

BEFORE THE FEDERAL ELECTION COMMISSION

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MARGARET CHRIST
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Washington, DC 20005
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v.

MUR No. _____

BIG TENT PROJECT FUND
8 The Green, Suite 8164
Dover, DE 19901

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Big Tent Project Fund (“Big Tent Project”) has violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Big Tent Project formed the day after Democratic presidential candidate Bernie Sanders won the New Hampshire Democratic presidential primary, and one week after Sanders finished in a virtual tie in the Iowa caucuses; its executive director, Jonathan Kott, said he created the group at the behest of donors concerned about Sanders’ rise. In approximately one month after forming, Big Tent Project reported \$4,819,714 in anti-Sanders independent expenditures to the Commission targeting voters in the states whose primary elections followed New Hampshire’s. Once Sanders’ path to the presidential nomination became a near-impossibility, Big Tent Project’s activity dropped precipitously. The evidence overwhelmingly indicates that Big Tent Project has the major purpose of influencing federal

elections, but has failed to register as a political committee and to publicly disclose its contributors, in violation of 52 U.S.C. §§ 30102-04. Even if Big Tent Project were not a political committee, it violated FECA by failing to disclose contributors who gave for political purposes and to fund its independent expenditures, and additionally failed to report tens of thousands of dollars of independent expenditures, in violation of 52 U.S.C. § 30104(c). FECA guarantees voters' right to know which wealthy special interests are spending big money to influence our vote and our government, and Big Tent Project's unlawful shielding of those donors' identities undermined that right.

3. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation" 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).
4. Campaign Legal Center ("CLC") is a nonpartisan, nonprofit 501(c)(3) organization whose mission is to protect and strengthen the U.S. democratic process through litigation and other legal advocacy. CLC participates in judicial and administrative matters throughout the nation regarding campaign finance, voting rights, redistricting, and government ethics issues.

FACTS

5. On February 12, 2020, the day after Sanders won the New Hampshire Democratic primary, Big Tent Project registered as a corporation in Delaware.¹ As a newly formed corporation, there is no record of it having yet filed an annual form 990 with the Internal Revenue

¹ Entity Search for "Big Tent Project Fund," STATE OF DELAWARE, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last visited Apr. 13, 2020).

Service, but news reports have identified the group as organized under Section 501(c)(4) of the Internal Revenue Code.² Its Executive Director is Jonathan Kott.³

6. On February 17, 2020, Big Tent Project created a Facebook page.⁴ Between February 19 and March 10, 2020, Big Tent Project ran approximately 1,900 paid ads on Facebook and Instagram attacking Sanders' candidacy, according to Facebook's political ad archive.⁵
7. On February 19, 2020, *POLITICO Playbook* reported on "the Dem ad campaign aimed at taking down Bernie," and described Big Tent Project as "a Dem 501(c)(4) group aimed at boosting moderates" that "has \$1 million to spend in [the] South Carolina and Nevada [presidential primaries and caucuses] to bash Sen. Bernie Sanders."⁶ Kott was quoted in the piece as stating:

"Despite over 50 years in public life, Bernie Sanders has never been fully vetted. The Big Tent Project will shed light on his record of politically toxic policy proposals starting in Nevada and South Carolina. *Voters need to understand* that his well-known plans to kick union employees off their health care plans and end all private insurance, raise middle-class taxes and double the size of the government, and his less well-known radical views, like his efforts to dump nuclear waste in Hispanic communities, will repel many *general-election voters*.

Either this stuff is debated now, when Democrats have time to consider it fully, or it will come out in the fall, in a torrent of negative ads by the Trump team that would likely prove politically fatal. Democrats deserve the facts before they *choose a nominee*."⁷

² E.g., Anna Palmer & Jake Sherman, *The Dem Ad Campaign Aimed At Taking Down Bernie*, POLITICO (Feb. 19, 2020), <https://www.politico.com/newsletters/playbook/2020/02/19/the-dem-ad-campaign-aimed-at-taking-down-bernie-488357>.

³ *Id.*

⁴ Ads by Big Tent Project, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=112739086975178&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=112739086975178&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Apr. 14, 2020).

⁵ *Id.* Publicly available political ad archives do not show Big Tent Project running ads on other digital platforms, as neither the Google ad archive nor the Snap ad archive shows any records at all of ads run under the Big Tent Project name. See Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/region/US> (last visited Apr. 7, 2020); Snap Political Ads Library, SNAP, INC., <https://www.snap.com/en-US/political-ads/> (last visited Apr. 7, 2020).

⁶ Palmer & Sherman, *supra* note 2.

⁷ *Id.* (emphasis added).

8. On that same day, February 19, 2020, *NPR* reported that “[m]oderate Democrats are striking back as Vermont Sen. Bernie Sanders continues to rise in national polls. The Big Tent Project, a recently formed 501(c)(4) organization, launched an advertising blitz on Wednesday that is specifically targeting Sanders”:

Big Tent Executive Director Jonathan Kott, a former top adviser to Sen. Joe Manchin, D-W.Va., says the ad buys could expand as the group continues to raise funds. Kott declined to name the donors sponsoring the push, but he said any future ads will continue to target Sanders.

