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BEFORE THE FEDERAL ELECTION COMMISSION

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v.

MUR No. 7343

HIGHWAY 31
Edward Still, in his official capacity as Treasurer
429 Green Springs Highway, Suite 161-304
Birmingham, AL 35209

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Highway 31 (ID: C00659896) has failed to report and misreported contributions received and has misreported disbursements in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.*
2. Highway 31 was formed in Alabama on November 6, 2017 and—despite not having raised a penny and having no record of political fundraising—was quickly extended \$1,154,844 in credit by out-of-state media consulting firms for independent expenditures in connection with the special election for U.S. Senate in Alabama in December 2017. Highway 31's pre-special report—the only report filed before Alabama voters went to the polls on Election Day—did not list the identity of any contributors, but it did report \$1,154,844 in debt. Two days after the close of the pre-special reporting period, Highway 31 received a \$1.2 million contribution from Senate Majority PAC, and then repaid its vendors. As described below, these facts

present reason to believe that Highway 31 failed to report contributions received from its vendors, and/or from Senate Majority PAC and Priorities USA Action, in violation of its reporting obligations at 52 U.S.C. § 30104(b)(3)(A), and that there is additionally reason to believe Highway 31 violated its reporting obligations at 52 U.S.C. § 30104(b)(4) by failing to adequately report any payments to extinguish debts and obligations. Moreover, Highway 31 reported receiving \$910,000 in contributions from Priorities USA Action—contributions that Priorities USA Action’s reports indicate it did not make. Highway 31 therefore misreported its receipts in violation of its reporting obligations at 52 U.S.C. §§ 30104(b)(3).

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.¹

FACTS

5. Highway 31 is an independent expenditure-only political action committee (i.e., a “super PAC”) that filed a Statement of Organization with the Commission on November 6, 2017.²
6. Just two days after forming, Highway 31 began reporting independent expenditures in the Alabama Senate special election. Its first 48-hour independent expenditure report, for

¹ CLC’s voting rights attorneys, including J. Gerald Hebert, were not involved in this complaint.

² Highway 31, Statement of Organization, FEC Form 1, at 1, 2 (filed Nov. 6, 2017), <http://docquery.fec.gov/pdf/522/201711069086611522/201711069086611522.pdf>.

advertising disseminated on November 8, 2017, disclosed \$144,088 in payments to Bully Pulpit Interactive for “online advertising and media production costs – estimate.”³ Highway 31 went on to report an additional \$1.016 million in independent expenditures through November 22, 2017, which marked the end of the pre-special reporting period.⁴

7. Highway 31 filed its pre-special report on November 30, 2017.⁵ The group disclosed \$1,154,844 in independent expenditures over the reporting period, despite having raised \$0; it claimed the vendors that produced and disseminated its independent expenditures had extended the newly formed committee \$1,154,844 in credit.⁶ This comprised \$800,693 in credit from Bully Pulpit Interactive for advertising and media production costs; \$309,690 in credit from Waterfront Strategies for media buys; \$3,475 in credit from Denise Nelson Voiceovers; \$5,870 in credit from Nutt Labs for media production; \$29,717 in credit from Putnam Partners for media production; and \$5,400 in credit from ZUUR for media production.⁷ These vendors were scattered across the east coast, from Pennsylvania to Georgia; none of them was located in Alabama.⁸
8. By the date of the Alabama Senate special election, December 12, 2017, Highway 31 had made \$4,232,566 in independent expenditures,⁹ but had not reported the identities of any of its contributors.

³ Highway 31, 24/48 Hour Report of Independent Expenditures, FEC Schedule E (filed Nov. 10, 2017), <http://docquery.fec.gov/pdf/917/201711109086621917/201711109086621917.pdf>.

⁴ 24/48 Hour Report of Independent Expenditures, FEC Schedule E, at 8 (filed Nov. 27, 2017), <http://docquery.fec.gov/pdf/835/201711279087657835/201711279087657835.pdf>.

⁵ Highway 31, Pre-Special Report, FEC Form 3X, at 1 (filed Nov. 30, 2017), <http://docquery.fec.gov/pdf/779/201711309087675779/201711309087675779.pdf>.

⁶ *Id.* at 2, 3.

⁷ *Id.* at 6-11.

⁸ *Id.*

⁹ Highway 31, Year-End Report, FEC Form 3X, at 4, 43 (filed Jan. 21, 2018), <http://docquery.fec.gov/pdf/548/201801199090457548/201801199090457548.pdf>.

