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VIA HAND DELIVERY AND ELECTRONIC MAIL

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 7343

Dear Mr. Jordan:

We write on behalf of Highway 31 and Edward Still in his Official Capacity as Treasurer, SMP and Rebecca Lambe in her Official Capacity as Treasurer, Priorities USA Action and Gregory Speed in his Official Capacity as Treasurer; Putnam Partners; Denise Nelson Voiceovers; Waterfront Strategies; ZUUR; and Bully Pulpit Interactive. (collectively "Respondents"), in response to the complaint filed by the Campaign Legal Center and Sandhya Bathija on March 7, 2018 in the above-referenced matter.

Highway 31 terminated on January 19, 2018. Notably, the Commission accepted Highway 31's termination with full awareness of the transactions described in the Complaint, each of which were detailed in Highway 31's publicly available campaign finance reports. Because the Complaint does not present any evidence that Highway 31 committed a violation and does not allege that the other Respondents committed a violation, it does not meet the requirements for a complaint that may be considered by the Commission. The Commission must find that no reason to believe a violation occurred, dismiss the allegations, and close the file.

The Complaint mischaracterizes and misconstrues Respondents' lawful activity under the Federal Election Campaign Act of 1971, as amended ("the Act") and its accompanying regulations ("Commission Regulations.") The substantive claims here are three-fold: *first*, the false allegation that Highway 31 should have listed its vendors as contributors; *second*, the erroneous allegation that SMP made a reportable contribution to Highway 31 prior to November 24, 2017, when a contribution from SMP was first reported; and third, the allegation that Highway 31 not listing its payments to vendors as expenditures on Schedule B when the debt was reported on Schedule D is somehow a violation of the law. Neither the facts nor the law support these baseless allegations.

A valid complaint must include a "clear and concise recitation of the facts which describe a

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violation of a statute or regulation.”¹ Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation.² Because the Complaint alleges no conduct which constitutes a violation of the Act or Commission Regulations, apart from an extremely minor error made on Highway 31’s post-election report,³ the Commission should find no reason to believe that Respondents violated the Act and should dismiss this matter.

FACTUAL DESCRIPTION

Highway 31 was formed as an independent expenditure-only committee on November 6, 2017, amidst increased local and national attention in the special election for Alabama’s U.S. Senate seat left vacant by current Attorney General Jeff Sessions.⁴ The Commission established a schedule for reporting for the special election that occurred on December 12, 2017.⁵

On November 10, 2017, Highway 31 began reporting independent expenditures in connection with the special election as required by 11 C.F.R. § 104.4(b)(2). In their independent expenditure reports, political committees are required to report “[e]ach person who receives any disbursement during the reporting period in an aggregate amount of value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure(s).”⁶ So, for example, on November 10, 2017, Highway 31 filed a 48-hour report reporting incurred expenses to Bully Pulpit Interactive and Denise Nelson Voiceovers for an independent expenditure.⁷ On a 24-hour report filed on November 27, 2017 as required by 11 C.F.R. § 104.4(c), Highway 31 reported incurred expenses to Bully Pulpit Interactive and Ourso Beychok Johnson, Inc. in support of an independent expenditure.⁸ No requirement exists to report debts or obligations on these reports.

Based on the FEC’s reporting schedule for the special election, Highway 31 filed a pre-election report on November 30, 2017 that covered contributions received, expenditures made, and debt

¹ 11 C.F.R. § 111.4.

² See Commissioners Mason, Sandstrom, Smith & Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

³ Respondents acknowledge that Priorities USA, not Priorities USA Action, should have been listed as the contributor to Highway 31.

⁴ Highway 31 Statement of Organization, FEC Form 1 (Nov. 6, 2017).

⁵ FEC, Alabama 2017 Special Election Reporting, <https://www.fec.gov/updates/alabama-special-election-reporting-senate-2017/>.

⁶ 11 C.F.R. § 104.3(b)(3)(vii)(A).

⁷ FEC 24/48 Hour Report of Independent Expenditures (Nov. 10, 2017), <http://docquery.fec.gov/pdf/917/201711109086621917/201711109086621917.pdf>.

⁸ FEC 24/48 Hour Report of Independent Expenditures (Nov. 27, 2017), <http://docquery.fec.gov/pdf/843/201711279087657843/201711279087657843.pdf>.