“No presumed front-runner in the modern era has ever skated by so easily with virtually no scrutiny of his record or ideas,” Kott said in a message. “Sanders himself said he would welcome a debate about his socialism and electability so this project intends to launch one.”⁸

9. Independent expenditure reports filed with the Commission show that on February 19, 2020, Big Tent Project began running \$195,000 in “online/digital advertising” opposing Sanders in Nevada.⁹
10. On February 23, 2020, *Axios* reported that the Big Tent Project “sent hundreds of thousands of mailers bashing Bernie Sanders to black voters in South Carolina who voted in the state’s 2016 primary.”¹⁰ According to *Axios*, Big Tent Project spent approximately \$100,000 on these mailers, and at the time had “another \$700K at its disposal to target various South Carolina voters before the Feb. 29 primary.”¹¹ The mailers critiqued the costs of Sanders’ policies and ended with the message, “Nominating Bernie means we reelect Trump. We can’t afford Bernie.”¹²

⁸ NPR Staff, *Nevada Democratic Debate: Live Updates and Analysis*, NPR (Feb. 19, 2020), <https://will.illinois.edu/news/story/nevada-democratic-debate-live-updates-and-analysis>.

⁹ Big Tent Project Fund, 2020 April Quarterly, FEC Form 5 at 2 (filed Apr. 10, 2020), <https://docquery.fec.gov/pdf/321/202004109216633321/202004109216633321.pdf>.

¹⁰ Alayna Treene, *Exclusive: Anti-Sanders campaign targets black South Carolina voters*, AXIOS (Feb. 23, 2020), <https://www.axios.com/bernie-sanders-south-carolina-group-658e85b9-2434-4e04-94ce-4a01a8637900.html>.

¹¹ *Id.*

¹² *Id.*

11. Reports filed with the Commission show that on February 20, 2020, Big Tent Project spent \$96,031 on independent expenditures opposing Sanders in South Carolina in the form of a “mailing expense,”¹³ and over the next six days reported an additional \$1,061,072 in anti-Sanders independent expenditures in the state.¹⁴
12. On February 24, 2020, Kott appeared on a CNN segment anchored by Erin Burnett, who introduced him as “Executive Director of The Big Tent Project which is a group raising millions against Bernie Sanders.”¹⁵ On the segment, Kott emphasized, “I think part of what the point of my group's efforts are is to make sure voters know exactly what [Sanders’] positions are. I think he's gotten away with not being vetted properly the way the other candidates have.”¹⁶
13. On February 25, 2020, the *Associated Press* reported that “[n]ervous Democrats who never thought Bernie Sanders had a chance of winning the 2020 presidential primary are now asking the party's big-dollar donors to open their wallets to stop the self-described democratic socialist”:¹⁷

... after wins in New Hampshire and Nevada and a virtual tie for first place in Iowa, many are waking to the reality that Sanders could be on his way to clinching the nomination next week when voters in more than a dozen states head to the polls on Super Tuesday. That’s led to a scramble to pull together the resources to stop a candidate many establishment-minded Democrats believe is too liberal to defeat President Donald Trump.

“I think we all woke up after New Hampshire and realized that we now had a front-runner who has not received any scrutiny over his policy positions, and people got very concerned and reacted,” said Jonathan Kott, who leads a group that is hitting Sanders with negative ads.

¹³ Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 2.

¹⁴ *Id.* at 2-4. This subsequent South Carolina spending included both independent expenditures described as “mailing expense[s]” and those described as “digital/online advertising.” *Id.*

¹⁵ Jonathan Kott, *Jonathan Kott talks Democratic Primary with Erin Burnett on CNN*, YOUTUBE (Feb. 24, 2020), <https://www.youtube.com/watch?v=B5LMDSbV9vY>.

¹⁶ *Id.*

¹⁷ Brian Slodysko, *Can Bernie be stopped? Some Democratic donors are trying*, ASSOCIATED PRESS (Feb. 25, 2020), <https://abcnews.go.com/Politics/wireStory/bernie-stopped-democratic-donors-69213107>.

Leaders of the anti-Sanders efforts are asking donors for money to pay for attack ads. Others are urging those still in the race with the longest of odds to drop out. And Joe Biden supporters are marketing a super PAC supporting the former vice president as the vehicle that could help moderates defeat Sanders.¹⁸

After describing Big Tent Project’s anti-Sanders ads in Nevada and South Carolina, the *Associated Press* noted that “Kott says [Big Tent Project is] looking to expand its ad campaign to other states and is expecting to take in more checks soon.”¹⁹

14. The same day, February 25, 2020, *CNN* reported that Kott “told CNN Monday he started his group when Democratic donors approached him following Sanders' win in the New Hampshire primary. Kott says he's already raised close to \$2 million, and plans to spend it delving into Sanders record and views.”²⁰ Kott told *CNN*, “The best thing we can do is give voters all the information about Bernie Sanders before they vote.”²¹
15. On February 27, 2020, *Time* reported that “more than half a dozen donors turned to” Kott after Sanders won the New Hampshire primary, that Kott told *Time* that Democrats “surprised” at that win “decided to act and make sure voters had all the information about his radical views,” that Big Tent Project raised more than \$1 million within days of forming and immediately “poured” those funds into anti-Sanders ads in South Carolina and Nevada, and that “[d]onations to the group picked up even more after Sanders’ win on Feb. 22”:

In the aftermath of the New Hampshire primary, more than half a dozen donors turned to Jonathan Kott, a former longtime aide to West Virginia Democratic Sen. Joe Manchin. “A lot of Democrats were surprised that Bernie Sanders had been able to avoid the scrutiny of a front runner,” Kott says, “and they decided to act and make sure voters had all the information about his radical views before they voted.”