9. On December 27, 2017, Senate Majority PAC (“SMP”) spokesperson Chris Hayden told the *Associated Press* that SMP was Highway 31’s main backer: “Yes, SMP was the contributor to Highway 31,” said Hayden. “There were a few small donations when Highway 31 became public, but it was predominantly funded by SMP.”¹⁰ Additionally, the *Associated Press* reported that:

Hayden said the Senate Majority PAC spent more than \$6 million in Alabama. That included: \$2 million on television and radio; \$2 million on a voter turnout operation in partnership with BlackPAC; \$1.5 million on digital advertising in partnership with Priorities USA; and \$700,000 on direct mailings. Priorities USA is another Democratic super PAC.¹¹

10. On January 19, 2018, Highway 31 filed a 43-page year-end report¹² that reflected \$3,194,000 in contributions from SMP (ID: C00484642);¹³ \$910,000 from Priorities USA Action (ID: C00495861);¹⁴ \$250,000 from the League of Conservation Voters;¹⁵ and \$8,000 from other sources.¹⁶ This was the first time Highway 31 had disclosed the identities of any of its contributors.
11. That same day, January 19, 2018, Highway 31 filed a termination report.¹⁷

¹⁰ Associated Press, *Mysterious Democratic-funded ‘Highway 31’ super PAC spent \$4M to defeat Moore in Alabama*, NBC News (Dec. 27, 2017), <https://www.nbcnews.com/politics/elections/mysterious-democratic-funded-highway-31-super-pac-spent-4m-defeat-n832871>.

¹¹ *Id.* Notably, although both SMP and Priorities USA made contributions and expenditures in connection with the Alabama special election, neither committee filed a post-special report, nor did they file their year-end report according to the schedule outlined by the Commission. *See generally* 11 C.F.R. §§ 111.30-.46; *see also* Filing Dates for Alabama Senate Special Elections, 82 Fed. Reg. 24124 (May 25, 2017), https://www.fec.gov/resources/cms-content/documents/fedreg_notice2017-10.pdf.

¹² Highway 31, Year-End Report, FEC Form 3X, at 1 (filed Jan. 19, 2018), <http://docquery.fec.gov/pdf/548/201801199090457548/201801199090457548.pdf>.

¹³ *Id.* at 9-11. SMP gave \$1,200,000 on Nov. 24, 2017, two days after the Pre-Special Report.

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 6-8.

¹⁷ Highway 31, Termination Report, FEC Form 3X, at 1 (filed Jan. 19, 2018), <http://docquery.fec.gov/pdf/955/201801199090466955/201801199090466955.pdf>. The termination report listed only one receipt, a \$2,230.21 contribution from SMP on January 4th, and one disbursement, \$2,490 to Edward Still Law Firm, LLC, for legal services. *Id.* at 6, 7. Highway 31 also filed a post-special report on January 19, 2018, covering January 1, 2018, and reported no additional contributions or expenditures. Highway 31, Post-Special Report, FEC Form 3X, at 1 (filed Jan. 19, 2018), <http://docquery.fec.gov/pdf/518/201801199090464518/201801199090464518.pdf>.

12. Highway 31's top two vendors, Waterfront Strategies and Bully Pulpit, have also regularly contracted with Highway 31's top two contributors, SMP and Priorities USA Action. SMP has already reported more than \$2.8 million in disbursements to Waterfront Strategies for independent expenditures in the 2017-2018 cycle, and over \$152 million in disbursements for independent expenditures since 2010;¹⁸ SMP also paid Waterfront Strategies \$400,000 for a "media buy" on November 17, 2017.¹⁹ Priorities USA Action has paid Bully Pulpit \$804,000 in disbursements for digital ad buys in the 2017-2018 cycle,²⁰ and paid it at least \$356,337 for independent expenditures.²¹
13. In 2017, other committees had reported paying Bully Pulpit and Waterfront Strategies a total of approximately \$5.5 million.²² Of the \$167.2 million that other committees paid Bully Pulpit and Waterfront Strategies since 2015, there does not appear to be another example analogous to the Highway 31-Bully Pulpit or Highway 31-Waterfront Strategies relationship;

¹⁸ See Independent Expenditures (24- and 48- hour reports) from "SMP" to "Waterfront Strategies," https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00484642&is_notice=true&payee_name=waterfront (last visited Feb. 28, 2018).

