

April 27, 2026

Maricopa County Elections Department  
ATTN: Candidate Services & Campaign Finance  
510 S. 3rd Ave  
Phoenix, AZ 85003  
campfin@maricopa.gov

Re: Complainant's Reply to Snell & Wilmer's April 24, 2026 Response in CF-2026-006  
(Turning Point Action)

Dear Ms. Dyster:

I am the complainant in CF-2026-006. I have reviewed the April 24, 2026 letter from Eric Spencer of Snell & Wilmer on behalf of Turning Point Action ("TPA"). The letter mischaracterizes the legal standard, misreads A.R.S. Sec. 16-922(C) as a pleading bar, and confirms --- not denies --- the operative factual predicates of the complaint. Most of Spencer's "rebuttals" admit the underlying facts and dispute only their interpretive weight. That is not a defense at the reasonable-cause stage; it is an invitation for the Department to investigate. I respectfully submit this reply and ask the Department to find reasonable cause and to require TPA to produce its written firewall policy under A.R.S. Sec. 16-922(D)(1), if such a policy exists.

## I. Spencer's Lead Legal Argument Misreads the Statute

Spencer's strongest legal argument is in the second-to-last paragraph of his letter:

*"When a filing officer does not find evidence of actual coordination or the use of nonpublic candidate information under A.R.S. Sec. 16-922(B), the filing officer may only rely on criteria in A.R.S. Sec. 16-922(C) as follows . . . . The Complainant does not invoke these statutory factors, therefore the 9 'Evidence Items' must be ignored in their entirety." (Spencer Letter at 3, emphasis added.)*

That reading inverts the statute. A.R.S. Sec. 16-922(C) is **permissive**, not exclusive. The actual statutory text is:

*"In evaluating whether an expenditure is an independent expenditure, a filing officer or enforcement officer **may consider** the following to be **rebuttable evidence** of coordination: 1. Any agent of the person making the expenditure is also an agent of the candidate . . . . 2. In the same election cycle, the person making the expenditure or that person's agent is or has been authorized to raise or spend monies on the candidate's behalf. 3. In the same election cycle, the candidate is or has been authorized to raise money or solicit contributions on behalf of the person making the expenditure." A.R.S. Sec. 16-922(C) (emphasis added).*

The words "may consider" and "rebuttable evidence" are non-exclusive. The statute identifies three categories of facts the filing officer is **permitted** to weigh as rebuttable evidence; nothing in the text tells the officer to ignore other probative facts. Subsection (C) does not say "only." It does not say "exclusively." It does not say a complainant must plead these three factors as a prerequisite to inquiry.

The actual coordination inquiry lives in A.R.S. Sec. 16-922(B)(1), which the complaint expressly invokes. Subsection (B)(1) provides:

*"An expenditure is not an independent expenditure if . . . [t]here is actual coordination with respect to an expenditure between a candidate or candidate's agent and the person making the expenditure or that person's agent."*

That is an open evidentiary standard. "Actual coordination" is a question of fact. A filing officer evaluates that question on the totality of the evidence, not on whether the complainant has invoked three particular hot-button factors from subsection (C).

Spencer's "must be ignored in their entirety" framing has no basis in the statute. The Department should not adopt it.

## **II. Spencer's Item-by-Item Responses Concede the Factual Predicates**

Spencer's letter responds individually to nine evidence items. With respect to most of them, he admits the underlying fact and disputes only the inference. The Department should examine these admissions carefully.

### **A. Evidence Item 1 (TPA-domain email addresses for all four candidates)**

Spencer concedes that the candidate emails exist on TPA's domain. He characterizes them as "dummy @tpaction.com email aliases" (Spencer Letter at 2) and asserts there are "no actual email addresses or email inboxes" and that none of the candidates "been provided access to Turning Point Action's email system." (Id.)

That is an admission, not a denial. TPA provisioned email aliases at "@tpaction.com" for **Chris Dobson, Barry Pacey, Rusty Kennedy, and Kelly Cooper**. Those aliases are stored in TPA's content management system and are visible in the application data of TPA's bio pages, as documented in Exhibits A-1 through A-4 of the underlying complaint. TPA's choice to call these aliases "dummies" does not change the fact that TPA created them. Whether they route to inboxes or to /dev/null, they are organizational identifiers that TPA built into its own infrastructure for the four candidates.

The Department should also note what Spencer does not say. He does not deny:

- That the four candidate profiles were created on the **same day**, January 13, 2026, with sequential profile IDs 124, 125, 126, and 127.
- That all four bio pages carry a `noindex` SEO directive instructing search engines not to index them.
- That the "endorsed" field in TPA's CMS is set to **FALSE** for all four candidates --- meaning TPA's own system does not classify them as endorsees.

