. § 30104(g)(2) for failing to file a 48-hour report with regard to its expenditures on the Instagram video.<sup>66</sup>

### C. Disclaimers

The Act requires disclaimers on all public communications made by a political committee and on public communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate.<sup>67</sup> “Public communications” include “mass mailings,” which are mailings of more than 500 pieces of mail of an identical or substantially similar nature within any 30-day period,”<sup>68</sup> “telephone bank[s] to the general public,” which are more than 500 identical or substantially similar telephone calls within a 30-day period,<sup>69</sup> and “any other form of

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<sup>66</sup> The available information suggests that this communication ran between October 2 and 15, 2018. *See* CIP Ad Library Profile. Therefore, it does not appear that CIP was required to make 24-hour reports for this particular communication. *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R. §§ 104.4(c), 109.10(d). CIP promoted “Real Solutions” and “Proven Leader” on Facebook platforms between October 31 and November 6, 2018, and between November 1 and November 6, 2018, respectively. CIP Ad Library Profile; *see also supra* note 40. Because CIP made those independent expenditures after the 20th day before an election, but more than 24 hours before, CIP may have been required to make 24-hour reports of those expenditures as well. *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R. §§ 104.4(c), 109.10(d). The available information does not, however, indicate the timing or precise amount of expenditures spent on the mailer and robocalls.

<sup>67</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a).

<sup>68</sup> 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

<sup>69</sup> 52 U.S.C. § 30101(22), (24); 11 C.F.R. §§ 100.26, 100.28. The Commission has found robocall programs to be public communications either as a form of “telephone bank[s] to the general public” or otherwise as general public political advertising. *See* F&LA at 3-4 (Nov. 24, 2004), MURs 5401, 5422 (Texans for Henry Cuellar).

1 general public political advertising.”<sup>70</sup> The term general public political advertising “shall not  
2 include communications over the Internet, except for communications placed for a fee on another  
3 person’s Web site.”<sup>71</sup>

4 The available information indicates that all of CIP’s communications constitute public  
5 communications for purposes of the Act’s disclaimer requirements. The mailer and robocalls  
6 appear professionally produced, were likely distributed in quantities exceeding 500 units, the  
7 mailer contained a USPS bulk mail permit, and CIP does not deny the mailer was a mass mailing  
8 or the robocalls qualified as a telephone bank to the general public, respectively. Nor does CIP  
9 deny that the Instagram video and the two Ferrara videos were paid communications on another  
10 person’s website. The Act requires CIP to include disclaimers on all public communications  
11 because it appears that CIP is a political committee.<sup>72</sup> However, regardless of whether CIP is a  
12 political committee, the Act requires disclaimers on all of the communications at issue here  
13 because they contain express advocacy.<sup>73</sup>

14 Where required, disclaimers must be “presented in a clear and conspicuous manner, to  
15 give the reader, observer, or listener adequate notice of the identity of the person or political  
16 committee that paid for, and where required, that authorized the communication.”<sup>74</sup> Because  
17 there is no indication the communications were authorized by any candidate’s authorized

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<sup>70</sup> 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26.

<sup>71</sup> 11 C.F.R. § 100.26.

<sup>72</sup> See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

<sup>73</sup> See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

<sup>74</sup> 11 C.F.R. § 110.11(c). For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. *Id.* § 110.11(c)(2).

1 committee, the Act requires disclaimers that clearly state the name and permanent address,  
2 telephone number, or website address of the person who paid for the communication and state  
3 that the communication is not authorized by any candidate or candidate's committee.<sup>75</sup>

4 All of CIP's communications contain some form of a disclaimer identifying CIP as the  
5 sponsor. However, only the robocall includes a disclaimer that fully complies with the Act's  
6 requirements: the narrator states the robocall was paid for by CIP, not authorized or coordinated  
7 with a candidate, and provides CIP's telephone number. The remaining communications each  
8 lack at least one required component of the disclaimer: the mailer fails to include CIP's  
9 permanent address, telephone number, or website; and the Instagram videos fail to include  
10 contact information and fail to state that they were not authorized by or coordinated with any  
11 candidate or candidate's committee. Those omissions notwithstanding, all of the  
12 communications at issue contained information to indicate that CIP had authorized the  
13 communications.<sup>76</sup> Consistent with Commission precedent, the Commission dismisses the  
14 Complaint's disclaimer allegations as a matter of prosecutorial discretion but cautions the  
15 Community Issues Project against additional disclaimer violations.<sup>77</sup>

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<sup>75</sup> 11 C.F.R. § 110.11(b)(3).

<sup>76</sup> The Commission has not pursued disclaimer violations in past matters where the disclaimer was incomplete but contained sufficient information to indicate that the sponsor had authorized the communication. *See, e.g.,* F&LA at 4 & n.13, MUR 7095 (RGA Right Direction PAC).

<sup>77</sup> *See, e.g.,* F&LA at 4 & n.15, MUR 7095.