¹⁹ SMP reported this media buy on the Schedule B of its 2017 year-end report. SMP, 2017 Year-End Report, FEC Form 3X, at 2247 (filed Jan. 31, 2018), <http://docquery.fec.gov/pdf/002/201801319091099002/201801319091099002.pdf>.

²⁰ Disbursements to "Bully Pulpit" from "Priorities USA Action," 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00495861&recipient_name=bully+pulpit&min_date=01%2F01%2F2017&max_date=01%2F24%2F2018 (last visited Feb. 28, 2018).

²¹ Priorities USA Action, 24/48 Hour Report of Independent Expenditures, FEC Schedule E (filed May 25, 2017), <http://docquery.fec.gov/pdf/736/201705259055151736/201705259055151736.pdf>; Priorities USA Action, 24/48 Hour Report of Independent Expenditures, FEC Schedule E (filed June 10, 2017), <http://docquery.fec.gov/pdf/593/201706109056425593/201706109056425593.pdf>; Priorities USA Action, 24/48 Hour Report of Independent Expenditures, FEC Schedule E (filed Feb. 25, 2018), <http://docquery.fec.gov/pdf/669/201802259095588669/201802259095588669.pdf>.

²² See Disbursements to "Bully Pulpit" or "Waterfront Strategies," 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&recipient_name=bully+pulpit&recipient_name=waterfront+strategies&min_date=01%2F01%2F2017&max_date=01%2F24%2F2018 (last visited Jan. 25, 2018); Independent Expenditures (regularly scheduled reports) to "Bully Pulpit" or "Waterfront Strategies," Jan. 1, 2017-present, https://www.fec.gov/data/independent-expenditures/?data_type=processed&is_notice=false&payee_name=bully+pulpit&payee_name=waterfront+strategie&min_date=01%2F01%2F2017 (last visited Jan. 25, 2018).

the extension of debt to a brand new committee with \$0 cash-on-hand does not appear to be a typical business practice for either vendor.²³

14. On its year-end report, Priorities USA Action does not report any contributions to Highway 31 or any other political committee.²⁴

SUMMARY OF THE LAW

15. FECA requires each treasurer of a political committee to file reports of receipts and disbursements with the Commission. 52 U.S.C. § 30104(a)(1).
16. For any political committee other than an authorized committee, such reports must include the total amount of contributions received, 52 U.S.C. § 30104(b)(2)(A), as well as the identification of each person or political committee who made a contribution in excess of \$200 during the reporting period, together with the date and amount of such contribution, 52 U.S.C. § 30104(b)(3)(A)-(B).

²³ The only other instances of Waterfront Strategies extending credit involved political committees that had a longstanding relationship with the vendor and/or a demonstrated history of fundraising and substantial cash on hand. For example, on its pre-general 2016 report, Senate Majority PAC reported incurring a \$7,086.77 debt to Waterfront Strategies. Senate Majority PAC, Pre-General 2016 Report, FEC Form 3X, at 1525 (amended June 22, 2017), <http://docquery.fec.gov/pdf/448/201706229065074448/201706229065074448.pdf>. However, Senate Majority PAC (formerly Commonsense Ten) been contracting with Waterfront Strategies since 2010. Disbursements to “Waterfront Strategies” from “SMP (C00484642),” 2009-10, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2010&data_type=processed&committee_id=C00484642&recipient_name=waterfront+strategies&min_date=01%2F01%2F2009&max_date=12%2F31%2F2010 (last visited Jan. 26, 2018). In another case, the super PAC For Our Future reported a \$11,376.46 debt to Waterfront Strategies on its pre-general 2016 report. For Our Future, Pre-General 2016 Report, FEC Form 3X, at 180 (amended Aug. 9, 2017), <http://docquery.fec.gov/pdf/822/201708099070311822/201708099070311822.pdf>. However, the super PAC had formed months earlier and already had almost \$2.5 million in cash on hand at the end of its first reporting period. For Our Future, July 15 Quarterly Report, FEC Form 3X, at 2 (filed July 15, 2016), <http://docquery.fec.gov/pdf/508/201607159020558508/201607159020558508.pdf>. In a third example, Waterfront Strategies extended \$864,702.26 in debt to SEIU COPE shortly before the 2012 general election. SEIU COPE, Pre-General Report, FEC Form 3X, at 141 (amended June 5, 2013), <http://docquery.fec.gov/pdf/007/13962756007/13962756007.pdf>. However, the committee was decades old and had more than \$7 million in cash on hand according to its pre-general report. *Id.* at 2.

