

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7343

DATE COMPLAINT FILED: Mar. 5, 2018¹

DATE OF NOTIFICATION: Mar. 7, 2018

DATE OF LAST RESPONSE: May 3, 2018

DATE ACTIVATED: July 10, 2018

ELECTION CYCLE: 2018

EXPIRATION OF SOL: Earliest: Nov. 8, 2022
Latest: Jan. 19, 2023

COMPLAINANT:

Campaign Legal Center Sandhya Bathija

RESPONDENTS:

Highway 31 and Edward Still in his official capacity as treasurer
Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer²
Priorities USA Action and Greg Speed in his official capacity as treasurer
Bully Pulpit Interactive
Waterfront Strategies
Putnam Partners
Nutt Labs
ZUUR
Denise Nelson Voiceovers

RELEVANT STATUTES AND REGULATIONS:

- 52 U.S.C. § 30101(8)(A)(i)
- 52 U.S.C. § 30104(a), (b)
- 11 C.F.R. § 100.52(a), (b)
- 11 C.F.R. § 100.55
- 11 C.F.R. § 104.3
- 11 C.F.R. § 104.4
- 11 C.F.R. § 104.11(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ The Complaint was filed about four weeks after the Commission approved Highway 31's termination.

² Although the Complaint refers to “Senate Majority PAC,” that committee filed an Amended Statement of Organization on November 16, 2017, changing its name to “SMP.” *Compare* SMP Amended Statement of Organization (Nov. 16, 2017) *with* Senate Majority PAC Amended Statement of Organization (Nov. 10, 2016).

1 **I. INTRODUCTION**

2 Highway 31 registered with the Commission as an independent expenditure-only political
3 committee and sought to terminate about two months later. In the 74 days between those
4 events, Highway 31 made independent expenditures (“IEs”) totaling over \$4 million, in
5 connection with one election: the December 12, 2017, Alabama Special General Election for
6 Senate between Doug Jones and Roy Moore.³ Although Highway 31 disseminated over
7 \$1 million of these IE's prior to its first regularly scheduled report, that report disclosed no
8 contributions, no disbursements, and no cash-on-hand, but did disclose debt in the amount of
9 the IE's. Highway 31 did not disclose any of its contributions or disbursements until after the
10 special election, on the day it requested termination.

11 The Complaint alleges that Highway 31 and Edward Still, in his official capacity as
12 treasurer (“Highway31”), violated 52 U.S.C. § 30104(b)(3) by not reporting contributions
13 received before that first report. The Complaint, noting that Highway 31 was a newly formed
14 committee with no cash-on-hand, argues that either Highway 31's media vendors made
15 contributions to Highway 31 in the form of extensions of credit that were not consistent with
16 their typical business practice, or Highway 31's largest later-disclosed contributor, Senate
17 Majority PAC and Rebecca Lambe in her official capacity as treasurer (“SMP”), made
18 contributions by guaranteeing Highway 31's debts to the vendors. The Complaint also alleges
19 that Highway 31 failed to properly report its disbursements to the vendors to pay these debts,
20 and it misidentified a contributor in one of its reports. Respondents argue that Highway 31
21 complied with the special election reporting schedules established by the Commission and that,

³ See 24/48 Hour Reports of Independent Expenditures filed November 10, 2017 through December 12, 2017 (showing thirteen 24- or 48-hour reports of IE's, all either supporting Jones or opposing Moore, totaling \$4,232,566).

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1 with one exception in which a contributor was misidentified, Highway 31's reporting was
2 proper.

3 As explained below, we recommend that the Commission: (1) find reason to believe
4 Highway 31 violated 52 U.S.C. § 30104(b)(3) by failing to report contributions it received from
5 its vendors in the form of extensions of credit; (2) find no reason to believe that the vendors,
6 Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam
7 Partners, and ZUUR, violated the Federal Election Campaign Act of 1971, as amended (the
8 "Act") by making contributions in the form of extensions of credit; (3) take no action at this
9 time as to the allegation that Highway 31 or SMP violated 52 U.S.C. § 30104 by failing to
10 accurately report contributions in the form of a guarantee by SMP; (4) exercise its prosecutorial
11 discretion and dismiss the allegation that Highway 31 erroneously reported Priorities USA
12 Action as a contributor instead of a related entity, Priorities USA; (5) find no reason to believe
13 that Priorities USA Action and Greg Speed in his official capacity as treasurer failed to report
14 those contributions to Highway 31; and (6) find no reason to believe that Highway 31 violated
15 52 U.S.C. § 30104(b)(4) by failing to properly report disbursements made to pay its debts and
16 obligations to vendors.

17 **II. FACTUAL BACKGROUND**

18 Highway 31 filed a Statement of Organization with the Commission on November 6,
19 2017.⁴ Under the Commission's reporting schedules for the Alabama Senate special election,

⁴ See Highway 31 Statement of Organization (Nov. 6, 2017).

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1 Highway 31 was required to, and did, file three disclosure reports:⁵

2 • a Pre-General Report covering activity through November 22, 2017;
 3 • a Year-End Report covering activity from November 23, through December 31, 2017;
 4 and
 5 • a Post-General Report covering all special election activity on January 1, 2018.⁶

6
 7 The Pre-General Report was due on November 30, 2017, and the other two were due after the
 8 election, on January 21, 2018.⁷

9 Highway 31's timely-filed Pre-General Report covered the period from its registration on
 10 November 6 through close of books on November 22, 2017. It disclosed no receipts,
 11 disbursements, or cash-on-hand, but disclosed debts and obligations to vendors totaling
 12 \$1,154,844, as shown on the following chart.⁸

Vendor	Amount of IEs	Purpose
Bully Pulpit Interactive	\$800,693	Advertising and media production
Waterfront Strategies	\$309,690	Media buys
Putnam Partners	\$29,717	Media production
Nutt Labs	\$5,870	Media production
ZUUR	\$5,400	Media production
Denise Nelson Voiceovers	\$3,475	Media production

⁵ Highway 31 filed its Statement of Organization after the date of the Special Primary Election, so was not responsible for any filing obligations with respect to that election. *See* Filing Dates for the Alabama Senate Special Elections, 82 Fed. Reg. 24,124, 24,124 (May 25, 2017) (noting special primary election date of August 15, 2017).

⁶ *See id.* at 24,125 (explaining the separation of 2017 and 2018 special election activity between the Year-End and Post-General reports, respectively, because of the calendar-year aggregation rules).

⁷ *Id.*

⁸ *See* Highway 31 Pre-Special Election Report (Nov. 30, 2017).

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1 Thirty-eight days after the December 12 election, Highway 31 timely filed its 2017 Year-
 2 End Report, which disclosed receipts totaling \$4,365,298, including five contributions from SMP
 3 (totaling \$3.194 million) and two from Priorities USA Action (totaling \$910,000).⁹ In its Year-
 4 End Report, Highway 31 reported (on Schedule A) that it received its first contribution,
 5 \$1,200,000.27 from SMP, on November 24, 2017, two days after the close of books for the Pre-
 6 General Report.¹⁰ In the same report, Highway 31 reported (on Schedule E) that it made its first
 7 three disbursements (totaling \$499,223) on the same day as its first reported receipt.¹¹ The Year-
 8 End Report also reported (on Schedule D) no outstanding balances on Highway 31's previously-
 9 reported debts to the six vendors and reported (on Schedule E) disbursements equal to the
 10 amounts of the debts to all the vendors.¹²

11 On the same day Highway 31 filed its 2017 Year-End Report, it filed a Termination
 12 Report.¹³ The Commission approved Highway 31's termination on February 8, 2018.¹⁴

⁹ See Highway 31 2017 Year-End Report (Jan. 19, 2018) (reporting six additional itemized contributions as well: one from League of Conservation Voters, Inc. (\$250,000) and five from individuals (totaling \$10,250)). While Highway 31's Year-End Report disclosed receiving two contributions from Priorities USA Action totaling \$910,000, Priorities USA Action's 2017 Year-End Report did not report any contributions to Highway 31 or any other political committee.

¹⁰ See *id.* at 9.

¹¹ See *id.* at 25, 30, 33 (reporting three disbursements to Waterfront Strategies on November 24, 2017: \$99,623 for an IE distributed on November 23; \$89,910 for an IE to be distributed on November 28; and \$309,690 for an IE distributed on November 22, respectively).

¹² Highway 31 reported (on Schedule D) adjustments to "previously estimated" debts to Nutt Labs and Bully Pulpit Interactive. See *id.* at 15, 17, 18, 19.

¹³ See Highway 31 Termination Report (Jan. 19, 2018) (disclosing one receipt of \$2,230 from SMP, one disbursement of \$2,690, and no cash-on-hand). On that same day, Highway 31 also filed a timely Post-Special Election Report that reported \$459 cash-on-hand and no receipts or disbursements on January 1, 2018. See Highway 31 Post-Special Election Report (Jan. 19, 2018).

¹⁴ See Highway 31 Termination Approval (Feb. 8, 2018).