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Michael Warren, Jeff Zeleny, Lauren Fox & Fredreka Schouten, *Bernie Sanders' rise has moderate Democrats wondering if it's too late to stop him*, CNN (Feb. 25, 2020), <https://www.cnn.com/2020/02/25/politics/bernie-sanders-2020-rise/index.html>.

²¹ *Id.*

Kott formed the Big Tent Project, a group which, as a 501(c)4 nonprofit, does not have to disclose its donors. Within days the group received more than \$1 million, which it poured into ads in Nevada and South Carolina to sow doubt about Sanders' ability to deliver on his policy platform. "Socialist Bernie Sanders promises the world," stated one ad that aired in both states. "But at what cost? \$60 trillion." Donations to the group picked up even more after Sanders' win in Nevada on Feb. 22, according to Kott, who says he's steadily been receiving more six- and seven-figure donations and is closing in on \$3 million.²²

16. On February 29, 2020, *NBC* similarly reported, based on an interview with Kott, that Big Tent Project was a "new group of moderate Democrats trying to stop Bernie Sanders from winning their party's presidential nomination" that "came together in recent weeks as some Democratic donors and operatives grew concerned about Sanders' strength in Iowa and New Hampshire":

"Big Tent Project is spending nearly \$4 million on ads in Super Tuesday states to provide voters with the facts about Bernie Sanders radical record before they vote," said the group's executive director, Jonathan Kott, a former top aide to West Virginia Democratic Sen. Joe Manchin.²³

17. On March 2, 2020, the *Washington Post* similarly reported that Big Tent Project (which the *Post* described as a "super PAC") would be spending \$4 million in Super Tuesday states, and that Kott claimed the group "is now the largest anti-Sanders group in terms of cash spent."²⁴
18. For the March 3, 2020 "Super Tuesday" primaries, Big Tent Project reported to the Commission that it spent \$3,467,610 on multi-state "Online/Digital" independent expenditures.²⁵

²² Alana Abramson, *Big-Money Democratic Donors Are Trying to Stop Bernie Sanders. But Even They Worry It Could Be Too Late*, TIME (Feb. 27, 2020), <https://time.com/5791185/bernie-sanders-democratic-party-donors/>.

²³ Alex Seitz-Ward, *Group preps \$4 million Super Tuesday push to stop Sanders*, NBC (Feb. 29, 2020), <https://www.nbcnews.com/politics/2020-election/live-blog/south-carolina-primary-live-updates-democrats-vote-2020-candidates-n1145296/ncrd1146166#liveBlogHeader>.

²⁴ Jacqueline Alemany, *Power Up: Your complete guide to everything Super Tuesday*, WASH. POST (Mar. 2, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/powerup/2020/03/02/powerup-your-complete-guide-to-everything-super-tuesday/5e58202188e0fa101a73b860/>.

²⁵ Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 2-6.

19. On March 4, 2020, *CNN* reported that Kott “was triumphant . . . after the Vermont senator's disappointing second-place finish in several Super Tuesday state's primaries,” reiterated that “Kott started the PAC, the Big Tent Project, after last month's New Hampshire primary, when he said a group of Democratic donors approached him with concerns Sanders could be running away with the nomination without an exploration of his record”:

Kott told *CNN* on Monday that since former Vice President Joe Biden won South Carolina's primary, Big Tent raised an additional \$4 million. Nearly all of that, Kott said, was going to digital ads targeting voters in Super Tuesday states.²⁶

20. On March 6, 2020, *The Daily Beast* characterized Big Tent Project Fund as “an outside group formed by moderate Democrats in the wake of Sanders’ rise in the Democratic field,” and featured the following statement from Kott:

“Big Tent Project has spent nearly \$7 million in South Carolina, Super Tuesday and now Michigan, Washington, and Idaho exposing Bernie’s radical record and ideas,” said the group’s executive director, Jonathan Kott. “Once voters learn more about him, they overwhelmingly reject his candidacy, because they know the only thing he can actually deliver is another four years of Trump.”²⁷

21. Big Tent Project has not reported any independent expenditures since the Super Tuesday primary elections on March 3, 2020, which was characterized at the time as a “dominant night” for Sanders’ opponent Joe Biden and a “disappoint[ing]” one for Sanders.²⁸
22. However, Facebook’s political ad archive does show that in the five days before the March 10 primaries in Michigan, Big Tent Project targeted voters in that state with tens of thousands

²⁶ Veronica Rocha, Amanda Wills, Mike Hayes & Meg Wagner, *Super Tuesday 2020*, *CNN* (Mar. 4, 2020), https://www.cnn.com/politics/live-news/super-tuesday-results-2020/h_7862117d2a088e09f58d95cc422e91f6. In perhaps an illustration of the singular political purpose the group was projecting, *CNN* incorrectly characterizes Big Tent Project Fund as a super PAC in this story. *Id.*

²⁷ Jackie Kucinich, *An Anti-Sanders Group That’s Ticking Off Bernie Plans Another Round of Ads*, *THE DAILY BEAST* (Mar. 6, 2020), <https://www.thedailybeast.com/an-anti-sanders-group-thats-ticking-off-bernie-plans-another-round-of-ads?ref=scroll>.