Those are the markers of organizational integration, not endorsement. An endorsement is public; these pages are de-indexed. An endorsement is one-off; these were batch-created. An endorsement is recorded as such; these are flagged "endorsed: false" and instead given organizational titles ("President," "Vice-President," "Board Governor"). Spencer's "dummy alias" framing does not address any of that.

#### **B. Evidence Item 4 (Slate website infrastructure)**

Spencer writes:

*"But, when comparing the respective website images in Exhibits B-1 and B-2, they are obviously not identical. This 'same branding' theory is just speculation." (Spencer Letter at 2.)*

Pixel-level identity is not the test. The complaint did not allege the two sites were identical; it alleged they share **slate composition, messaging, and presentation**. Spencer does not dispute that the four candidates on the slate are identical, that the candidate selection is identical, or that TPA's [tpaction.com/srpendorsements](http://tpaction.com/srpendorsements) page promotes the same four-person slate that the candidates' own [electedleadershipforSRP.com](http://electedleadershipforSRP.com) promotes. That is the relevant overlap; the visual treatment is secondary.

#### **C. Evidence Item 5 (Candidate committee vs. campaign operation)**

Spencer dismisses the year-end 2025 fundraising disparity as "nonsensical." (Spencer Letter at 2.) He does not deny:

- That Dobson's candidate committee (1002039) reported \$5,000 raised and \$0 spent through December 31, 2025.
- That TPA leadership has publicly described spending "millions" and deploying "hundreds of staff" in connection with the SRP elections.

A candidate committee that has raised \$5,000 cannot run a metropolitan-wide sign campaign. Either a different funder is paying for the sign campaign, or the candidate is benefiting from in-kind contributions that have not been reported. The complaint does not require certainty on which; it identifies the disparity as a fact requiring investigation. Spencer's response identifies

no alternative explanation.

#### **D. Evidence Item 6 (Slate formation by candidate)**

Spencer characterizes Item 6 as "pure speculation" but does not dispute the underlying fact:

*"The Complainant speculates that because SRP presidential candidate Chris Dobson recruited Barry Pacey to run as vice-president, and Turning Point Action later spent substantial sums of money to support those candidacies, then Turning Point Action must be running the candidates' campaign strategy." (Spencer Letter at 2.)*

Spencer does not deny:

- That Dobson recruited Pacey.
- That Dobson and Pacey together selected the rest of the slate.
- That TPA spent "substantial sums" supporting the slate Dobson and Pacey assembled.

Those facts come from Pacey's own statements to AZ Central, published April 4, 2026, available at

<https://www.azcentral.com/story/news/local/phoenix/2026/04/04/turning-point-srp-election/>. The point is not that one fact alone proves coordination. The point is that the candidate selected the slate, told the press he selected the slate, and then a large outside expenditure organization spent on that exact slate. The Department is permitted to find that probative.

#### **E. Evidence Item 7 (AZFRG admission)**

Spencer writes:

*"The Complainant also notes that an organization known as Arizonans for Responsible Growth has publicly discussed its alleged voter registration and messaging collaboration with Turning Point Action. But, even if true, this has no bearing on whether Turning Point Action coordinated with the 4 SRP candidates in question." (Spencer Letter at 3.)*

The phrase "even if true" is the operative concession. Spencer does not deny that AZFRG's chair, Jimmy Lindblom, publicly stated that AZFRG and TPA collaborate on voter registration and messaging. He challenges only the inference. But TPA's collaboration with another political-spending organization on voter registration and messaging is itself relevant to whether TPA's expenditure operations are walled off, as a Sec. 16-922(D)(1) firewall would require, or are integrated into a coordinated campaign architecture.

#### **F. Evidence Item 8 (Pacey's company donation to AZFRG)**

Spencer concedes:

*"The Complainant notes that vice-presidential candidate Barry Pacey's company donated \$1,000 to Arizonans for Responsible Growth. This is utterly irrelevant . . . ." (Spencer Letter at 3.)*

The fact is admitted; only the relevance is disputed. The Department should weigh that. A candidate's company funds an organization; that organization spends \$211,000 or more supporting the candidate's slate. Whether or not it crosses the legal threshold for coordination, it is a financial connection that defeats the claim of arms-length independence Spencer is asking the Department to accept.

### **G. Evidence Item 9 (Cooper and Kennedy unregistered; Pacey underregistered)**

Spencer writes:

*"Even if these two candidates did in fact limit their campaign activity in anticipation of future independent expenditure support, that would not somehow constitute coordination under Arizona law." (Spencer Letter at 3.)*

That sentence is remarkable. The phrase "**in anticipation of future independent expenditure support**" presupposes that Cooper and Kennedy expected outside expenditures to support them. An expectation of support, communicated or known to the spender in advance of the expenditure, is the textbook fact pattern of coordination. The Federal Election Commission has long recognized that a candidate's "wink-and-nod" reliance on future outside spending --- even without an explicit agreement --- forms a basis for treating outside expenditures as coordinated. (See, e.g., 11 C.F.R. Sec. 109.21(d)(4) (federal coordinated-content regulation, codifying the principle that reliance on a "common vendor" or shared knowledge of campaign needs can establish coordination).)