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1 The Complaint notes that "Highway 31's top two vendors, Waterfront Strategies and
 2 Bully Pulpit, have also regularly contracted with Highway 31's top two contributors, SMP and
 3 Priorities USA Action."¹⁵ The Complaint presents its analysis of reports filed with the
 4 Commission that shows no other instance in which these two vendors extended credit to new
 5 committees with no cash-on-hand.¹⁶

6 The Respondents filed a joint response largely denying the allegations.¹⁷ The Response
 7 states that Highway 31 retained the vendors to provide media production services, the vendors
 8 billed Highway 31 for their services in the normal and usual course of business, and Highway 31
 9 paid fair market rates for those services shortly thereafter.¹⁸ Respondents maintain that the
 10 services were performed, billed, and paid for in a matter of weeks—a practice the vendors assert
 11 is the ordinary course for their clients.¹⁹ Respondents point out that three of the vendors
 12 (Waterfront Strategies, Bully Pulpit Interactive, and Putnam Partners) are listed on the debt
 13 schedules of other political committees, as proof that the practice of providing services in
 14 advance and receiving payment later is common for these vendors.²⁰

¹⁵ Compl. at 5 (noting further that SMP reports show "over \$152 million in disbursements for independent expenditures since 2010" to Waterfront Strategies and Priorities USA Action reports show payments to Bully Pulpit of about \$804,000 in 2017-18). SMP's reports also show that it made one disbursement to Highway 31's vendor Putnam Partners during the special election period. *See* SMP 2017 Year-End Report at 2224 (Jan. 31, 2018).

¹⁶ *See* Compl. at 5-6 and n. 23.

¹⁷ Resp. at 4-6. All Respondents filed one joint response.

¹⁸ *Id.* at 4-5. The Response does not provide any explanation of any of the vendors' normal and usual business practices other than by asserting that the Highway 31 transactions were within those vendors' ordinary course of business. *Id.* at 3.

¹⁹ *Id.* at 5. The Response does not attach any invoices or other documents in support of this assertion.

²⁰ *See id.* at 4 and nn. 23-24 (citing Democratic National Committee ("DNC") Amended 2016 Year-End Report Schedule D at 5427 (June 1, 2017); DNC 2016 June Monthly Report, Schedule D at 3894 (June 20, 2016); DNC 2016 Feb. Monthly Report, Schedule D at 1126 (Feb. 19, 2016); House Majority PAC ("HMP") 2014 June

1 Finally, Highway 31 acknowledges that it misreported Priorities USA Action as a
 2 contributor in its 2017 Year-End Report, and states that the correct contributor was a related
 3 entity, Priorities USA.²¹ Highway 31 explains that because the contributions were made by wire
 4 transfer, it was unclear which entity made the contribution.²² Highway 31 states that it is willing
 5 to file an amended report, but asserts that it cannot do so because it has terminated.²³

6 **III. LEGAL ANALYSIS**

7 **A. Highway 31 Failed to Report Contributions from its Vendors in the Form of**
 8 **Extensions of Credit**

9
 10 The Act requires each treasurer of a political committee to file reports of receipts and
 11 disbursements with the Commission.²⁴ For any political committee other than an authorized
 12 committee, such reports must include the total amount of contributions received, as well as the
 13 identification of each person who made a contribution in excess of \$200 during the reporting
 14 period, together with the date and amount of such contribution.²⁵

15 A "contribution" includes "any gift [or] advance . . . of money or anything of value made
 16 by any person for the purpose of influencing any election for Federal office."²⁶ The extension of

Monthly Report, Schedule D at 79 (June 20, 2014) (reporting debt to Putnam Partners); and HMP Pre-Special Election Report Schedule D at 91 (Mar. 7, 2014) (reporting debt to Waterfront Strategies)).

²¹ Resp. at 6.

²² *Id.*

²³ *Id.*

²⁴ 52 U.S.C. § 30104(a)(1).

²⁵ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

²⁶ 52 U.S.C. § 30101(8)(A)(i).

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1 credit to a political committee by a commercial vendor is a contribution, “unless the credit is
 2 extended in the ordinary course of the person’s business and the terms are substantially similar to
 3 extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.”²⁷
 4 Commission regulations state that, in determining whether credit was extended in a commercial
 5 vendor’s ordinary course of business, the Commission will consider whether (1) the commercial
 6 vendor followed its established procedures and its past practice in approving the extension of
 7 credit; (2) the commercial vendor received prompt payment in full for prior extensions of credit
 8 to the same committee; and (3) the extension of credit conformed to the usual and normal
 9 practice in that vendor’s trade or industry.²⁸ The Commission has explained that “[t]hese factors
 10 are intended to provide guidance . . . The factors need not be accorded equal weight and in some
 11 cases a single factor may not be dispositive.”²⁹

12 As a preliminary matter, it appears that the vendors to which Highway 31 incurred debt
 13 are all in the business of providing the services they provided to Highway 31 and are, therefore,
 14 “commercial vendors.” And, from Highway 31’s reporting of debts, it appears that each of the
 15 vendors extended credit to Highway 31 by providing services in advance of payment.

16 The available information supports a conclusion that the vendors’ extensions of credit to
 17 Highway 31 were contributions because they were not made in the ordinary course of the
 18 vendors’ business and on terms similar to those the vendors would make to non-political

²⁷ 11 C.F.R. § 100.55 (explaining, too, that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3. A “commercial vendor” is any person who provides goods or services to a candidate or political committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods and services. 11 C.F.R. § 116.2(c).

²⁸ 11 C.F.R. § 116.3(c).

²⁹ Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26,378, 26,381 (June 27, 1990); *see also* Advisory Op. 1991-20 (Call Interactive) at 4.

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1 customers that are of similar risk and size of obligation. At the time its vendors extended it
 2 credit, Highway 31 was a brand-new committee with no apparent money or assets. It had no
 3 payment history with the credit-extending vendors, or any others. Yet, Highway 31's two largest
 4 creditors, Bully Pulpit Interactive and Waterfront Strategies, performed over \$1,100,000 worth
 5 of work on credit before Highway 31 had received a single dollar in contributions. The vendors
 6 assert that the work they did for Highway 31, and the credit they extended, were done in the
 7 ordinary course of their businesses, but provide no information about the vendors' past practices,
 8 industry or trade practices, or the vendors' procedures against which to assess the credibility of
 9 this assertion other than by reference to reported extensions of credit by three of the vendors to
 10 two dissimilar committees.

11 The committees cited by the Respondents as examples of the vendors' ordinary course of
 12 business are the DNC and House Majority PAC—large, well-known, and well-financed
 13 committees that participate in elections cycle after cycle, including in years' long courses of
 14 dealing with the vendors who later extended credit.³⁰ An examination of just the first example
 15 presented by Respondents shows that Bully Pulpit Interactive extended credit in the amount of
 16 \$85,761 to the DNC at the end of 2016³¹ only after an eight-year course of dealing in which the

³⁰ See, e.g., DNC Disbursements to Bully Pulpit Interactive, Jan. 1, 2015-Jan. 31, 2016 (showing 11 disbursements totaling \$590,618 pre-dating the identified February 2016 reported debt from the DNC to Bully Pulpit Interactive); DNC Disbursements to Bully Pulpit Interactive, 2013-2014, (showing additional 33 disbursements totaling \$1,489,794); DNC Disbursements to Bully Pulpit Interactive, 2011-2012 (showing additional 28 disbursements totaling \$2,255,495); DNC Disbursements to Bully Pulpit Interactive, 2009-2010, (showing additional 33 disbursements totaling \$3,205,910); HMP Disbursements to "Putnam," Jan. 1, 2013 – Feb. 28, 2014 (showing 3 disbursements totaling \$5,879 to Putnam Partners LLC pre-dating the identified March and June, 2014 reported debt from HMP to Putnam Partners); HMP Disbursements to "Putnam," 2011-2012 (showing 7 additional disbursements totaling \$18,550); HMP Disbursements to "Waterfront," Jan. 1, 2013 – Feb. 28, 2014 (showing 11 disbursements totaling \$459,656 to Waterfront Strategies pre-dating the identified 2014 reported debt from HMP to Waterfront Strategies); HMP Disbursements to "Waterfront," 2011-2012, (showing 29 additional disbursements, by reference to Schedule E, totaling \$2,541,984). These numbers represents disbursements reported on Schedule B, so may not include additional disbursements reported on Schedule E.

³¹ See DNC Amended 2016 Year-End Report Schedule D at 5427.

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1 DNC reported 128 separate payments totaling \$21,682,457 to Bully Pulpit, including payments
2 for prior debt. In contrast, Bully Pulpit extended credit of almost ten times that amount—over
3 \$800,000—to Highway 31, a committee with no apparent assets, after no course of dealing
4 between the parties, and on no record of disbursements (for the payment of other debts or any
5 other purpose). In fact, a comprehensive examination of all reports filed with the Commission
6 since 2000 found that, until Bully Pulpit Interactive extended credit to Highway 31, it appears to
7 have never extended credit to a similarly-situated committee, that is, one whose first report
8 indicated no cash-on-hand, no receipts, and no disbursements at the time the committee reported
9 the debt to Bully Pulpit Interactive.³² Thus, despite the unsworn and unsupported assertions of
10 Respondents that they engaged in ordinary business practices consistent with prior practices, the
11 record does not support a finding that there was anything ordinary in the vendors' extension of
12 over \$1 million in credit to a political committee with the risk profile of Highway 31.