²⁸ N.Y. Times Staff, *Super Tuesday Aftermath: Sanders Acknowledges Setback After Biden’s Big Night*, *N.Y. TIMES* (Mar. 8, 2020), <https://www.nytimes.com/live/2020/primary-results-biden-sanders-03-04>.

of dollars of Facebook ads expressly advocating against Sanders' election.²⁹ Big Tent Project did not report those independent expenditures to the Commission.³⁰ Big Tent Project has not run any Facebook ads from the Big Tent Project Facebook page since March 10.³¹

23. Between March 5 and March 17, Big Tent Project spent approximately \$72,000 on anti-Sanders Facebook ads run under the name "United We Succeed" that targeted voters in primary states such as Michigan and Arizona.³² Like Big Tent Project's ads run under its own name, the ads run under the "United We Succeed" name criticized Sanders on issues such as the cost of enacting his proposed presidential policies, but unlike the ads run under the Big Tent Project name, the "United We Succeed" ads ended with an appeal for viewers to "call" Sanders.³³ Ads run under the United We Succeed page name stopped after March 17, the date

²⁹ See Ads by Big Tent Project in Michigan, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=112739086975178®ions\[0\]=Michigan&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=112739086975178®ions[0]=Michigan&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Apr. 14, 2020). It appears that Big Tent Project also ran Facebook ads targeting Idaho that were not reported to the Commission, but Facebook's ad library does not include an option to filter ads targeted to Idaho.

³⁰ See Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 2-5 (showing no reported independent expenditures in Michigan); see also Big Tent Project Fund, Independent Expenditures in Michigan (24- and 48-hour reports), 2019-20, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90019175&is_notice=true&most_recent=true&candidate_office_state=MI&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Apr. 26, 2020) (showing no results).

³¹ Ads by Big Tent Project, Facebook Ad Library, *supra* note 4.

³² See Zach Monterallo, *What to watch for in tonight's primaries*, POLITICO (Mar. 10, 2020), <https://www.politico.com/newsletters/morning-score/2020/03/10/what-to-watch-for-in-tonights-primaries-785969>; Ads by United We Succeed, Facebook Ad Library, FACEBOOK, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=100926438191751 (last visited Apr. 17, 2020). Both the "About" section of the United We Succeed Facebook page and the United We Succeed website describes it as "a campaign in partnership with the Big Tent Project Fund." United We Succeed, *About*, FACEBOOK, <https://www.facebook.com/pg/United-We-Succeed-100926438191751/about> (last visited Apr. 17, 2020); UNITED WE SUCCEED, <https://www.unitedwesucceed.org> (last visited Apr. 7, 2020).

³³ Ads by United We Succeed, Facebook Ad Library, FACEBOOK, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=100926438191751 (last visited Apr. 17, 2020).

of primary elections won by Biden that “effectively ended [Sanders’] chance of a comeback.”³⁴

24. To date, Big Tent Project has reported \$4,819,714 in independent expenditures to the Commission, all of which opposed Sanders.³⁵ According to the Center for Responsive Politics, the group ranks ninth among all outside groups—registered political committees and others—in terms of total independent expenditures reported in the 2020 cycle, as of this filing.³⁶
25. To date, the only Big Tent Project activities in the public record are those that center on opposing Sanders.

CAUSES OF ACTION

I. BIG TENT PROJECT FAILED TO REGISTER AS A POLITICAL COMMITTEE

26. FECA defines the term “political committee” to mean “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.” 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5(a).³⁷

³⁴ Reid J. Epstein, Lisa Lerer & Thomas Kaplan, *Joe Biden Wins Primaries in Florida, Illinois, and Arizona: Highlights*, N.Y. TIMES (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/us/politics/march-17-democratic-primary.html>.

³⁵ Big Tent Project Fund, Independent Expenditures (24- and 48-hour reports), 2019-20, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90019175&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Apr. 13, 2020).

³⁶ OpenSecrets, *2020 Outside Spending, by Group: Independent Expenditures*, CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/summ.php?cycle=2020&chrt=V&disp=O&type=I> (last visited Apr. 26, 2020).

³⁷ “Contribution” is defined to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). “Expenditure” is similarly defined to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i).

27. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate *or the major purpose of which is the nomination or election of a candidate.*” *Id.* at 79 (emphasis added). Later, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court again invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the *organization’s major purpose may be regarded as campaign activity*, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, the group would become “subject to the obligations and restrictions applicable to those groups *whose primary objective is to influence political campaigns.*” *Id.* (emphasis added). The Court in *McConnell v. FEC*, 540 U.S. 93 (2003), restated the “major purpose” test for political committee status as iterated in *Buckley*. *Id.* at 170 n.64.
28. The Commission has explained:
- [D]etermining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).
- Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).
29. “[A]n organization[’s] relative spending in the most recent calendar year” is a particularly relevant time period for assessing a group’s major purpose. *CREW v. FEC*, 209 F. Supp. 3d 77, 93-94 (D.D.C. 2016) (noting that Congress defined “political committee” in terms of calendar-year spending at 52 U.S.C. § 30101(4), and finding Commissioners acted contrary to law by limiting their analysis to group’s lifetime spending and failing to consider whether an organization’s major purpose had changed).