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incurred up until November 22, 2017.⁹ The Act and Commission Regulations require political committees to disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.¹⁰ On regularly-filed reports, political committees must, in relevant part, "on Schedule C or D as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee."¹¹ Accordingly, on its pre-election report, Highway 31 listed its outstanding debt on Schedule D, which included debt owed to Bully Pulpit Interactive, Denise Nelson Voiceovers, and additional vendors for Highway 31's expenses incurred while engaging in independent expenditures.¹² The vendors' provision of services were extended in the ordinary course of business.¹³

At the time of the close of books of its pre-election report, Highway 31 had not yet begun receiving contributions. It began to receive contributions only after that point. For example, on November 24, 2017, it received a contribution of \$1,200,000.00 from SMP. On November 29, 2017, it received a \$250,000.00 contribution from League of Conservation Voters, Inc. On November 30, 2017, it received a \$2,000.00 contribution from an individual.¹⁴

On January 19, 2018, Highway 31 filed its year-end report.¹⁵ In addition to disclosing all contributions received,¹⁶ Highway 31 reported on Schedule D extinguishing all of its outstanding debt to each vendor. On January 19, 2018, Highway 31 also filed its post-election report and its termination report.¹⁷ The Commission approved the termination on February 8, 2018.¹⁸ Highway 31 no longer exists as a political committee and is thus unable to file any amendments to the reports filed with the Commission.

LEGAL ANALYSIS

The Complainants' attempts to distort the brevity of Highway 31's existence is without

⁹ Highway 31 Pre-Election Report (Nov. 30, 2017),

<http://docquery.fec.gov/pdf/779/201711309087675779/201711309087675779.pdf>.

¹⁰ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

¹¹ 11 C.F.R. § 104.3(d).

¹² Highway 31 Pre-Election Report (Nov. 30, 2017),

<http://docquery.fec.gov/pdf/779/201711309087675779/201711309087675779.pdf>.

¹³ 11 C.F.R. § 100.55.

¹⁴ Highway 31 Year-End Report (Jan. 19, 2018),

<http://docquery.fec.gov/pdf/548/201801199090457548/201801199090457548.pdf>.

¹⁵ *Id.*

¹⁶ Highway 31 incorrectly listed one of its contributors as Priorities USA Action when in fact the contributor was Priorities USA.

¹⁷ Highway 31 Year-End Report (Jan. 19, 2018),

<http://docquery.fec.gov/pdf/548/201801199090457548/201801199090457548.pdf>; Highway 31 Termination Report (Jan. 18, 2018), <http://docquery.fec.gov/pdf/955/201801199090466955/201801199090466955.pdf>.

¹⁸ FEC Termination Letter (Feb. 8, 2018),

<http://docquery.fec.gov/pdf/746/201802080300097746/201802080300097746.pdf>.

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foundation. Highway 31 engaged in activity in a short period of time. It made independent expenditures, reported outstanding debt to vendors, and accepted contributions. It did so in compliance with the law and with Commission Regulations.

First, Highway 31's vendors were properly reported as debtors. Highway 31 engaged vendors to create independent expenditures in support of Doug Jones in connection with the Alabama special election. Highway 31 reported outstanding payments to vendors on Schedule D of its pre-election report. Federal law requires political committees to include in their campaign finance reports "the amount and nature of outstanding debts and obligations owed by or to [a] political committee."¹⁹ Furthermore, debts and obligations owed "which remain outstanding shall be continuously reported until extinguished."²⁰ Highway 31 reported its outstanding debts to vendors on its reports filed with the Commission until the debt was extinguished. By the time it filed its post-special election report and its year-end report on January 19, 2018, Highway 31 extinguished its debts to its vendors. The Commission has found fault with political committees who fail to disclose their debt.²¹ However, where committees properly disclose their outstanding debt and report extinguishing them, there can be no violation of any reporting obligation.

The argument that Highway 31 should have reported its vendors as contributors is without any factual support whatsoever. Highway 31 paid each vendor the fair market value for services rendered in the ordinary course of business. The vendors had every reason to believe that they would be paid. The Complaint argues that it is "hard to believe" that vendors would extend credit in this manner, and point to the fact that there are "no records of these vendors extending" credit to other committees.²² However, at least some of the vendors have been reported on another committee's debt schedule. For example, on its 2016 year-end report and on several of its 2016 monthly reports, the Democratic National Committee reported owing debt to Bully Pulpit Interactive.²³ On several of its 2014 reports, House Majority PAC reported debt to Putnam Partners and to Waterfront Strategies.²⁴

¹⁹ 52 U.S.C. § 30104(b)(8); *see also* 11 C.F.R. § 104.3(d).

²⁰ *Id.* § 104.11(a) (citing *id.* § 104.3(d)).

²¹ *See, e.g.*, MUR 7235, Statement of Reasons of Chairman Steven T. Walther (May 1, 2017), <https://www.fec.gov/files/legal/murs/7235/17044435798.pdf>; Mur 6943, Statement of Reasons of Chairwoman Ann Ravel, (June 19, 2015), <https://www.fec.gov/files/legal/murs/6943/15044376430.pdf>.

²² Complaint ¶ 23.