13 This conclusion is consistent with several matters in which the Commission found reason
14 to believe that a vendor's extension of credit to a committee was not made in the vendor's
15 ordinary course of business and was, therefore, a contribution. For example, in MUR 5635, the
16 Commission found reason to believe a vendor extended credit outside its ordinary course of
17 business and industry practice on a record that included facts, as ascertained in a Commission
18 audit, similar to the ones in this matter: a vendor extended over \$1 million credit on a short term

³² The same examination of Commission reports (of all committees since 2000 that filed a first regular report disclosing no receipts, no disbursements, no cash-on-hand, but debt), shows that the other vendors in this matter also never extended credit to a similarly situated committee until the extensions of credit to Highway 31. These results are consistent with those in the examination conducted by the Complainant.

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1 contract to a committee with which it had no prior business relationship.³³ In another matter, the
 2 Commission found reason to believe on a record, like the one here, with little or no information
 3 demonstrating or substantiating that the vendors' extensions of credit had been made in the
 4 ordinary course of business.³⁴ Conversely, the Commission has found no reason to believe a
 5 vendor's extension of credit constituted a contribution where the record included documents,
 6 sworn affidavits, or other evidence establishing that the extensions of credit had been made in the
 7 vendor's ordinary course of business or on terms substantially similar to extensions of credit to
 8 other clients of similar risk and size of obligation.³⁵

9 Here, Respondents did not submit affidavits, written agreements, or other documents to
 10 support their contentions that the vendors acted in their ordinary course of business. The record
 11 includes no evidence reasonably supporting a conclusion that Highway 31's vendors extended
 12 credit in the ordinary course of their business and on terms substantially similar to extensions of
 13 credit to any other debtor of similar risk and size of obligation. Given Highway 31's apparently
 14 high risk, as a newly formed committee that had no assets and no apparent relationship with the
 15 vendors, and the enormous size of Highway 31's obligations, the record supports a conclusion

³³ MUR 5635 (Conservative Leadership PAC, *et al.*) General Counsel's Brief at 7-8. The Commission conciliated with the committee and vendor on the extension of credit violation.

³⁴ See MUR 6101(Heller *et al.*) Factual & Legal Analysis at 6, 8-10 (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial RTB finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See, MUR 6101 (Heller *et al.*) Second GCR at 5 (discussing prior matters in which the Commission took no further action after an RTB finding on an extension of credit outside ordinary business practices).

³⁵ See, e.g. MUR 6141 (Friends of Dave Reichert) Factual & Legal Analysis at 8-14 (Aug. 26, 2009) (finding no RTB that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no RTB that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

1 that the vendors' extensions of credit were not made in the ordinary course of business and,
 2 therefore, they should have been reported as contributions on Highway 31's Pre-General Report.

3 We recognize, as Respondents argue, that the time between the extensions of credit and
 4 Highway 31's payments of those obligations was short, but Highway 31's failure to timely report
 5 contributions is not a trivial or technical violation. Highway 31 registered with the Commission,
 6 made over \$4 million in IEs before a high-profile special election, did not report a single
 7 contribution until after that election, and reported those contributions on the same day it asked
 8 the Commission to terminate. Thus, the public was deprived of critical information about
 9 Highway 31's funding when interest in the election was high and was of most use to voters in
 10 assessing Highway 31's IEs.³⁶

11 Accordingly, we recommend that the Commission find reason to believe that Highway 31
 12 and Edward Still, in his official capacity as treasurer failed to report contributions in the form of
 13 extensions of credit in violation of 52 U.S.C. § 30104(b)(3)(A).

14 As to the vendors, their contributions appear to be lawful, since Highway 31 is an
 15 independent expenditure-only political committee ("IEOPC") permitted to accept funds outside
 16 the Act's otherwise applicable contribution limits and source prohibitions, including
 17 contributions from corporations.³⁷ Because the vendors appear to have been permitted to make

³⁶ See *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (explaining that the Supreme Court has consistently upheld the Act's disclosure provisions, which provide the electorate with "information about the sources of election-related spending" to "help citizens make informed choices in the political marketplace.") (internal quotations and citations omitted).

³⁷ See *id.*, generally; *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010); *see also* 52 U.S.C. §§ 30116(a)(1), 30118(a).

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1 contributions to an IEOPC,³⁸ have no independent reporting obligation for making the
 2 contributions, and do not appear to have otherwise violated any provision of the Act, we
 3 recommend that the Commission find no reason to believe Bully Pulpit Interactive, Waterfront
 4 Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, and ZUUR violated the Act
 5 in this matter.

6 In light of these conclusions, the Commission need not make a finding with respect to the
 7 Complaint's alternative theory for concluding that Highway 31 failed to report contributions
 8 relating to its debt obligations, that is, that SMP guaranteed Highway 31's debts to its vendors.³⁹
 9 Despite press reports indicating that Highway 31 was a project of SMP,⁴⁰ the available record
 10 does not currently provide a sufficient basis to infer that Highway 31 may have received a
 11 contribution from SMP (or another contributor) in the form of a guarantee to Highway 31's
 12 vendors on behalf of Highway 31. Although the Complaint urges the Commission to infer from
 13 the timing of SMP's first reported contribution to Highway 31 that SMP guaranteed Highway
 14 31's disclosed debt, the available record also supports another reasonable inference: that the

³⁸ See, e.g., 11 C.F.R. § 114.2, note to paragraph (b) (noting that corporations may make contributions to IEOPCs). Although IEOPCs may not accept contributions from certain sources, such as foreign nationals, the record includes no indication that any of the vendors is prohibited from contributing to an IEOPC.

³⁹ See 11 C.F.R. §§ 100.52(a)-(b) (defining "contribution" to include a "loan" and defining "loan" to include a guarantee, an endorsement, or any other form of security). Commission regulations require a guarantor's name to be disclosed as a contributor, and the amount of the contribution to be equal to the amount guaranteed. 11 C.F.R. § 100.52(b)(3).

⁴⁰ See, e.g., Gabriel Debenedetti, *Secret Super PAC backing Jones in Alabama Exposed*, Politico, (Dec. 11, 2017), <https://www.politico.com/story/2017/12/11/secret-super-pac-backing-jones-exposed-alabama-senate-290502> (stating that Highway 31 "is a joint project of two of the largest national Democratic Super PACs—Senate Majority PAC and Priorities USA Action—along with a group of Alabama Democrats"); Compl. at 4 (citing 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-fundedhighway-31-super-pac-spent-4m-defeat-n832871>, for SMP spokesperson's statement that Highway 31 "was predominantly funded by SMP").

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1 vendors made contributions in the form of extensions of credit and that Highway 31 made its
 2 first payments on its debt on the same day as it received the contribution from SMP because it
 3 had, for the first time, cash-on-hand to do so Without additional information suggesting a loan
 4 or guarantee from SMP, the information now available suggests, at most, that SMP might have
 5 made an unsecured promise to Highway 31 to make a contribution to help pay for its activities,
 6 something the Commission has advised does not constitute a contribution.⁴¹ Because an
 7 investigation of the extensions of credit might reveal, however, that the vendors extended credit
 8 to Highway 31 because of a guarantee from SMP (or another of Highway 31's contributors), we
 9 recommend that the Commission take no action at this time regarding the allegation that SMP
 10 made, and Highway 31 violated 52 U.S.C. § 30104 by failing to accurately report contributions
 11 in the form of a guarantee by SMP for Highway 31's debts.

12 **B. Highway 31 Improperly Reported Receipts from Priorities USA**

13 Highway 31 admits that it incorrectly identified Priorities USA Action as making two
 14 contributions, and states that the correct contributor was a related entity, Priorities USA.⁴² While
 15 Highway 31 has offered to amend its disclosure report, its belief that a terminated committee
 16 cannot amend its disclosures is incorrect. Although Highway 31, as a terminated committee,
 17 may not use the Commission's electronic system to amend its reports, but it may submit a paper

⁴¹ Compare Advisory Op. 2015-08 (Repledge) (Nov. 9, 2015) (advising that a mere pledge to make a contribution is not itself a contribution under 52 U.S.C. § 30101(8)); and Advisory Op. 1985-29 (John Breaux Committee) (Nov. 4, 1985) (determining that an unsecured promise to pay interest on a loan to a candidate committee was not a contribution, although "any actual payment of interest" would be a contribution) *with* MUR 6823 (Mississippi Conservatives) Factual and Legal Analysis at 11 (Finding reason to believe the IEOPC failed to report identity of owner of CD actually pledged to bank as collateral for loan to IEOPC).

⁴² Resp. at 6.

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1 amendment or Miscellaneous Report.⁴³ Accordingly, we recommend that the Commission
 2 exercise its prosecutorial discretion and dismiss the allegation that Highway 31 violated
 3 52 U.S.C. § 30104(b)(3) and direct Highway 31 to work with the Reports Analysis Division to
 4 amend its reports.⁴⁴

5 Because the available information does not indicate that Priorities USA Action made the
 6 contributions corresponding to the receipts reported by Highway 31, we recommend the
 7 Commission find no reason to believe that Priorities USA Action and Greg Speed in his official
 8 capacity as treasurer violated 52 U.S.C. § 30104 by failing to report contributions it made to
 9 Highway 31 that correspond to Highway 31's reported receipts.

10 **C. Highway 31 Properly Reported its Debts, Obligations, and Disbursements.**

11 Commission regulations also require political committees that make independent
 12 expenditures to report them in their regularly scheduled disclosure reports, in accordance with
 13 11 C.F.R. § 104.3(b)(3)(vii), and to include in their reporting, "all enforceable contracts, either
 14 oral or written, obligating funds for disbursements during the calendar year for independent
 15 expenditures, where those independent expenditures are made with respect to the same election
 16 for Federal office."⁴⁵ Consistent with this requirement, political committees must disclose the

⁴³ The Reports Analysis Division has indicated that Highway 31 would be able to file a paper Form 99 to correct the misreported contribution.