30. Courts have also rejected the categorical exclusion of non-express advocacy communications from the major purpose analysis. *CREW v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016) (“Indeed, it blinks reality to conclude that many of the ads considered by the Commissioners in this case were not designed to influence the election or defeat of a particular candidate in an ongoing race.”); *see also CREW v. FEC*, 299 F. Supp. 3d 83, 89, 101 (D.D.C. 2018).
31. To determine if an organization’s major purpose is the nomination or election of federal candidates, the Commission conducts a fact-specific case-by-case analysis. For example, the Commission will consider an organization’s public statements in determining its purpose,³⁸ and will examine conduct other than publicly available advertisements, such as materials distributed to donors and fundraising appeals.³⁹ *See* 72 Fed. Reg. at 5601.
32. Courts have upheld the Commission’s fact-based major purpose test. *See, e.g., Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 555-58 (4th Cir. 2012) (“RTAA”) (rejecting the claim that the only method to determine PAC status is to examine whether “campaign-related speech amounts to 50% of all expenditures,” and concluding that the Commission’s comprehensive consideration of multiple factors was “a sensible approach to determining whether an organization qualifies for PAC status” that is “consistent with Supreme Court precedent and does not unlawfully deter protected speech”); *see also Free Speech v. FEC*, 720 F.3d 788, 797-98 (10th Cir. 2013) (upholding the Commission’s multi-factor major-

³⁸ *See, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (court found organization evidenced its major purpose through its own materials, which stated the organization’s main goal of supporting the election of the Republican Party candidates for Federal office and through efforts to get prospective donors to consider supporting Federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means”); Advisory Op. 2006–20 (Unity 08) (organization evidenced its major purpose through organizational statements of purpose on Web site).

³⁹ *Malenick*, 310 F. Supp. 2d at 234-36 (examining organizations’ materials distributed to prospective donors).

purpose approach).⁴⁰ Courts reviewing state laws have upheld laws that more broadly define “political committee.” See, e.g., *Yamada v. Snipes*, 786 F.3d 1182, 1194-95 (9th Cir. 2015) (upholding state law defining political committee to include any group making more than \$1,000 in expenditures over two years, regardless of whether the group has the major purpose of influencing an election); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 134-39 (2d Cir. 2014) (upholding state law defining political committee as any group which accepts more than \$1,000 in contributions and makes more than \$1,000 in expenditures in a two year election cycle to support or oppose a candidate; rejecting argument that political committee status must be limited to groups with a “major purpose” to influence elections); *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 414-15 (5th Cir. 2014) (upholding state law that defined political committee to include any group which engages in “some” activities that “support[] or oppos[e]” a candidate); *Worley v. Fla. Sec’y of State*, 717 F.3d 1238, 1240, 1253 (11th Cir. 2013) (upholding state law applying political committee status to groups that raise contributions or spend “more than \$500 in a year to expressly advocate the election or defeat of a candidate”); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 470-71, 491 (7th Cir. 2012) (upholding state law defining political committee to include groups that spend more than \$3,000 on ads that “almost verbatim” met federal definition of electioneering communications, and rejecting argument that political committee status must be limited to groups with a “major purpose” to influence elections); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 42, 54-57, 59 (1st Cir. 2011) (upholding disclosure law for political committees, even though law did not require a political committee have a “major purpose” of influencing

⁴⁰ Courts reviewing state laws governing political committees have described similar fact-based major purpose tests. See, e.g., *Corsi v. Ohio Elections Comm’n*, 981 N.E.2d 919, 927 (Ohio App. 2012) (quoting *RTAA* and noting that “[t]he determination of an organization’s ‘primary or major purpose’ is a fact intensive analysis and such a determination must weigh a number of considerations”).

an election); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1008-12 (9th Cir. 2010) (upholding state law defining political committee as a group with a “primary or one of the primary purposes” to “affect, directly or indirectly, governmental decision making by supporting or opposing candidates”).

33. For the reasons set forth above, there is a two-prong test for “political committee” status under federal law: (1) whether the entity or other group of persons has received “contributions” or made “expenditures” of \$1,000 or more in a calendar year, and (2) whether its “major purpose” is influencing the “nomination or election of a candidate,” as stated by *Buckley*.
34. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Commission, 52 U.S.C. § 30103, must comply with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and must file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.
35. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, specific information regarding such committee’s financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. 52 U.S.C. § 30104(b). Courts have repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., CREW v. FEC*, 209 F. Supp. 3d at 81 (“disclosure ‘open[s] the basic process of our federal election[s] to public view,’ . . . by ‘provid[ing] the electorate with information’ concerning the sources and outlets for campaign money” (internal citations omitted)); *cf. Citizens United v. FEC*, 558 U.S. 310, 369 (2010) (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”); *see also Stop*

This Insanity Inc. Emp. Leadership Fund v. FEC, 761 F.3d 10, 17 (D.C. Cir. 2014)

(describing the “First Amendment rights of the public to know the identity of those who seek to influence their vote”).

