



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA EMAIL AND FIRST CLASS MAIL**

Ezra W. Reese, Esq.  
Perkins Coie  
700 13th Street, N.W., Suite 600  
Washington, DC 20005-3960

AUG 02 2019

Re: MUR 7343

Dear Mr. Reese:

On March 7, 2018, the Federal Election Commission ("Commission") notified your clients, Priorities USA Action and Gregory Speed in his official capacity as treasurer ("Priorities USA Action"), Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Putnam Partners, Nutt Labs, and ZUUR, that it received a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").

On July 25, 2019, the Commission found, on the basis of the information in the complaint, and information provided by respondents, that there is no reason to believe Priorities USA Action, Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Putnam Partners, Nutt Labs, and ZUUR violated the Act in this matter. Accordingly, the Commission closed its file in this matter as it pertains to Priorities USA Action, Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Putnam Partners, Nutt Labs, and ZUUR. The Factual and Legal Analysis, explaining the Commission's findings, are enclosed.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109 (a) (12) (A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Ezra W. Reese, Esq.  
MUR 7343 (Highway 31)  
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If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650 or [cjacksonjones@fec.gov](mailto:cjacksonjones@fec.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran", with a long horizontal flourish extending to the right.

Lynn Y. Tran  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Bully Pulpit Interactive **MUR: 7343**  
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.

The Commission: finds no reason to believe that 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 finds no reason to believe that Priorities USA failed to report contributions it made to Highway 31.

## II. FACTUAL BACKGROUND

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

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

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

<sup>1</sup> See Highway 31 Statement of Organization (Nov. 6, 2017).

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

<sup>3</sup> 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.

1 receipt.<sup>4</sup> 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.<sup>5</sup>

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."<sup>6</sup> 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.<sup>7</sup>

9 The Respondents filed a joint response largely denying the allegations.<sup>8</sup> 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.<sup>9</sup>  
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.<sup>10</sup> Respondents point

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<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> See Compl. at 5-6 and n. 23.

<sup>8</sup> Resp. at 4-6.

<sup>9</sup> *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.

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

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

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

### III. LEGAL ANALYSIS

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

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

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<sup>11</sup> 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)).

<sup>12</sup> Resp. at 6.

<sup>13</sup> 52 U.S.C. § 30104(a)(1).

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

<sup>15</sup> 52 U.S.C. § 30101(8)(A)(i).

1 extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.”<sup>16</sup>  
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.<sup>17</sup> 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.”<sup>18</sup>

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

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<sup>16</sup> 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).

<sup>17</sup> 11 C.F.R. § 116.3(c).

<sup>18</sup> 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.

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.<sup>19</sup> 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 2016<sup>20</sup> 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

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<sup>19</sup> 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.

<sup>20</sup> See DNC Amended 2016 Year-End Report Schedule D at 5427.

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.<sup>21</sup> 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.<sup>22</sup> In another matter, the

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<sup>21</sup> 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.

<sup>22</sup> 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.

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.<sup>23</sup> 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.<sup>24</sup>

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.

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<sup>23</sup> 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).

<sup>24</sup> 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           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.<sup>25</sup> Because the vendors appear to have been permitted to make  
5 contributions to an IEOPC,<sup>26</sup> 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.<sup>27</sup>  
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.

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<sup>25</sup> 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).

<sup>26</sup> 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.

<sup>27</sup> Resp. at 6.