⁴⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985); see also MUR 7064 (Patriots for America, *et al.*) Factual & Legal Analysis at 4-5 (exercising prosecutorial discretion to dismiss alleged reporting violation where committee corrected the error after the filing of the complaint). The recommendation to dismiss the reporting violation is also consistent with the treatment of similarly situated committees that are referred to the Alternative Dispute Resolution Office ("ADRO"). We confirmed with ADRO that in these circumstances, where the terminated committee has indicated a willingness to amend its reports, ADRO would not usually seek a civil penalty or require remedial measures beyond filing corrected reports.

⁴⁵ 11 C.F.R. § 104.4(a), (f).

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1 amount and nature of their outstanding debts and obligations until those obligations are
 2 extinguished.⁴⁶ A separate schedule for debts and obligations owed by a political committee is
 3 required to be filed on Schedule D, along with a statement explaining the circumstances and
 4 conditions under which each debt and obligation was incurred and extinguished.⁴⁷

5 There is no information to support the allegation that Highway 31 failed to properly report
 6 disbursements made to extinguish its debts and obligations, in violation of 52 U.S.C.
 7 § 30104(b)(4). Highway 31 filed timely 48-Hour Notices for its November 8-22, 2017, IEs,
 8 properly reported the unpaid IEs again as memo entries on Schedule E of its next regular report
 9 (the 2017 Pre-General Report), and simultaneously reported the debts and obligations for these
 10 IEs on Schedule D of the 2017 Pre-General Report.⁴⁸ In its 2017 Year-End Report, Highway 31
 11 reported the extinguishing of its debt obligations (including amounts paid) on Schedule D, and
 12 itemized payments to its vendors for expenses incurred for IEs on Schedule E.⁴⁹ A review of
 13 Highway 31's 2017 Year-End Report shows that it reported disbursements to its vendors on
 14 Schedule E in amounts equal to its reported debts to those vendors on Schedule D.

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

⁴⁷ 11 C.F.R. § 104.11(a).

⁴⁸ See 52 U.S.C. § 30104(g) (requiring a political committee that makes or contracts to make IEs aggregating \$1,000 or more with respect to a given election, after the 20th day, but more than 24 hours before an election, to report those expenditures within 24-Hours; and to report IEs of \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, within 48-Hours); 11 C.F.R. §§ 104.4(b), (c); *Campaign Guide for Nonconnected Committees* at 72, available at <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (informing committee filing 48-hour report that it "must report a last-minute expenditure a second time on a Schedule E filed with its next regular report" and noting that IEs "made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and on Schedule D as a reportable debt").

⁴⁹ Debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. 11 C.F.R. § 104.11(a). Committees that report debts and obligations in connection with independent expenditures are required to report the debt on Schedule D of Form 3X and itemize payments on that debt on Schedule E of the same form until the debt is extinguished. See *Instructions for Schedule E, Itemized Independent Expenditures (FEC Form 3X)*, available at <https://www.fec.gov/resources/cms-content/documents/fecfrm3xei.pdf>.

1 Therefore, we recommend that the Commission find no reason to believe Highway 31 and
2 Edward Still, in his official capacity as treasurer failed to properly report disbursements made to
3 extinguish debts and obligations in violation of 52 U.S.C. § 30104(b)(4).

4 **IV. INVESTIGATION**

5 The proposed investigation would seek to establish the circumstances surrounding the
6 extensions of credit to Highway 31 by its vendors Bully Pulpit Interactive, Waterfront Strategies,
7 Denise Nelson Voiceovers, Nutt Labs, Putnam Partners and ZUUR, to determine whether those
8 extensions of credit were made in the ordinary course of business. We will seek to conduct the
9 investigation by voluntary means, but we recommend that the Commission authorize compulsory
10 process, as necessary.

11 **V. RECOMMENDATIONS**

- 12 1. Find reason to believe Highway 31 and Edward Still in his official capacity as
13 treasurer failed to report contributions in the form of extensions of credit in violation
14 of 52 U.S.C. § 30104(b)(3)(A);
- 15 2. Find no reason to believe Bully Pulpit Interactive, Waterfront Strategies, Denise
16 Nelson Voiceovers, Nutt Labs, Putnam Partners, and ZUUR violated the Act in this
17 matter;
- 18 3. Take no action at this time as to the allegation that Highway 31 and Edward Still in his
19 official capacity as treasurer and Senate Majority PAC and Rebecca Lambe in her
20 official capacity as treasurer violated 52 U.S.C. § 30104 by failing to accurately report
21 contributions in the form of a guarantee by SMP for Highway 31's debts;
- 22 4. Dismiss the allegation that Highway 31 violated 52 U.S.C. § 30104(b)(3) by
23 misreporting the identity of a contributor and direct Highway 31 to work with the
24 Reports Analysis Division to amend its reports;
- 25 5. Find no reason to believe Priorities USA Action and Greg Speed in his official
26 capacity as treasurer violated 52 U.S.C. § 30104;
- 27 6. Find no reason to believe Highway 31 and Edward Still in his official capacity as
28 treasurer failed to properly report debts and obligations, or disbursements in violation
29 of 52 U.S.C. § 30104(b)(4);

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7. Approve the attached Factual and Legal Analysis;
8. Authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary;
9. Close the file as to Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, ZUUR, and Priorities USA Action and Greg Speed in his official capacity as treasurer; and
10. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

3/8/19

Charles Kitcher
Charles Kitcher
Acting Associate General Counsel for Enforcement

Date

16 
17 Lynn Y. Tran
18 Assistant General Counsel

19 *Camilla Jackson Jones by LCF*
20 Camilla Jackson Jones
21 Attorney

Attachment

1. Factual and Legal Analysis for Highway 31
2. Factual and Legal Analysis for Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, ZUUR, and Priorities USA Action

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Highway 31 and Edward Still
in his official capacity as treasurer **MUR:** 7343

I. INTRODUCTION

7 Highway 31 registered with the Commission as an independent expenditure-only political
8 committee and sought to terminate about two months later. In the 74 days between those
9 events, Highway 31 made independent expenditures (“IEs”) totaling over \$4 million, in
10 connection with one election: the December 12, 2017, Alabama Special General Election for
11 Senate between Doug Jones and Roy Moore.¹ Although Highway 31 disseminated over
12 \$1 million of these IEs prior to its first regularly scheduled report, that report disclosed no
13 contributions, no disbursements, and no cash-on-hand, but did disclose debt in the amount of
14 the IEs. Highway 31 did not disclose any of its contributions or disbursements until after the
15 special election, on the day it requested termination.

16 The Complaint alleges that Highway 31 and Edward Still, in his official capacity as
17 treasurer (“Highway 31”), violated 52 U.S.C. § 30104(b)(3) by not reporting contributions
18 received before that first report. The Complaint, noting that Highway 31 was a newly formed
19 committee with no cash-on-hand, argues that either Highway 31’s media vendors made
20 contributions to Highway 31 in the form of extensions of credit that were not consistent with
21 their typical business practice, or Highway 31’s largest later-disclosed contributor, SMP and
22 Rebecca Lambe in her official capacity as treasurer (“SMP”), made contributions by
23 guaranteeing Highway 31’s debts to the vendors. The Complaint also alleges that Highway 31

¹ See 24/48 Hour Reports of Independent Expenditures filed November 10, 2017 through December 12, 2017 (showing thirteen 24- or 48-hour reports of IEs, all either supporting Jones or opposing Moore, totaling \$4,232,566).

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1 failed to properly report its disbursements to the vendors to pay these debts, and it misidentified
 2 a contributor in one of its reports. Respondents argue that Highway 31 complied with the
 3 special election reporting schedules established by the Commission and that, with one exception
 4 in which a contributor was misidentified, Highway 31's reporting was proper.

5 As explained below, the Commission: (1) finds reason to believe Highway 31 violated
 6 52 U.S.C. § 30104(b)(3) by failing to report contributions it received from its vendors in the
 7 form of extensions of credit; (2) exercises its prosecutorial discretion and dismisses the
 8 allegation that Highway 31 erroneously reported Priorities USA Action as a contributor instead
 9 of a related entity, Priorities USA; and (3) finds no reason to believe that Highway 31 violated
 10 52 U.S.C. § 30104(b)(4) by failing to properly report disbursements made to pay its debts and
 11 obligations to vendors.

12 **II. FACTUAL BACKGROUND**

13 Highway 31 filed a Statement of Organization with the Commission on
 14 November 6, 2017.² Under the Commission's reporting schedules for the Alabama Senate
 15 special election, Highway 31 was required to, and did, file three disclosure reports:³
 16 • a Pre-General Report covering activity through November 22, 2017;
 17 • a Year-End Report covering activity from November 23, through December 31, 2017;
 18 and
 19 • a Post-General Report covering all special election activity on January 1, 2018.⁴
 20

² See Highway 31 Statement of Organization (Nov. 6, 2017).

³ Highway 31 filed its Statement of Organization after the date of the Special Primary Election, so was not responsible for any filing obligations with respect to that election. See Filing Dates for the Alabama Senate Special Elections, 82 Fed. Reg. 24,124, 24,124 (May 25, 2017) (noting special primary election date of August 15, 2017).