36. Based on public reports and filings with the Commission, there is reason to believe that Big Tent Project met the test for political committee status by making expenditures of \$1,000 or more in a calendar year, and having the “major purpose” of influencing the “nomination or election of a candidate.”
37. The first prong of the political committee test is satisfied because Big Tent Project made over \$1,000 in expenditures.⁴¹
38. The second prong of the political committee test is satisfied because Big Tent Project had the major purpose of influencing the election or nomination of candidates. Over approximately the month following its formation, Big Tent Project reported \$4,819,714 in anti-Sanders independent expenditures to the Commission targeting voters in the primary states that followed New Hampshire, and those anti-Sanders independent expenditures constituted the vast majority of the group’s known overall spending in 2020. The group’s known additional spending that was not reported to the Commission nonetheless focused on opposing Sanders: Big Tent Project ran at least \$35,000 worth of Facebook ads expressly advocating against Sanders’ election targeting Michigan voters in advance of that state’s primary (see *infra* Count IV), and spent approximately \$72,000 on anti-Sanders Facebook ads run under the “United We Succeed” name that targeted primary state voters.⁴² Every publicly available

⁴¹ See Big Tent Project Fund, 2020 April Quarterly, *supra* note 9 (disclosing \$4,819,714 in independent expenditures to the Commission, more than 4,000 times the threshold for the first prong of the political committee test).

⁴² The United We Succeed ads critiqued Sanders for the costs associated with his presidential policy platform, for a decades-old vote on nuclear waste siting, and for alleged improprieties involving his wife. Although the ads ended by urging voters—who were not Sanders’ U.S. Senate constituents, since the ads were targeted outside of

digital ad that Big Tent Project has run from its formation to date appears to have named Sanders and/or pictured Sanders, and been distributed to voters shortly before primary elections in their states.⁴³ Federal Communications Commission (“FCC”) records do not show Big Tent Project purchasing any broadcast ads.⁴⁴ There is no evidence in the public record of Big Tent Project engaging in activities in 2020 *other* than those aimed at opposing Sanders’ election.

39. In determining a group’s major purpose, the Commission not only considers an organization’s overall spending, but also considers other materials, such as an organization’s public statements.⁴⁵ Such evidence further indicates that Big Tent Project has the major purpose of influencing the election or nomination of candidates. For example:

- a) *CNN* reported that executive director Jonathan Kott told the outlet that he “started his group when Democratic donors approached him following Sanders' win in the New Hampshire primary,”⁴⁶ and *Time* similarly reported that “[i]n the aftermath of the New Hampshire primary, more than half a dozen donors turned to” Kott, after which he formed the Big Tent Project.⁴⁷

Vermont—to “call” Sanders rather than vote against him in the primary, the call to action was not connected to any pending or potential legislative action.

⁴³ The Facebook ad archive shows that Big Tent Project ran approximately 1,900 ads, and searching for “Sanders” in the keyword search field does not reduce the 1,900 estimate of number of ads run on the page. Ads by Big Tent Project, Facebook Ad Library, *supra* note 4. Publicly available political ad archives do not show Big Tent Project running ads on other platforms, as neither the Google ad archive nor the Snapchat ad archive show any records at all of ads run under the Big Tent Project name. See Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/region/US> (last visited Apr. 14, 2020); Snap Political Ads Library, SNAP, INC., <https://www.snap.com/en-US/political-ads/> (last visited Apr. 14, 2020).

⁴⁴ Search for “Big Tent Project,” FCC Public Inspection Files, FCC.GOV, [https://publicfiles.fcc.gov/find/%22big%20tent%20project%22/page-offset-0/order-best-match/filter-\[\]/#files](https://publicfiles.fcc.gov/find/%22big%20tent%20project%22/page-offset-0/order-best-match/filter-[]/#files) (last visited Apr. 14, 2020) (showing no results).

⁴⁵ See, e.g., *FEC v. GOPAC, Inc.*, 917 F. Supp. at 859.

⁴⁶ Warren, Zeleny, Fox & Schouten, *supra* note 20; see also Rocha, Wills, Hayes & Wagner, *supra* note 26 (a later *CNN* piece reporting that “Kott started the PAC, the Big Tent Project, after last month's New Hampshire primary, when he said a group of Democratic donors approached him with concerns Sanders could be running away with the nomination without an exploration of his record”).

⁴⁷ Abramson, *supra* note 22; see also Palmer & Sherman, *supra* note 2.

- b) Big Tent Project raised \$1 million within days of its formation, which it “poured” into anti-Sanders independent expenditures in Nevada and South Carolina;⁴⁸ Kott stated publicly that “ad buys could expand as the group continues to raise funds” and that “any future ads will continue to target Sanders,”⁴⁹ and, indeed, as Big Tent Project raised additional funds following subsequent primary elections, the group used the money to purchase additional anti-Sanders ads.⁵⁰
- c) The only content on the group’s website are two anti-Sanders ads,⁵¹ and its Facebook page does not include any organic content; instead, the Facebook account only seems to have been used to purchase digital ads, every one of which appears to have named Sanders or pictured Sanders.⁵²
- d) After Sanders’ path to the presidential nomination became a virtual impossibility, Big Tent Project’s activities dropped precipitously. Although Big Tent Project spent nearly \$5 million on independent expenditures in its first month of existence, it has not run any digital or broadcast ads under the Big Tent name since Sanders lost the Michigan primary, and it has not run any additional ads under the “United We Succeed” name since Sanders lost the Arizona primary, nor has it not updated its website or social media pages. Its executive director also has

⁴⁸ Abramson, *supra* note 22.