²⁴ Priorities USA Action, Year-End Report, FEC Form 3X (filed Jan. 31, 2018), <http://docquery.fec.gov/pdf/022/201801319091295022/201801319091295022.pdf>.

17. “Contribution” includes “any 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(8)(A)(i).
18. “Contribution” also includes an extension of credit, “unless the credit is extended in the ordinary course of the person’s business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.” 11 C.F.R. § 100.55.
19. “Contribution” also includes any loan or “guarantee.” 11 C.F.R. § 100.52(a)-(b). A guarantor must be reported as a contributor. *Id.* § 100.52(b)(3).
20. Political committees must report all payments to reduce or extinguish debts or obligations on Schedule D (“Debts and Obligations”), as well as itemize the date, amount, and purpose of each such disbursement on Schedule B (“Itemized Disbursements”).²⁵

CAUSES OF ACTION

I. Highway 31 Failed to Report Contributions Received from Vendors

21. There is reason to believe that Highway 31 failed to report contributions received from its vendors.
22. Highway 31 was formed in Alabama on November 6, 2017 and—despite not having raised a penny and with no record of political fundraising—was immediately extended \$144,087 in credit by the Washington, D.C.-based Waterfront Strategies for independent expenditures disseminated two days later, on November 8. By November 22, 2017, Waterfront Strategies, Bully Pulpit Interactive, and other vendors—all of them outside of Alabama—had extended the newly formed Highway 31 \$1,154,844 in credit.²⁶

²⁵ FEC, *Instructions for Form 3X and Related Schedules* at 20 (revised 05/2016), <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf> (emphasis added).

²⁶ 24/48 Hour Report of Independent Expenditures, FEC Schedule E, at 8 (filed Nov. 27, 2017), <http://docquery.fec.gov/pdf/835/201711279087657835/201711279087657835.pdf>. This included \$241,587 in credit

23. A vendor may extend credit to a political committee, but if the credit is not “extended in the ordinary course of the person’s business” with terms “substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation,” then the extension of credit is a contribution. 11 C.F.R. § 100.55. Political committees must report the identity of all contributors over \$200, and the date and amount of the contribution. 52 U.S.C. § 30104(b)(3)(A).
24. It is hard to believe that the vendors here would, in the ordinary course of business, extend hundreds of thousands of dollars in credit to an entity that was formed just weeks earlier and had a total of \$0 in its bank account. Indeed, as explained above, the primary vendors do not appear to have extended credit to any other entity like Highway 31. Moreover, because Highway 31’s independent expenditures were disseminated before these vendors were paid, at least some of the vendors appear to have made out-of-pocket payments to Facebook and the television stations that disseminated the ads. There are no records of any of these vendors similarly extending five, six, or seven figures of credit to a newly formed committee with no cash-on-hand. Therefore, the extension of credit by these vendors constituted contributions to Highway 31.
25. As a result, there is reason to believe that Highway 31 failed to report contributions received from Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, and ZUUR, in violation of its reporting obligations at 52 U.S.C. § 30104(b)(3)(A).

from Bully Pulpit Interactive for advertising and media production costs; \$309,690 in credit from Waterfront Strategies for media buys; \$3,475 in credit from Denise Nelson Voiceovers, \$5,870 in credit from Nutt Labs for media production; \$29,716 in credit from Putnam Partners for media production; and \$5,400 in credit from ZUUR for media production.

II. Highway 31 Failed to Report Contributions Received from SMP

26. There is also reason to believe that Highway 31 failed to report contributions received from SMP.
27. At the close of the pre-special reporting period, November 22, 2017, Highway 31 reported it had made \$1,154,844 in independent expenditures on credit and was \$1,154,844 in debt; two days later, on November 24, 2017, SMP gave Highway 31 \$1,200,000.²⁷ That same day, Highway 31 repaid the \$309,690 owed to Waterfront Strategies,²⁸ and repaid the other vendors shortly thereafter. (The exact dates of many of the other debt repayments are unknown; see Count III, below.)
28. The timing of these transactions provides reason to believe that SMP (and/or contributors to those committees) guaranteed that the vendors who disseminated Highway 31's independent expenditures would get paid. A "guarantee" is a loan, 11 C.F.R. § 100.52(b), a loan is a contribution, *id.* § 100.52(a), and a guarantor's name must be listed as a contributor, *id.* § 100.52(b)(3).²⁹ And yet Highway 31's pre-special report—the only report filed before Alabama voters went to the polls on Election Day—did not list the identity of any contributors.
29. As a result, there is reason to believe that Highway 31 violated 52 U.S.C. § 30104(b)(3)(A) by failing to report contributions received from SMP.