⁴ See *id.* at 24,125 (explaining the separation of 2017 and 2018 special election activity between the Year-End and Post-General reports, respectively, because of the calendar-year aggregation rules).

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1 The Pre-General Report was due on November 30, 2017, and the other two were due after the
 2 election, on January 21, 2018.⁵

3 Highway 31's timely-filed Pre-General Report covered the period from its registration on
 4 November 6 through close of books on November 22, 2017. It disclosed no receipts,
 5 disbursements, or cash-on-hand, but disclosed debts and obligations to vendors totaling
 6 \$1,154,844, as shown on the following chart.⁶

Vendor	Amount of IEs	Purpose
Bully Pulpit Interactive	\$800,693	Advertising and media production
Waterfront Strategies	\$309,690	Media buys
Putnam Partners	\$29,717	Media production
Nutt Labs	\$5,870	Media production
ZUUR	\$5,400	Media production
Denise Nelson Voiceovers	\$3,475	Media production

7 Thirty-eight days after the December 12 election, Highway 31 timely filed its 2017 Year-
 8 End Report, which disclosed receipts totaling \$4,365,298, including five contributions from SMP
 9 (totaling \$3.194 million) and two from Priorities USA Action (totaling \$910,000).⁷ In its Year-
 10 End Report, Highway 31 reported (on Schedule A) that it received its first contribution,
 11 \$1,200,000.27 from SMP, on November 24, 2017, two days after the close of books for the Pre-

⁵ *Id.*

⁶ See Highway 31 Pre-Special Election Report (Nov. 30, 2017).

⁷ See Highway 31 2017 Year-End Report (Jan. 19, 2018) (reporting six additional itemized contributions as well: one from League of Conservation Voters, Inc. (\$250,000) and five from individuals (totaling \$10,250)). While Highway 31's Year-End Report disclosed receiving two contributions from Priorities USA Action totaling \$910,000, Priorities USA Action's 2017 Year-End Report did not report any contributions to Highway 31 or any other political committee.

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1 General Report.⁸ In the same report, Highway 31 reported (on Schedule E) that it made its first
 2 three disbursements (totaling \$499,223) on the same day as its first reported receipt.⁹ The Year-
 3 End Report also reported (on Schedule D) no outstanding balances on Highway 31's previously-
 4 reported debts to the six vendors and reported (on Schedule E) disbursements equal to the
 5 amounts of the debts to all the vendors.¹⁰

6 On the same day Highway 31 filed its 2017 Year-End Report, it filed a Termination
 7 Report.¹¹ The Commission approved Highway 31's termination on February 8, 2018.¹²

8 The Complaint notes that "Highway 31's top two vendors, Waterfront Strategies and
 9 Bully Pulpit, have also regularly contracted with Highway 31's top two contributors, SMP and
 10 Priorities USA Action."¹³ The Complaint presents its analysis of reports filed with the
 11 Commission that shows no other instance in which these two vendors extended credit to new
 12 committees with no cash-on-hand.¹⁴

8 See *id.* at 9.

9 See *id.* at 25, 30, 33 (reporting three disbursements to Waterfront Strategies on November 24, 2017: \$99,623 for an IE distributed on November 23; \$89,910 for an IE to be distributed on November 28; and \$309,690 for an IE distributed on November 22, respectively).

10 Highway 31 reported (on Schedule D) adjustments to "previously estimated" debts to Nutt Labs and Bully Pulpit Interactive. See *id.* at 15, 17, 18, 19.

11 See Highway 31 Termination Report (Jan. 19, 2018) (disclosing one receipt of \$2,230 from SMP, one disbursement of \$2,690, and no cash-on-hand). On that same day, Highway 31 also filed a timely Post-Special Election Report that reported \$459 cash-on-hand and no receipts or disbursements on January 1, 2018. See Highway 31 Post-Special Election Report (Jan. 19, 2018).

12 See Highway 31 Termination Approval (Feb. 8, 2018).

13 Compl. at 5 (noting further that SMP reports show "over \$152 million in disbursements for independent expenditures since 2010" to Waterfront Strategies and Priorities USA Action reports show payments to Bully Pulpit of about \$804,000 in 2017-18). SMP's reports also show that it made one disbursement to Highway 31's vendor Putnam Partners during the special election period. See SMP 2017 Year-End Report at 2224 (Jan. 31, 2018).

14 See Compl. at 5-6 and n. 23.

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1 Highway 31 filed a response largely denying the allegations.¹⁵ The Response states that
 2 Highway 31 retained the vendors to provide media production services, the vendors billed
 3 Highway 31 for their services in the normal and usual course of business, and Highway 31 paid
 4 fair market rates for those services shortly thereafter.¹⁶ The Response maintain that the services
 5 were performed, billed, and paid for in a matter of weeks—a practice the vendors assert is the
 6 ordinary course for their clients.¹⁷ The Response points out that three of the vendors (Waterfront
 7 Strategies, Bully Pulpit Interactive, and Putnam Partners) are listed on the debt schedules of
 8 other political committees, as proof that the practice of providing services in advance and
 9 receiving payment later is common for these vendors.¹⁸

10 Finally, Highway 31 acknowledges that it misreported Priorities USA Action as a
 11 contributor in its 2017 Year-End Report, and states that the correct contributor was a related
 12 entity, Priorities USA.¹⁹ Highway 31 explains that because the contributions were made by wire

¹⁵ Resp. at 4-6.

¹⁶ *Id.* at 4-5. The Response does not provide any explanation of any of the vendors' normal and usual business practices other than by asserting that the Highway 31 transactions were within those vendors' ordinary course of business. *Id.* at 3.

¹⁷ *Id.* at 5. The Response does not attach any invoices or other documents in support of this assertion.

¹⁸ See *id.* at 4 and nn. 23-24 (citing Democratic National Committee ("DNC") Amended 2016 Year-End Report Schedule D at 5427 (June 1, 2017); DNC 2016 June Monthly Report, Schedule D at 3894 (June 20, 2016); DNC 2016 Feb. Monthly Report, Schedule D at 1126 (Feb. 19, 2016); House Majority PAC ("HMP") 2014 June Monthly Report, Schedule D at 79 (June 20, 2014) (reporting debt to Putnam Partners); and HMP Pre-Special Election Report Schedule D at 91 (Mar. 7, 2014) (reporting debt to Waterfront Strategies)).

¹⁹ Resp. at 6.

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1 transfer, it was unclear which entity made the contribution.²⁰ Highway 31 states that it is willing
 2 to file an amended report, but asserts that it cannot do so because it has terminated.²¹

3 **III. LEGAL ANALYSIS**

4 **A. Highway 31 Failed to Report Contributions from its Vendors in the Form of**
 5 **Extensions of Credit**

6
 7 The Act requires each treasurer of a political committee to file reports of receipts and
 8 disbursements with the Commission.²² For any political committee other than an authorized
 9 committee, such reports must include the total amount of contributions received, as well as the
 10 identification of each person who made a contribution in excess of \$200 during the reporting
 11 period, together with the date and amount of such contribution.²³

12 A “contribution” includes “any gift [or] advance . . . of money or anything of value made
 13 by any person for the purpose of influencing any election for Federal office.”²⁴ The extension of
 14 credit to a political committee by a commercial vendor is a contribution, “unless the credit is
 15 extended in the ordinary course of the person’s business and the terms are substantially similar to
 16 extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.”²⁵

²⁰ *Id.*

²¹ *Id.*

²² 52 U.S.C. § 30104(a)(1).

²³ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

²⁴ 52 U.S.C. § 30101(8)(A)(i).

²⁵ 11 C.F.R. § 100.55 (explaining, too, that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3. A “commercial vendor” is any person who provides goods or services to a candidate or political committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods and services. 11 C.F.R. § 116.2(c).

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1 Commission regulations state that, in determining whether credit was extended in a commercial
2 vendor's ordinary course of business, the Commission will consider whether (1) the commercial
3 vendor followed its established procedures and its past practice in approving the extension of
4 credit; (2) the commercial vendor received prompt payment in full for prior extensions of credit
5 to the same committee; and (3) the extension of credit conformed to the usual and normal
6 practice in that vendor's trade or industry.²⁶ The Commission has explained that “[t]hese factors
7 are intended to provide guidance . . . The factors need not be accorded equal weight and in some
8 cases a single factor may not be dispositive.”²⁷

9 As a preliminary matter, it appears that the vendors to which Highway 31 incurred debt
10 are all in the business of providing the services they provided to Highway 31 and are, therefore,
11 “commercial vendors.” And, from Highway 31’s reporting of debts, it appears that each of the
12 vendors extended credit to Highway 31 by providing services in advance of payment.

13 The available information supports a conclusion that the vendors’ extensions of credit to
14 Highway 31 were contributions because they were not made in the ordinary course of the
15 vendors’ business and on terms similar to those the vendors would make to non-political
16 customers that are of similar risk and size of obligation. At the time its vendors extended it
17 credit, Highway 31 was a brand-new committee with no apparent money or assets. It had no
18 payment history with the credit-extending vendors, or any others. Yet, Highway 31’s two largest
19 creditors, Bully Pulpit Interactive and Waterfront Strategies, performed over \$1,100,000 worth
20 of work on credit before Highway 31 had received a single dollar in contributions. The vendors

²⁶ 11 C.F.R. § 116.3(c).

