



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

July 16, 2024

By Electronic Mail

Eric H. Spencer, Esq.
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RE: MUR 7892
Austin Smith

Dear Mr. Spencer:

On March 30, 2021, the Federal Election Commission notified your client, Austin Smith, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on May 1, 2023, voted to dismiss the allegations as they pertain to your client. Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Adrienne C. Baranowicz

Adrienne C. Baranowicz
Deputy Associate General Counsel
For Enforcement

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Austin Smith**MUR 7892****I. INTRODUCTION**

The Complaint in this matter alleges that Turning Point Action (“TPA”), a non-profit corporation, violated 52 U.S.C. § 30104(c) of the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to disclose any of its contributors when it reported making more than \$1.4 million in independent expenditures in 2020.¹ Specifically, the Complaint alleges that while TPA made independent expenditures that exceeded the \$250 statutory threshold in August 2020, it disclosed no contributors as required by 52 U.S.C. § 30104(c)(1) in its 2020 October Quarterly Report or in its 2020 Year-End Report.² The Complaint further alleges that TPA solicited donations for the purpose of furthering an independent expenditure and did not disclose contributors who donated for that purpose, as required by 52 U.S.C. § 30104(c)(2)(C), in its relevant reports.³ The Complaint also alleges that Austin Smith, TPA’s National Field Director and the signatory of the organization’s reports filed with the Commission, is liable in his official and personal capacity for the organization’s violations because he signed the reports.⁴

¹ Compl. ¶ 3 (Mar. 23, 2021).

² *Id.*

³ *Id.*

⁴ *Id.* ¶ 4.

1 In its joint Response, TPA argues that Austin Smith, the signatory on the FEC Form 5
2 (Report of Independent Expenditures Made and Contributions Received), is not liable in an
3 official or personal capacity because he is not a treasurer of a political committee.⁵

4 Based on the available information, the Commission dismisses the allegation that Austin
5 Smith violated 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C) in his official or personal
6 capacity. Absent any allegation or information of any personal liability on the part of Smith,
7 other than the fact of his signature, neither subsection 30104(b) nor (c) imposes federal campaign
8 finance liability on the signer of reports for entities that are not political committees.

9 II. FACTUAL AND LEGAL ANALYSIS

10 TPA is described in the Complaint and Response as a tax-exempt social welfare
11 organization that is organized under Section 501(c)(4) of the Internal Revenue Code.⁶
12 According to TPA's Form 990 filed with the Internal Revenue Service, the organization's self-
13 described mission is "to promote social welfare through raising awareness about free markets
14 and capitalism, initiating civic action amongst the younger generation and educating youth in
15 order to be a resource for free market thinkers to further advance their values to educate and
16 empower the younger generation."⁷

⁵ *Id.* at 8.

⁶ *See* Compl. ¶ 9; Resp. at 3 (Apr. 9, 2021).

⁷ IRS Form 990, TPA, 2021 Return of Organization Exempt From Income Tax at 1 (July 6, 2022),
https://apps.irs.gov/pub/epostcard/cor/464331510_202106_990O_2022080220262113.pdf ("2021 TPA Form 990").

Austin Smith served as TPA's national field director during the 2020 election cycle⁸ and is TPA's signatory on the independent expenditure reports (FEC Form 5's) filed with the Commission.⁹

Smith signed the FEC Form 5's which state that "submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 52 U.S.C. § 30109." The Complaint alleges that TPA's 2020 October Quarterly and Year-End Reports contained incomplete and erroneous information and thus that Smith, by filing and signing the forms, is personally liable for TPA's violations of 52 U.S.C. § 30104(b)(3)(A), (c)(1), and (c)(2)(C).¹⁰

Absent any allegation or information of any personal liability on the part of Smith, other than the fact of his signature, neither subsection section 30104(b) nor (c) imposes personal liability under the Act on an individual who signs a statement disclosing independent expenditures. Further, we are not aware of any precedent in which the Commission found a non-treasurer liable for reporting violations in connection with the filings by a group that is not a political committee. Accordingly, the Commission dismisses the allegation that Austin Smith violated § 30104(b)(3)(A), (c)(1), and (c)(2)(C) in his official or personal capacity.

⁸ Compl. ¶ 12.

⁹ TPA, 2021 October Quarterly Report at 1 (Oct. 15, 2021); TPA, 2021 April Quarterly Report at 1 (Apr. 15, 2021); TPA, 2020 Year End Report at 1 (Jan. 30, 2021); TPA, 2020 October Quarterly Report at 1 (Oct. 15, 2020).

¹⁰ Compl. ¶¶ 54, 55, 56.