Even setting aside the federal framework, A.R.S. Sec. 16-922(B)(1) defines coordination as "actual coordination with respect to an expenditure." A candidate who chooses not to register or fundraise because outside support is "anticipated" is, by the respondent's own admission, in a state of mutual understanding with the spender. The Department is entitled to find that probative.

### **III. The Firewall Defense Is Not Available Without a Written Policy**

A.R.S. Sec. 16-922(D)(1) creates an affirmative defense to coordination. It is available **only** when:

*"(a) The person's agent did not participate in deciding to make the expenditure or in deciding the content, timing or targeting of the expenditure[;] (b) The person making the*

expenditure has a **written policy establishing the firewall and its requirements**[: and] (c) The person making the expenditure and the person's agent followed the written policy regarding the firewall." A.R.S. Sec. 16-922(D)(1)(a)-(c) (emphasis added).

The defense requires a written policy. Spencer's response does not assert that TPA has one. He does not produce one. He does not reference one. He does not claim that any of TPA's officers or staff are aware of one.

The Department should require Spencer to confirm, on the record, whether TPA has a written firewall policy in effect with respect to its SRP-related expenditures. If TPA does not, the affirmative defense in Sec. 16-922(D)(1) is unavailable as a matter of law, regardless of how Spencer characterizes the facts.

#### IV. The "Candidate Silence Is Independence" Argument Is Backwards

Spencer asserts:

*"Candidate silence is actually indicative of independence, not coordination." (Spencer Letter at 3.)*

That is not how Arizona campaign-finance law treats independent expenditures. Independent expenditures are, by design, **public** and **reported**. A.R.S. Sec. 16-925(A) requires that any IE communication carry a "paid for by" disclaimer naming the spender. A.R.S. Sec. 16-926(H) requires the spender to file an IE report with the filing officer. The premise of independent expenditure status is transparency: the public sees who spent and what the candidate did or did not authorize.

Coordinated relationships, in contrast, are characteristically quiet. A coordinated arrangement that became public would no longer be coordinated only in form, because the coordination itself would be exposed to legal consequence.

The Department should not credit a theory that **silence about an organizational integration --- TPA-domain email addresses, batch-created bio pages, de-indexed staff profiles, organizational titles** --- somehow proves independence. The candidates' silence about their relationship with TPA is consistent with concealment, not with arms-length endorsement.

#### V. The Pattern of Compliance Failure Forecloses Prosecutorial Discretion

Spencer does not invoke prosecutorial discretion in CF-2026-006 to the same degree he does in CF-2026-001, but his closing request --- that the Department find no reasonable cause and dismiss the complaint --- carries the same implicit ask. The Department should weigh that ask against the respondent's compliance record.

Date	Forum	Matter	Outcome
Mar 2021	FEC	MUR 7892 -- Turning Point Action; Austin Smith (TPA director)	Conciliation agreement October 2024; **\$18,000 civil penalty** for failing to disclose **\$33,795** in contributions on 2020 reports
Aug 2022	AZ Sec. of State	Investigation of TPA GOTV rallies (Goodyear, Mesa)	Investigation opened on alleged unlawful coordination with state-legislative candidates
Jun 2025	AZ Attorney General	Indictment of TPA executive Austin Smith	14 counts of nomination-petition fraud
Jul 2025	AZ CCEC	MUR 25-04 -- Unity Rising USA v. TPA / TP PAC	Pending; alleges \$500,000 transfer with zero VRKA donor disclosure
Nov 2025	AZ AG / Maricopa Sup. Ct.	Smith guilty plea	Probation; **5-year ban from holding public office**
Feb 2026	AZ Sec. of State	Turning Point Pac Arizona (Filer ID 101981) -- March Pre-Election report	Filed one day late; \$10 fine assessed
2026	AZ CCEC	MUR 26-03 -- Logvin v. TPA	Pending; 90-day deadline 7/5/2026

The Federal Election Commission has already adjudicated TPA for **failing to disclose contributions**. The civil penalty was paid; the conduct was admitted. CREW summarized the matter:

*"Turning Point Action failed to disclose more than \$33,795 in contributions on its 2020 October Quarterly and Year-End Reports." (CREW, \*Turning Point Action Fined Following CREW Complaint\*, October 2024.)*

A respondent that has been federally fined for nondisclosure on prior reports, that has had a senior executive plead guilty to election-related fraud, and that is concurrently the subject of two pending state-level disclosure proceedings is not a respondent to whom "first-bite" leniency reasonably attaches. The 2025 EPM's prosecutorial-discretion language at pages 296-297 is calibrated for one-off, unintentional, low-significance violations. A coordinated-expenditure complaint in a metropolitan election against a respondent with this record is none of those things.