²⁷ Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26,378, 26,381 (June 27, 1990); *see also* Advisory Op. 1991-20 (Call Interactive) at 4.

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1 assert that the work they did for Highway 31, and the credit they extended, were done in the
 2 ordinary course of their businesses, but provide no information about the vendors' past practices,
 3 industry or trade practices, or the vendors' procedures against which to assess the credibility of
 4 this assertion other than by reference to reported extensions of credit by three of the vendors to
 5 two dissimilar committees.

6 The committees cited by the Highway 31 as examples of the vendors' ordinary course of
 7 business are the DNC and House Majority PAC—large, well-known, and well-financed
 8 committees that participate in elections cycle after cycle, including in years' long courses of
 9 dealing with the vendors who later extended credit.²⁸ An examination of just the first example
 10 presented in the Highway 31 Response shows that Bully Pulpit Interactive extended credit in the
 11 amount of \$85,761 to the DNC at the end of 2016²⁹ only after an eight-year course of dealing in
 12 which the DNC reported 128 separate payments totaling \$21,682,457 to Bully Pulpit, including
 13 payments for prior debt. In contrast, Bully Pulpit extended credit of almost ten times that
 14 amount—over \$800,000—to Highway 31, a committee with no apparent assets, after no course
 15 of dealing between the parties, and on no record of disbursements (for the payment of other debts

²⁸ See, e.g., DNC Disbursements to Bully Pulpit Interactive, Jan. 1, 2015-Jan. 31, 2016 (showing 11 disbursements totaling \$590,618 pre-dating the identified February 2016 reported debt from the DNC to Bully Pulpit Interactive); DNC Disbursements to Bully Pulpit Interactive, 2013-2014, (showing additional 33 disbursements totaling \$1,489,794); DNC Disbursements to Bully Pulpit Interactive, 2011-2012 (showing additional 28 disbursements totaling \$2,255,495); DNC Disbursements to Bully Pulpit Interactive, 2009-2010, (showing additional 33 disbursements totaling \$3,205,910); HMP Disbursements to "Putnam," Jan. 1, 2013 – Feb. 28, 2014 (showing 3 disbursements totaling \$5,879 to Putnam Partners LLC pre-dating the identified March and June, 2014 reported debt from HMP to Putnam Partners); HMP Disbursements to "Putnam," 2011-2012 (showing 7 additional disbursements totaling \$18,550); HMP Disbursements to "Waterfront," Jan. 1, 2013 – Feb. 28, 2014 (showing 11 disbursements totaling \$459,656 to Waterfront Strategies pre-dating the identified 2014 reported debt from HMP to Waterfront Strategies); HMP Disbursements to "Waterfront," 2011-2012, (showing 29 additional disbursements, by reference to Schedule E, totaling \$2,541,984). These numbers represents disbursements reported on Schedule B, so may not include additional disbursements reported on Schedule E.

²⁹ See DNC Amended 2016 Year-End Report Schedule D at 5427.

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1 or any other purpose). In fact, a comprehensive examination of all reports filed with the
2 Commission since 2000 found that, until Bully Pulpit Interactive extended credit to Highway 31,
3 it appears to have never extended credit to a similarly-situated committee, that is, one whose first
4 report indicated no cash-on-hand, no receipts, and no disbursements at the time the committee
5 reported the debt to Bully Pulpit Interactive.³⁰ Thus, despite the unsworn and unsupported
6 assertions of the vendors that they engaged in ordinary business practices consistent with prior
7 practices, the record does not support a finding that there was anything ordinary in the vendors'
8 extension of over \$1 million in credit to a political committee with the risk profile of Highway
9 31.

10 This conclusion is consistent with several matters in which the Commission found reason
11 to believe that a vendor's extension of credit to a committee was not made in the vendor's
12 ordinary course of business and was, therefore, a contribution. For example, in MUR 5635, the
13 Commission found reason to believe a vendor extended credit outside its ordinary course of
14 business and industry practice on a record that included facts, as ascertained in a Commission
15 audit, similar to the ones in this matter: a vendor extended over \$1 million credit on a short term
16 contract to a committee with which it had no prior business relationship.³¹ In another matter, the
17 Commission found reason to believe on a record, like the one here, with little or no information
18 demonstrating or substantiating that the vendors' extensions of credit had been made in the

³⁰ The same examination of Commission reports (of all committees since 2000 that filed a first regular report disclosing no receipts, no disbursements, no cash-on-hand, but debt), shows that the other vendors in this matter also never extended credit to a similarly situated committee until the extensions of credit to Highway 31. These results are consistent with those in the examination conducted by the Complainant.

³¹ MUR 5635 (Conservative Leadership PAC, *et al.*) General Counsel's Brief at 7-8. The Commission conciliated with the committee and vendor on the extension of credit violation.

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1 ordinary course of business.³² Conversely, the Commission has found no reason to believe a
 2 vendor's extension of credit constituted a contribution where the record included documents,
 3 sworn affidavits, or other evidence establishing that the extensions of credit had been made in the
 4 vendor's ordinary course of business or on terms substantially similar to extensions of credit to
 5 other clients of similar risk and size of obligation.³³

6 Here, Highway 31 did not submit affidavits, written agreements, or other documents to
 7 support its contentions that the vendors acted in their ordinary course of business. The record
 8 includes no evidence reasonably supporting a conclusion that Highway 31's vendors extended
 9 credit in the ordinary course of their business and on terms substantially similar to extensions of
 10 credit to any other debtor of similar risk and size of obligation. Given Highway 31's apparently
 11 high risk, as a newly formed committee that had no assets and no apparent relationship with the
 12 vendors, and the enormous size of Highway 31's obligations, the record supports a conclusion
 13 that the vendors' extensions of credit were not made in the ordinary course of business and,
 14 therefore, they should have been reported as contributions on Highway 31's Pre-General Report.

³² See MUR 6101(Heller *et al.*) Factual & Legal Analysis at 6, 8-10 (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial RTB finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See, MUR 6101 (Heller *et al.*) Second GCR at 5 (discussing prior matters in which the Commission took no further action after an RTB finding on an extension of credit outside ordinary business practices).

³³ See, e.g. MUR 6141 (Friends of Dave Reichert) Factual & Legal Analysis at 8-14 (Aug. 26, 2009) (finding no RTB that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no RTB that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

1 We recognize, as Highway 31 argues, that the time between the extensions of credit and
 2 Highway 31's payments of those obligations was short, but Highway 31's failure to timely report
 3 contributions is not a trivial or technical violation. Highway 31 registered with the Commission,
 4 made over \$4 million in IEs before a high-profile special election, did not report a single
 5 contribution until after that election, and reported those contributions on the same day it asked
 6 the Commission to terminate. Thus, the public was deprived of critical information about
 7 Highway 31's funding when interest in the election was high and was of most use to voters in
 8 assessing Highway 31's IEs.³⁴

9 Accordingly, the Commission finds reason to believe that Highway 31 and Edward Still,
 10 in his official capacity as treasurer failed to report contributions in the form of extensions of
 11 credit in violation of 52 U.S.C. § 30104(b)(3)(A).

12 **B. Highway 31 Improperly Reported Receipts from Priorities USA**

13 Highway 31 admits that it incorrectly identified Priorities USA Action as making two
 14 contributions, and states that the correct contributor was a related entity, Priorities USA.³⁵ While
 15 Highway 31 has offered to amend its disclosure report, its belief that a terminated committee
 16 cannot amend its disclosures is incorrect. Although Highway 31, as a terminated committee,
 17 may not use the Commission's electronic system to amend its reports, but it may submit a paper
 18 amendment or Miscellaneous Report. Accordingly, the Commission exercises its prosecutorial

³⁴ See *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (explaining that the Supreme Court has consistently upheld the Act's disclosure provisions, which provide the electorate with "information about the sources of election-related spending" to "help citizens make informed choices in the political marketplace.") (internal quotations and citations omitted).

³⁵ Resp. at 6.

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1 discretion and dismisses the allegation that Highway 31 violated 52 U.S.C. § 30104(b)(3) and
 2 directs Highway 31 to work with the Reports Analysis Division to amend its reports.³⁶

3 **C. Highway 31 Properly Reported its Debts, Obligations, and Disbursements.**

4 Commission regulations also require political committees that make independent
 5 expenditures to report them in their regularly scheduled disclosure reports, in accordance with
 6 11 C.F.R. § 104.3(b)(3)(vii), and to include in their reporting, “all enforceable contracts, either
 7 oral or written, obligating funds for disbursements during the calendar year for independent
 8 expenditures, where those independent expenditures are made with respect to the same election
 9 for Federal office.”³⁷ Consistent with this requirement, political committees must disclose the
 10 amount and nature of their outstanding debts and obligations until those obligations are
 11 extinguished.³⁸ A separate schedule for debts and obligations owed by a political committee is
 12 required to be filed on Schedule D, along with a statement explaining the circumstances and
 13 conditions under which each debt and obligation was incurred and extinguished.³⁹

14 There is no information to support the allegation that Highway 31 failed to properly report
 15 disbursements made to extinguish its debts and obligations, in violation of 52 U.S.C.
 16 § 30104(b)(4). Highway 31 filed timely 48-Hour Notices for its November 8-22, 2017, IEs,
 17 properly reported the unpaid IEs again as memo entries on Schedule E of its next regular report
 18 (the 2017 Pre-General Report), and simultaneously reported the debts and obligations for these

36 See *Heckler v. Chaney*, 470 U.S. 821 (1985); see also MUR 7064 (Patriots for America, *et al.*) Factual & Legal Analysis at 4-5 (exercising prosecutorial discretion to dismiss alleged reporting violation where committee corrected the error after the filing of the complaint).