⁴⁹ NPR Staff, *supra* note 8.

⁵⁰ Rocha, Wills, Hayes & Wagner, *supra* note 26 (reporting that, after Biden won South Carolina's primary on February 29, “Big Tent raised an additional \$4 million,” and that “[n]early all of that, Kott said, was going to digital ads targeting voters in Super Tuesday states”); *see also* Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 4-6.

⁵¹ BIG TENT PROJECT FUND, <https://www.bigtentprojectfund.com/> (last visited Apr. 13, 2020). Domain records show the website was created on February 14, 2020. WhoIs Search for “bigtentprojectfund.com,” WHOIS.NET, <https://www.whois.net/> (last visited Apr. 14, 2020).

⁵² Ads by Big Tent Project, Facebook Ad Library, *supra* note 4.

stopped appearing in the news media, and has stopped making public pronouncements about the group's fundraising.

40. Consequently, as demonstrated by Big Tent Project's independent expenditures and spending on public communications, the timing of and publicly stated purpose for the group's formation, its executive director's public statements about the group's purpose and planned activities, media descriptions of the group's purpose, and the severe drop in activity since it became clear that its targeted candidate would not secure the nomination, there is reason to believe that Big Tent Project's major purpose in 2020 has been the nomination or election of federal candidates, and because it made over \$1,000 in expenditures in a calendar year, it should have registered as a political committee, as defined at 52 U.S.C. § 30101(4).
41. Therefore, Big Tent Project violated 52 U.S.C. §§ 30102 and 30103 by failing to organize and register as a political committee.

II. BIG TENT PROJECT FAILED TO FILE REPORTS AS A POLITICAL COMMITTEE

42. As a political committee, Big Tent Project is required to file periodic reports with the Commission that, among other things, (1) identify all individuals who contributed an aggregate of more than \$200 in a year and the amount contributed; (2) identify all political committees that contributed and the amounts they contributed; (3) detail outstanding debts and obligations; and (4) list all of Big Tent Project's disbursements. 52 U.S.C. § 30104.
43. By failing to file these reports, Big Tent Project violated its reporting obligations at 52 U.S.C. § 30104.

III. IN THE ALTERNATIVE, BIG TENT PROJECT FAILED TO DISCLOSE CONTRIBUTORS WHO FUNDED ITS INDEPENDENT EXPENDITURES

44. Even if Big Tent Project were not a political committee, it violated its reporting requirements as a non-political committee by failing to report the identities of contributors who gave for

political purposes and for the purpose of furthering its independent expenditures, in violation of 52 U.S.C. § 30104(c).

45. Independent expenditures are expenditures that expressly advocate the election or defeat of a clearly identified federal candidate and are not coordinated with a candidate or political party. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a). A person other than a political committee that makes independent expenditures must file a report with the Commission disclosing, among other things, the identification of “each person who made a contribution to the reporting committee during the reporting period” in excess of \$200, 52 U.S.C. § 30104(c)(1) (cross-referencing 52 U.S.C. § 30104(b)(3)(A)), and “the identification of each person who made a contribution in excess of \$200 to the person filing such statement which was made for the purpose of furthering an independent expenditure,” 52 U.S.C. § 30104(c)(2)(C).
46. Previously, Commission regulations interpreted these statutory provisions to only require disclosure of each person who made a contribution in excess of \$200 “which contribution was made for the purpose of furthering the reported independent expenditure.” 11 C.F.R. § 109.10(e)(1)(vi). On August 3, 2018, however, the U.S. District Court for the District of Columbia held that the regulation was invalid and contrary to the statute it purported to implement. *CREW v. FEC*, 316 F. Supp. 3d 349, 423 (D.D.C. 2018). The court found that the Commission’s regulation “impermissibly narrow[ed] the mandated disclosure in 52 U.S.C. § 30104(c)(2)(C), which requires the identification of such donors contributing for the purpose of furthering the not-political committee's own express advocacy for or against the election of a federal candidate, even when the donor has not expressly directed that the funds be used

in the precise manner reported.” *Id.* Following the vacatur of the regulation taking effect,⁵³ the Commission issued guidance stating that it will enforce the statute by requiring persons other than political committees who report independent expenditures to disclose on quarterly reports the identity of all “donors of over \$200 annually making contributions ‘earmarked for political purposes’ . . . which contributions are ‘intended to influence elections,’”⁵⁴ and by requiring the identification of “donors over \$200 who contribute for the purpose of furthering *an* independent expenditure.”⁵⁵