²³ *See, e.g.*, Democratic National Committee ("DNC") Year-End Report, Schedule D at 5427 (June 1, 2017) (amended), <http://docquery.fec.gov/pdf/873/201706019055202873/201706019055202873.pdf>; DNC June 2016 Monthly Report, Schedule D at 3894 (June 20, 2016), <http://docquery.fec.gov/pdf/608/201606209018587608/201606209018587608.pdf>; DNC February 2016 Monthly Report, Schedule D at 1126 (Feb. 19, 2016), <http://docquery.fec.gov/pdf/624/201602199008509624/201602199008509624.pdf>.

²⁴ *See, e.g.*, House Majority PAC ("HMP") June 2014 Monthly Report, Schedule D at 79 (June 20, 2014), <http://docquery.fec.gov/pdf/218/14961299218/14961299218.pdf> (reporting debt to Putnam Partners); HMP Pre-

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So was the case here. The vendors performed work for Highway 31, whether placing advertisements, producing content for advertisements, or performing other consulting services. As they do for all their clients, the vendors sent Highway 31 invoices upon completion of their work; they are not paid in advance. The vendors' services, billing practices, and payment schedule followed the ordinary course of practice for their clients. Nevertheless, it is not a requirement that vendors have extended similar credit to political committees reporting to the Commission; and indeed, Highway 31 would not have been able to rely on such a history. Instead, the Commission regulations make clear that the test is whether the terms are "substantially similar to extensions of credit to nonpolitical debtors."²⁵ Because such arrangements are not listed on reports filed with the Commission, there is no factual basis for the Complaint to argue that the treatment of vendors as debtors was inaccurate.

Regarding the vendors: Complainants do not allege that any of the vendors violated the Act in any way and does not name them as Respondents. The vendors should not have been named as Respondents by the Commission, as they have not been alleged to have committed a "violation of a statute or regulation over which the Commission has jurisdiction."²⁶ While Highway 31 correctly reported all of its interactions with the vendors, even if the Complaint's distorted view of the facts had any basis in reality, the only potential question concerns Highway 31's filings. Under no set of facts would the vendors have needed to report anything to the Commission themselves, and even if they had made contributions, which they did not, such contributions would have been permissible. There is no set of facts in this case that could amount to any violation of the Act by the vendors.

Second, there is no evidence to believe that SMP or any other contributor guaranteed payments for Highway 31. And in fact, it did not do so. Highway 31 engaged in election activity in Alabama and sought donors to support its activity. Complainants engage in speculation by supposing a correlation between the timing and amounts of any contributions received by Highway 31.

Third, Highway 31 adequately reported its debt in accordance with Commission Regulations, which require that political committees report debt on a separate schedule until such debt is extinguished.²⁷ The Complaint tries to argue that Highway 31 should have reported payment for debts on Schedule B. However, that argument betrays Complainant's unfamiliarity with FEC Form 3X. The debts in question were not for Operating Expenditures reported on Line 21; they were for Independent Expenditures reported on line 24. Form 3X itself makes clear that those items are reported on Schedule E, not Schedule B. Including them on Schedule B as well would

Special Report, Schedule D at 91 (Mar. 7, 2014) (amended),
<http://docquery.fec.gov/pdf/612/14960489612/14960489612.pdf> (reporting debt to Waterfront Strategies).

²⁵ 11 C.F.R. § 100.55 (emphasis supplied).

²⁶ *Id.* § 111.4(d)(3).

²⁷ See *supra*, note 8.

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have been an error, because they would have artificially inflated Highway 31's overall disbursements and rendered its cash-on-hand statement inaccurate.

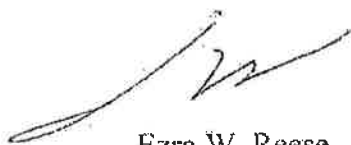
Finally, Highway 31 acknowledges that there was a minor error in its listing of contributors. Priorities USA Action, a political committee, was reported as a contributor; in fact, the contribution was from a related entity, Priorities USA, a 501(c)(4) organization. Because the contribution was made by wire, it was not apparent which entity was making the contribution. Highway 31 is willing to amend its report, but its understanding is that it can no longer amend since it has terminated upon the approval of the Commission.

Because the essential facts of the source of the contribution were disclosed, the Commission should exercise its prosecutorial discretion and take no further action because the allegations do not merit further use of Commission resources.²⁸

CONCLUSION

As described herein, the Complaint does not allege any facts, which, if proven true, would constitute a violation of the Act or Commission Regulations. Accordingly, the Commission should reject the Complaint's request for an investigation, find no reason to believe that a violation of the Act or Commission regulations has occurred, and immediately dismiss this matter.

Very truly yours,



Ezra W. Reese

²⁸ See *Heckler v. Chaney*, 470 U.S. 821 (1985) (the Commission has broad discretion to determine how to proceed with respect to complaints and referrals); 72 Fed. Reg. 12545-46 (Mar. 16, 2007) ("Pursuant to the exercise of its prosecutorial discretion, the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount of significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the Commission lacks majority support for proceeding with a matter for other reasons.").