37 11 C.F.R. § 104.4(a), (f).

38 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

39 11 C.F.R. § 104.11(a).

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1 IEs on Schedule D of the 2017 Pre-General Report.⁴⁰ In its 2017 Year-End Report, Highway 31
 2 reported the extinguishing of its debt obligations (including amounts paid) on Schedule D, and
 3 itemized payments to its vendors for expenses incurred for IEs on Schedule E.⁴¹ A review of
 4 Highway 31's 2017 Year-End Report shows that it reported disbursements to its vendors on
 5 Schedule E in amounts equal to its reported debts to those vendors on Schedule D.

6 Therefore, the Commission finds no reason to believe Highway 31 and Edward Still, in his
 7 official capacity as treasurer failed to properly report disbursements made to extinguish debts
 8 and obligations in violation of 52 U.S.C. § 30104(b)(4).

⁴⁰ See 52 U.S.C. § 30104(g) (requiring a political committee that makes or contracts to make IEs aggregating \$1,000 or more with respect to a given election, after the 20th day, but more than 24 hours before an election, to report those expenditures within 24-Hours; and to report IEs of \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, within 48-Hours); 11 C.F.R. §§ 104.4(b), (c); *Campaign Guide for Nonconnected Committees* at 72, available at <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (informing committee filing 48-hour report that it "must report a last-minute expenditure a second time on a Schedule E filed with its next regular report" and noting that IEs "made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and on Schedule D as a reportable debt").

⁴¹ Debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. 11 C.F.R. § 104.11(a). Committees that report debts and obligations in connection with independent expenditures are required to report the debt on Schedule D of Form 3X and itemize payments on that debt on Schedule E of the same form until the debt is extinguished. *See Instructions for Schedule E, Itemized Independent Expenditures (FEC Form 3X)*, available at <https://www.fec.gov/resources/cms-content/documents/fecfrm3xei.pdf>.

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Bully Pulpit Interactive
Waterfront Strategies
Denise Nelson Voiceovers
Nutt Labs
Putnam Partners
ZUUR
Priorities USA Action and Greg Speed
in his official capacity as treasurer

I. INTRODUCTION

The Complaint alleges Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, and ZUUR, violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by making contributions in the form of extensions of credit to Highway 31 and Edward Still, in his official capacity as treasurer (“Highway 31”). The Complaint also alleges that Priorities USA Action and Greg Speed in his official capacity as treasurer (“Priorities USA Action”) failed to report contributions it made to Highway 31.

20 The Commission: finds no reason to believe that Bully Pulpit Interactive, Waterfront
21 Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, and ZUUR, violated the
22 Federal Election Campaign Act of 1971, as amended (the “Act”) by making contributions in the
23 form of extensions of credit to Highway 31 and finds no reason to believe that Priorities USA
24 failed to report contributions it made to Highway 31.

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1 **II. FACTUAL BACKGROUND**

2 Highway 31 filed a Statement of Organization with the Commission on
 3 November 6, 2017.¹ Highway 31's timely-filed Pre-General Report covered the period from its
 4 registration on November 6 through close of books on November 22, 2017. It disclosed no
 5 receipts, disbursements, or cash-on-hand, but disclosed debts and obligations to vendors totaling
 6 \$1,154,844, as shown on the following chart.²

Vendor	Amount of IEs	Purpose
Bully Pulpit Interactive	\$800,693	Advertising and media production
Waterfront Strategies	\$309,690	Media buys
Putnam Partners	\$29,717	Media production
Nutt Labs	\$5,870	Media production
ZUUR	\$5,400	Media production
Denise Nelson Voiceovers	\$3,475	Media production

7 Thirty-eight days after the December 12 election, Highway 31 timely filed its 2017 Year-
 8 End Report, which disclosed receipts totaling \$4,365,298, including two from Priorities USA
 9 Action (totaling \$910,000).³ In its Year-End Report, Highway 31 reported (on Schedule E) that
 10 it made its first three disbursements (totaling \$499,223) on the same day as its first reported

¹ See Highway 31 Statement of Organization (Nov. 6, 2017).

² See Highway 31 Pre-Special Election Report (Nov. 30, 2017).

³ See Highway 31 2017 Year-End Report (Jan. 19, 2018) (reporting six additional itemized contributions as well: one from League of Conservation Voters, Inc. (\$250,000) and five from individuals (totaling \$10,250)). While Highway 31's Year-End Report disclosed receiving two contributions from Priorities USA Action totaling \$910,000, Priorities USA Action's 2017 Year-End Report did not report any contributions to Highway 31 or any other political committee.

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1 receipt.⁴ The Year-End Report also reported (on Schedule D) no outstanding balances on
 2 Highway 31's previously-reported debts to the six vendors and reported (on Schedule E)
 3 disbursements equal to the amounts of the debts to all the vendors.⁵

4 The Complaint notes that "Highway 31's top two vendors, Waterfront Strategies and
 5 Bully Pulpit, have also regularly contracted with Highway 31's top two contributors, SMP and
 6 Priorities USA Action."⁶ The Complaint presents its analysis of reports filed with the
 7 Commission that shows no other instance in which these two vendors extended credit to new
 8 committees with no cash-on-hand.⁷

9 The Respondents filed a joint response largely denying the allegations.⁸ The Response
 10 states that the vendors billed Highway 31 for their services in the normal and usual course of
 11 business, and Highway 31 paid fair market rates for those services shortly thereafter.⁹
 12 Respondents maintain that the services were performed, billed, and paid for in a matter of
 13 weeks—a practice the vendors assert is the ordinary course for their clients.¹⁰ Respondents point

⁴ See *id.* at 25, 30, 33 (reporting three disbursements to Waterfront Strategies on November 24, 2017: \$99,623 for an IE distributed on November 23; \$89,910 for an IE to be distributed on November 28; and \$309,690 for an IE distributed on November 22, respectively).

⁵ Highway 31 reported (on Schedule D) adjustments to "previously estimated" debts to Nutt Labs and Bully Pulpit Interactive. See *id.* at 15, 17, 18, 19.

⁶ Compl. at 5 (noting further that SMP reports show "over \$152 million in disbursements for independent expenditures since 2010" to Waterfront Strategies and Priorities USA Action reports show payments to Bully Pulpit of about \$804,000 in 2017-18). SMP's reports also show that it made one disbursement to Highway 31's vendor Putnam Partners during the special election period. See SMP 2017 Year-End Report at 2224 (Jan. 31, 2018).

⁷ See Compl. at 5-6 and n. 23.

⁸ Resp. at 4-6.

⁹ *Id.* at 4-5. The Response does not provide any explanation of any of the vendors' normal and usual business practices other than by asserting that the Highway 31 transactions were within those vendors' ordinary course of business. *Id.* at 3.

¹⁰ *Id.* at 5. The Response does not attach any invoices or other documents in support of this assertion.

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1 out that three of the vendors (Waterfront Strategies, Bully Pulpit Interactive, and Putnam
 2 Partners) are listed on the debt schedules of other political committees, as proof that the practice
 3 of providing services in advance and receiving payment later is common for these vendors.¹¹

4 Finally, Highway 31 acknowledges that it misreported Priorities USA Action as a
 5 contributor in its 2017 Year-End Report, and states that the correct contributor was a related
 6 entity, Priorities USA.¹²

7 **III. LEGAL ANALYSIS**

8 The Act requires each treasurer of a political committee to file reports of receipts and
 9 disbursements with the Commission.¹³ For any political committee other than an authorized
 10 committee, such reports must include the total amount of contributions received, as well as the
 11 identification of each person who made a contribution in excess of \$200 during the reporting
 12 period, together with the date and amount of such contribution.¹⁴

13 A “contribution” includes “any gift [or] advance . . . of money or anything of value made
 14 by any person for the purpose of influencing any election for Federal office.”¹⁵ The extension of
 15 credit to a political committee by a commercial vendor is a contribution, “unless the credit is
 16 extended in the ordinary course of the person’s business and the terms are substantially similar to

¹¹ See *id.* at 4 and nn. 23-24 (citing Democratic National Committee (“DNC”) Amended 2016 Year-End Report Schedule D at 5427 (June 1, 2017); DNC 2016 June Monthly Report, Schedule D at 3894 (June 20, 2016); DNC 2016 Feb. Monthly Report, Schedule D at 1126 (Feb. 19, 2016); House Majority PAC (“HMP”) 2014 June Monthly Report, Schedule D at 79 (June 20, 2014) (reporting debt to Putnam Partners); and HMP Pre-Special Election Report Schedule D at 91 (Mar. 7, 2014) (reporting debt to Waterfront Strategies)).

¹² Resp. at 6.

¹³ 52 U.S.C. § 30104(a)(1).

¹⁴ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

¹⁵ 52 U.S.C. § 30101(8)(A)(i).