47. Regardless of whether Big Tent Project qualifies as a political committee, there is reason to believe Big Tent Project received contributions for political purposes and for the purpose of furthering an independent expenditure, but failed to report the identity of those contributors on its Form 5 April Quarterly report filed with the Commission.⁵⁶
48. The public statements of Big Tent Project’s executive director and other public records provide reason to believe contributors gave to Big Tent Project for political purposes and to further the organization’s independent expenditures. Big Tent Project executive director Jonathan Kott has repeatedly stated publicly that the group was formed at the behest of contributors who sought to influence the Democratic presidential primary, with *CNN* reporting that Kott told the outlet that he “started his group when Democratic donors approached him following Sanders’ win in the New Hampshire primary”;⁵⁷ *Time* similarly reported that “[i]n the aftermath of the New Hampshire primary, more than half a dozen

⁵³ See Press Release, FEC, U.S. Supreme Court vacates stay in *CREW v. FEC* (1-259) (Sept. 19, 2018), <https://www.fec.gov/updates/us-supreme-court-vacates-stay-crew-v-fec-16-259/> (“As a result of the Supreme Court’s action, the vacatur of the regulation at issue is in effect as of September 18, 2018.”).

⁵⁴ Press Release, FEC, FEC Provides Guidance Following U.S. Supreme Court decision in *CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/> (internal citations omitted).

⁵⁵ *Id.* (emphasis in original).

⁵⁶ Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 1 (disclosing no contributors).

⁵⁷ Warren, Zeleny, Fox & Schouten, *supra* note 20.

donors turned to” Kott, and according to Kott, “they decided to act and make sure voters had all the information about his radical views before they voted.”⁵⁸ Big Tent Project reportedly raised \$1 million from those contributors “within days,” and one week after forming, “poured” those contributions into anti-Sanders independent expenditures in Nevada and South Carolina.⁵⁹ Following the Nevada and South Carolina elections, the *Associated Press* reported that “Kott says [Big Tent Project is] looking to expand its ad campaign to other states and is expecting to take in more checks soon,”⁶⁰ and Kott publicly stated the group’s spending on independent expenditures “could expand as the group continues to raise funds,” and that “any future ads will continue to target Sanders.”⁶¹ By February 25, 2020, according to *CNN*, “Kott says he’s already raised close to \$2 million, and plans to spend it delving into Sanders record and views,”⁶² and after Biden won South Carolina’s primary on February 29, “Big Tent raised an additional \$4 million,” according to *CNN*; “[n]early all of that, Kott said, was going to digital ads targeting voters in Super Tuesday states.”⁶³ Consistent with that report, days later Big Tent Project reported nearly \$3.5 million in independent expenditures targeting voters in Super Tuesday states.⁶⁴ This progression from public statements about the purpose of fundraising for independent expenditure activities, to public statements about having raised additional funds, to spending on independent expenditure activities, provides reason to believe that contributors gave to Big Tent Project for the purpose of influencing elections and to further its independent expenditures.

⁵⁸ Abramson, *supra* note 22; *see also* Palmer & Sherman, *supra* note 2.

⁵⁹ Abramson, *supra* note 22.

⁶⁰ *Id.*

⁶¹ NPR Staff, *supra* note 8.

⁶² Warren, Zeleny, Fox & Schouten, *supra* note 20.

⁶³ Rocha, Wills, Hayes & Wagner, *supra* note 26.

⁶⁴ Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 4-6.

49. By the group failing to disclose the identity of those contributors on its quarterly independent expenditure report filed with the Commission, there is reason to believe Big Tent Project violated 52 U.S.C. § 30104(c)(1) and (c)(2)(C).

IV. BIG TENT PROJECT FAILED TO REPORT INDEPENDENT EXPENDITURES IN STATES SUCH AS MICHIGAN

50. According to Facebook’s political ad archive, in the five days before March 10 primaries in Michigan, Big Tent Project targeted voters in that state with 58 Facebook ads expressly advocating against Sanders’ election that in the aggregate cost between \$35,124 and \$47,758.⁶⁵

51. FECA requires that a person other than a political committee that makes independent expenditures “in an aggregate amount or value in excess of \$250 during a calendar year” with respect to a particular election report the spending to the Commission. 52 U.S.C. § 30104(c). But Big Tent Project did not report any independent expenditures disseminated in Michigan.⁶⁶

52. Regardless of whether Big Tent Project qualifies as a political committee, by failing to report all independent expenditures in excess of \$250, there is reason to believe that Big Tent Project violated 52 U.S.C. § 30104(c).

PRAYER FOR RELIEF

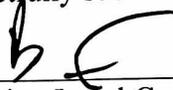
53. Wherefore, the Commission should find reason to believe that Big Tent Project violated 52 U.S.C. § 30101, *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).

⁶⁵ Ads by Big Tent Project in Michigan, Facebook Ad Library, *supra* note 29.

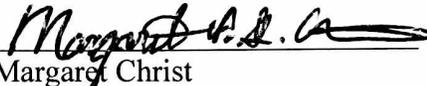
⁶⁶ Big Tent Project Fund, 2020 April Quarterly, *supra* note 9, at 2-6.

54. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



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April 27, 2020

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

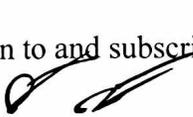
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Margaret Christ



Margaret Christ

Sworn to and subscribed before me this 27 day of April 2020.



Notary Public



For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 27 day of April 2020.



Notary Public