## VI. Requested Action

I respectfully request that the Department:

1. **Decline to dismiss** CF-2026-006 and find reasonable cause to believe A.R.S. Sec. 16-922 has been violated.
2. **Reject** Spencer's reading of A.R.S. Sec. 16-922(C) as a pleading bar. Subsection (C) is

permissive; the operative coordination inquiry is Sec. 16-922(B)(1), which the complaint pleads.

3. **Require Turning Point Action to produce, on the record**, any written firewall policy in effect during the SRP election cycle that complies with A.R.S. Sec. 16-922(D)(1)(b), or to confirm that no such policy exists.

4. **Require Turning Point Action to produce, on the record**, the date of creation of the four candidate profiles in TPA's content management system (Profile IDs 124, 125, 126, 127) and the user account that created them.

5. **Investigate** whether Cooper and Kennedy received in-kind contributions exceeding the A.R.S. Sec. 16-905 registration threshold, in light of Spencer's admission that they may have "limit[ed] their campaign activity in anticipation of future independent expenditure support."

6. **Investigate** whether Dobson and Pacey received in-kind contributions from TPA constituting unreported in-kind contributions in violation of A.R.S. Sec. 16-922(E) and the reporting requirements of A.R.S. Sec. 16-926.

7. **Refer** any disclosure issues outside the Department's jurisdiction (e.g., A.R.S. Sec. 16-971 et seq. donor disclosure under Proposition 211) to the Citizens Clean Elections Commission, where MUR 26-03 is already pending.

Thank you for your attention. I am available to provide additional documentation or testimony as needed.

Respectfully submitted,

[REDACTED]

[CITY REDACTED]

[EMAIL REDACTED]

[PHONE REDACTED]

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## Sources Cited

1. A.R.S. Sec. 16-905 (Committee qualification; requirements; exemption; adjustments), available at <https://www.azleg.gov/ars/16/00905.htm>

2. A.R.S. Sec. 16-922 (Independent and coordinated expenditures), available at <https://www.azleg.gov/ars/16/00922.htm>

3. A.R.S. Sec. 16-925 (Advertising and fundraising disclosure statements), available at <https://www.azleg.gov/ars/16/00925.htm>

4. A.R.S. Sec. 16-926 (Campaign finance reports; contents), available at

<https://www.azleg.gov/ars/16/00926.htm>

5. 11 C.F.R. Sec. 109.21 (FEC coordinated-communications regulation, common-vendor and former-employee provisions), available at <https://www.ecfr.gov/current/title-11/chapter-I/subchapter-A/part-109/subpart-C/section-109.21>

6. FEC Matter Under Review 7892 (Turning Point Action; Austin Smith), conciliation agreement October 2024, available at <https://www.fec.gov/data/legal/matter-under-review/7892/>

7. CREW, \*Turning Point Action Fined Following CREW Complaint\* (October 2024), available at <https://www.citizensforethics.org/news/press-releases/turning-point-action-fined-following-crew-complaint/>

8. AZ Attorney General, Press Release: \*Attorney General Mayes Announces Sentencing of Former Legislator Austin Smith\* (January 2026), available at <https://www.azag.gov/press-release/attorney-general-mayes-announces-sentencing-former-legislator-austin-smith>

9. AZ Mirror, \*Turning Point USA's Political Arms Accused of Violating Arizona Dark Money Disclosure Law\* (July 2025), available at <https://azmirror.com/briefs/turning-point-usa-political-arms-accused-of-violating-arizona-dark-money-disclosure-law/>

10. \*Turning Point Action Events Under Scrutiny by Arizona Secretary of State Over Election Law Violations\*, Rose Law Group Reporter (August 2022), available at <https://roselawgroupreporter.com/2022/08/turning-point-action-events-under-scrutiny-by-arizona-secretary-of-state-over-election-law-violations/>

11. \*Turning Point's Big SRP Bet\*, AZ Central (April 4, 2026), available at <https://www.azcentral.com/story/news/local/phoenix/2026/04/04/turning-point-srp-election/>

12. AZ SoS SeeTheMoney, "Turning Point Pac Arizona," Filer ID 101981 (committee record showing 2026 March Pre-Election report filed February 24, 2026, one day late, with \$10 fine assessed)

13. Original Complaint CF-2026-006 (filed April 6, 2026; Maricopa County Elections Department record), with Exhibits A-1 through A-4 (TPA bio page source extracts for Dobson, Pacey, Kennedy, Cooper)