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1 extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.”¹⁶
 2 Commission regulations state that, in determining whether credit was extended in a commercial
 3 vendor’s ordinary course of business, the Commission will consider whether (1) the commercial
 4 vendor followed its established procedures and its past practice in approving the extension of
 5 credit; (2) the commercial vendor received prompt payment in full for prior extensions of credit
 6 to the same committee; and (3) the extension of credit conformed to the usual and normal
 7 practice in that vendor’s trade or industry.¹⁷ The Commission has explained that “[t]hese factors
 8 are intended to provide guidance . . . The factors need not be accorded equal weight and in some
 9 cases a single factor may not be dispositive.”¹⁸

10 As a preliminary matter, it appears that the vendors to which Highway 31 incurred debt
 11 are all in the business of providing the services they provided to Highway 31 and are, therefore,
 12 “commercial vendors.” And, from Highway 31’s reporting of debts, it appears that each of the
 13 vendors extended credit to Highway 31 by providing services in advance of payment.

14 The available information supports a conclusion that the vendors’ extensions of credit to
 15 Highway 31 were contributions because they were not made in the ordinary course of the
 16 vendors’ business and on terms similar to those the vendors would make to non-political
 17 customers that are of similar risk and size of obligation. At the time its vendors extended it
 18 credit, Highway 31 was a brand-new committee with no apparent money or assets. It had no

¹⁶ 11 C.F.R. § 100.55 (explaining, too, that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3. A “commercial vendor” is any person who provides goods or services to a candidate or political committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods and services. 11 C.F.R. § 116.2(c).

¹⁷ 11 C.F.R. § 116.3(c).

¹⁸ Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26,378, 26,381 (June 27, 1990); *see also* Advisory Op. 1991-20 (Call Interactive) at 4.

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1 payment history with the credit-extending vendors, or any others. Yet, Highway 31's two largest
 2 creditors, Bully Pulpit Interactive and Waterfront Strategies, performed over \$1,100,000 worth
 3 of work on credit before Highway 31 had received a single dollar in contributions. The vendors
 4 assert that the work they did for Highway 31, and the credit they extended, were done in the
 5 ordinary course of their businesses, but provide no information about the vendors' past practices,
 6 industry or trade practices, or the vendors' procedures against which to assess the credibility of
 7 this assertion other than by reference to reported extensions of credit by three of the vendors to
 8 two dissimilar committees.

9 The committees cited by the Respondents as examples of the vendors' ordinary course of
 10 business are the DNC and House Majority PAC—large, well-known, and well-financed
 11 committees that participate in elections cycle after cycle, including in years' long courses of
 12 dealing with the vendors who later extended credit.¹⁹ An examination of just the first example
 13 presented by Respondents shows that Bully Pulpit Interactive extended credit in the amount of
 14 \$85,761 to the DNC at the end of 2016²⁰ only after an eight-year course of dealing in which the
 15 DNC reported 128 separate payments totaling \$21,682,457 to Bully Pulpit, including payments

¹⁹ See, e.g., DNC Disbursements to Bully Pulpit Interactive, Jan. 1, 2015-Jan. 31, 2016 (showing 11 disbursements totaling \$590,618 pre-dating the identified February 2016 reported debt from the DNC to Bully Pulpit Interactive); DNC Disbursements to Bully Pulpit Interactive, 2013-2014, (showing additional 33 disbursements totaling \$1,489,794); DNC Disbursements to Bully Pulpit Interactive, 2011-2012 (showing additional 28 disbursements totaling \$2,255,495); DNC Disbursements to Bully Pulpit Interactive, 2009-2010, (showing additional 33 disbursements totaling \$3,205,910); HMP Disbursements to "Putnam," Jan. 1, 2013 – Feb. 28, 2014 (showing 3 disbursements totaling \$5,879 to Putnam Partners LLC pre-dating the identified March and June, 2014 reported debt from HMP to Putnam Partners); HMP Disbursements to "Putnam," 2011-2012 (showing 7 additional disbursements totaling \$18,550); HMP Disbursements to "Waterfront," Jan. 1, 2013 – Feb. 28, 2014 (showing 11 disbursements totaling \$459,656 to Waterfront Strategies pre-dating the identified 2014 reported debt from HMP to Waterfront Strategies); HMP Disbursements to "Waterfront," 2011-2012, (showing 29 additional disbursements, by reference to Schedule E, totaling \$2,541,984). These numbers represents disbursements reported on Schedule B, so may not include additional disbursements reported on Schedule E.

²⁰ See DNC Amended 2016 Year-End Report Schedule D at 5427.

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1 for prior debt. In contrast, Bully Pulpit extended credit of almost ten times that amount—over
 2 \$800,000—to Highway 31, a committee with no apparent assets, after no course of dealing
 3 between the parties, and on no record of disbursements (for the payment of other debts or any
 4 other purpose). In fact, a comprehensive examination of all reports filed with the Commission
 5 since 2000 found that, until Bully Pulpit Interactive extended credit to Highway 31, it appears to
 6 have never extended credit to a similarly-situated committee, that is, one whose first report
 7 indicated no cash-on-hand, no receipts, and no disbursements at the time the committee reported
 8 the debt to Bully Pulpit Interactive.²¹ Thus, despite the unsworn and unsupported assertions of
 9 Respondents that they engaged in ordinary business practices consistent with prior practices, the
 10 record does not support a finding that there was anything ordinary in the vendors' extension of
 11 over \$1 million in credit to a political committee with the risk profile of Highway 31.

12 This conclusion is consistent with several matters in which the Commission found reason
 13 to believe that a vendor's extension of credit to a committee was not made in the vendor's
 14 ordinary course of business and was, therefore, a contribution. For example, in MUR 5635, the
 15 Commission found reason to believe a vendor extended credit outside its ordinary course of
 16 business and industry practice on a record that included facts, as ascertained in a Commission
 17 audit, similar to the ones in this matter: a vendor extended over \$1 million credit on a short term
 18 contract to a committee with which it had no prior business relationship.²² In another matter, the

²¹ The same examination of Commission reports (of all committees since 2000 that filed a first regular report disclosing no receipts, no disbursements, no cash-on-hand, but debt), shows that the other vendors in this matter also never extended credit to a similarly situated committee until the extensions of credit to Highway 31. These results are consistent with those in the examination conducted by the Complainant.

²² MUR 5635 (Conservative Leadership PAC, *et al.*) General Counsel's Brief at 7-8. The Commission conciliated with the committee and vendor on the extension of credit violation.

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1 Commission found reason to believe on a record, like the one here, with little or no information
 2 demonstrating or substantiating that the vendors' extensions of credit had been made in the
 3 ordinary course of business.²³ Conversely, the Commission has found no reason to believe a
 4 vendor's extension of credit constituted a contribution where the record included documents,
 5 sworn affidavits, or other evidence establishing that the extensions of credit had been made in the
 6 vendor's ordinary course of business or on terms substantially similar to extensions of credit to
 7 other clients of similar risk and size of obligation.²⁴

8 Here, Respondents did not submit affidavits, written agreements, or other documents to
 9 support their contentions that the vendors acted in their ordinary course of business. The record
 10 includes no evidence reasonably supporting a conclusion that Highway 31's vendors extended
 11 credit in the ordinary course of their business and on terms substantially similar to extensions of
 12 credit to any other debtor of similar risk and size of obligation. Given Highway 31's apparently
 13 high risk, as a newly formed committee that had no assets and no apparent relationship with the
 14 vendors, and the enormous size of Highway 31's obligations, the record supports a conclusion
 15 that the vendors' extensions of credit were not made in the ordinary course of business.

²³ See MUR 6101(Heller *et al.*) Factual & Legal Analysis at 6, 8-10 (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial RTB finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See, MUR 6101 (Heller *et al.*) Second GCR at 5 (discussing prior matters in which the Commission took no further action after an RTB finding on an extension of credit outside ordinary business practices).

²⁴ See, e.g. MUR 6141 (Friends of Dave Reichert) Factual & Legal Analysis at 8-14 (Aug. 26, 2009) (finding no RTB that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no RTB that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

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1 The vendors contributions, however, appear to be lawful, since Highway 31 is an
 2 independent expenditure-only political committee (“IEOPC”) permitted to accept funds outside
 3 the Act’s otherwise applicable contribution limits and source prohibitions, including
 4 contributions from corporations.²⁵ Because the vendors appear to have been permitted to make
 5 contributions to an IEOPC,²⁶ have no independent reporting obligation for making the
 6 contributions, and do not appear to have otherwise violated any provision of the Act, the
 7 Commission finds no reason to believe Bully Pulpit Interactive, Waterfront Strategies, Denise
 8 Nelson Voiceovers, Nutt Labs, Putnam Partners, and ZUUR violated the Act in this matter.

9 Highway 31 admits that it incorrectly identified Priorities USA Action as making two
 10 contributions, and states that the correct contributor was a related entity, Priorities USA.²⁷
 11 Because the available information does not indicate that Priorities USA Action made the
 12 contributions corresponding to the receipts reported by Highway 31, the Commission finds no
 13 reason to believe that Priorities USA Action and Greg Speed in his official capacity as treasurer
 14 violated 52 U.S.C. § 30104 by failing to report contributions it made to Highway 31 that
 15 correspond to Highway 31’s reported receipts.

²⁵ See *id.*, generally; *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010); *see also* 52 U.S.C. §§ 30116(a)(1), 30118(a).

²⁶ See, e.g., 11 C.F.R. § 114.2, note to paragraph (b) (noting that corporations may make contributions to IEOPCs). Although IEOPCs may not accept contributions from certain sources, such as foreign nationals, the record includes no indication that any of the vendors is prohibited from contributing to an IEOPC.

²⁷ Resp. at 6.