²⁷ Highway 31, Year-End Report, FEC Form 3X at 9 (filed Jan. 19, 2018), <http://docquery.fec.gov/pdf/548/201801199090457548/201801199090457548.pdf>.

²⁸ *Id.* at 33.

²⁹ Although an "unsecured promise" to make a contribution is not a contribution, AO 1985-29 (John Breaux Committee) at 4, and a "conditional promise to make a contribution" is not a contribution, AO 2015-08 (Repledge) at 5, there may be reason to believe that SMP or Priorities USA Action did indeed make secured promises to Highway 31's vendors that the committees would contribute enough to Highway 31 to cover their costs.

III. Highway 31 Failed to Report Disbursements to Extinguish Debt Obligations

30. On its year-end report, Highway 31 reported on Schedule D that it had repaid the entirety of the \$1,154,844 balance on its outstanding debts and obligations.³⁰ Schedule D does not include dates of disbursement. Highway 31 did not report payments for those debts on Schedule B, which would have included the date of each disbursement.
31. The instructions for Schedule D state: “When a payment is made to reduce or extinguish an obligation owed BY the committee, *the payment must be itemized on Schedule B*, reported on the appropriate line of the Detailed Summary Page, and included in the ‘Payment This Period’ column on Schedule D.”³¹
32. By Highway 31 failing to report the disbursements to settle its \$1,154,844 in reported debts on Schedule B, it effectively concealed the date that many of the disbursements were made—and concealed how quickly Highway 31 paid vendors after receiving contributions from SMP and Priorities USA Action.³²
33. Therefore, there is reason to believe Highway 31 violated its reporting obligations at 52 U.S.C. § 30104(b)(4) by failing to adequately report payments to extinguish debts and obligations on Schedule B.

IV. Highway 31 Reported Contributions that It Did Not Receive

34. Highway 31’s year-end report shows it receiving a \$785,000 contribution from Priorities USA Action on November 27, 2017, and a \$125,000 contribution on November 29, 2017.³³ However, Priorities USA Action’s year-end report, covering all disbursements from July

³⁰ Highway 31, Year-End Report, FEC Form 3X, at 15-20 (filed Jan. 19, 2018).

³¹ FEC, *Instructions for Form 3X and Related Schedules* at 20 (revised 05/2016), <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf> (emphasis added).

³² Although Highway 31’s Schedule E lists some debt payments for previously-reported independent expenditures, *see id.* 27, 29, 31, 33-34, 36-40, 42, this only accounts for an estimated \$358,406 of the \$1,154,844 in payments for outstanding debt.

³³ Highway 31, Year-End Report at 9-10.

2017 through December 2017, does not report any contributions to Highway 31 or any other political committee.³⁴

35. Therefore, there is reason to believe that Highway 31 violated its reporting requirements at 52 U.S.C. § 30104(b)(3) by failing to accurately report the identity of each person or political committee that gave it a contribution in excess of \$200, together with the date and amount of such contribution.

PRAYER FOR RELIEF

36. Wherefore, the Commission should find reason to believe that Highway 31 has violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
37. Further, 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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³⁴ Priorities USA Action, Year-End Report, FEC Form 3X (filed Jan. 31, 2018), <http://docquery.fec.gov/pdf/022/201801319091295022/201801319091295022.pdf>.

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March 5, 2018

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.

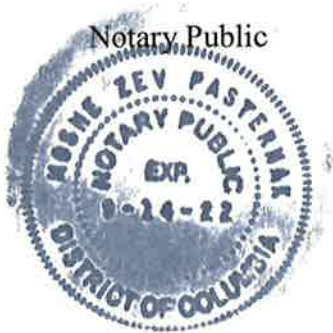
For Complainant Sandhya Bathija



Sandhya Bathija

Sworn to and subscribed before me this 5 day of March 2018.





For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 5 day of March 2018.



