



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  
Highway 31 and Edward Still in his official  
capacity as treasurer

Dear Mr. Reese:

On March 7, 2018, the Federal Election Commission notified your client, Highway 31 and Edward Still in his official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of 52 U.S.C. § 30104(b)(3) of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information provided by your client, the Commission, on July 25, 2019, found that there is reason to believe the Committee violated 52 U.S.C. § 30104(b)(3)(A) of the Act by failing to report contributions received from its vendors in the form of extensions of credit. The Commission, found no reason to believe that the Committee violated 52 U.S.C. § 30104(b)(4) by failing to properly report disbursements made to pay its debts and obligations. The Commission also exercised its prosecutorial discretion and dismissed the allegation that the Committee violated 52 U.S.C. § 30104(b)(3) by misreporting a contributor and directed the Committee to work with the Reports Analysis Division to amend its reports. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. Any additional materials or statements you wish to submit should accompany the response. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

In furtherance of its investigation in this matter, the Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. Where documents are requested, clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request in by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent(s).

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or [cjacksonjones@fec.gov](mailto:cjacksonjones@fec.gov).

On behalf of the Commission,

*Ellen L. Weintraub*  
 Ellen Weintraub  
 Chairman

Enclosure  
 Factual and Legal Analysis  
 Questions  
 Procedures

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

Please provide detailed answers to the following questions:

1. Describe any discussions or communications between Highway 31 and Edward Still, in his official capacity as treasurer (the “Committee”), and its vendors, Bully Pulpit Interactive, Waterfront Strategies, Denise Nelson Voiceovers, Nutt Labs, Putnam Partners, and/or ZUUR (“vendors”) regarding the financial arrangements by which the vendors agreed to extend credit to the Committee for the Committee’s public communications.
2. Provide all documents relating to or reflecting the discussions or communications identified in your response to question 1.
3. Identify any bank statements, guarantees, spreadsheets, reports, affidavits, or other financial documents the Committee provided to any of the vendors before that vendor agreed to extend credit to the Committee and produce a copy of any such documents.
4. Describe any discussions or communications between the Committee and Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer (“SMP”), regarding any promise SMP made to the Committee to fund the Committee’s public communications through SMP’s contributions.
5. Provide all documents relating to or reflecting the discussions or communications identified in your response to question 4.
6. Describe any discussions or communications between the Committee and SMP regarding the decision by any of the vendors to extend credit to the Committee, including whether SMP engaged in any discussions or communications with any of the vendors regarding the extension of credit.
7. Provide all documents relating to or reflecting the discussions or communications identified in your response to question 6.
8. In the last five years, have any of the vendors extended credit to a new entity that had no funds at the time the credit was extended? For each such instance, please identify the names of the entities, initial extension and payment dates, value of services provided, and the terms and conditions for the extension of credit and payment.
9. Provide all documents relating to or reflecting the instances identified in your response to question 8.

**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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> Under the Commission's reporting schedules for the Alabama Senate  
 15 special election, Highway 31 was required to, and did, file three disclosure reports:<sup>3</sup>

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.<sup>4</sup>

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<sup>2</sup> See Highway 31 Statement of Organization (Nov. 6, 2017).

<sup>3</sup> 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).

<sup>4</sup> 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).

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.<sup>5</sup>

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.<sup>6</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

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).<sup>7</sup> 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-

<sup>5</sup> *Id.*

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

<sup>7</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.

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1 General Report.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

6 On the same day Highway 31 filed its 2017 Year-End Report, it filed a Termination  
 7 Report.<sup>11</sup> The Commission approved Highway 31's termination on February 8, 2018.<sup>12</sup>

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."<sup>13</sup> 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.<sup>14</sup>

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<sup>8</sup> See *id.* at 9.

<sup>9</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>10</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>11</sup> 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).

<sup>12</sup> See Highway 31 Termination Approval (Feb. 8, 2018).

<sup>13</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>14</sup> See Compl. at 5-6 and n. 23.

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1 Highway 31 filed a response largely denying the allegations.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> Highway 31 explains that because the contributions were made by wire

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<sup>15</sup> Resp. at 4-6.

<sup>16</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>17</sup> *Id.* at 5. The Response does not attach any invoices or other documents in support of this assertion.

<sup>18</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>19</sup> Resp. at 6.

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

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.<sup>22</sup> 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.<sup>23</sup>

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.”<sup>24</sup> 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.”<sup>25</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 52 U.S.C. § 30104(a)(1).

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

<sup>24</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>25</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).

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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.<sup>26</sup> 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.”<sup>27</sup>

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

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<sup>26</sup> 11 C.F.R. § 116.3(c).

<sup>27</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.

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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.<sup>28</sup> 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 2016<sup>29</sup> 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

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<sup>28</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>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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

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<sup>30</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>31</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.

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1 ordinary course of business.<sup>32</sup> 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.<sup>33</sup>

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.

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<sup>32</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>33</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        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.<sup>34</sup>

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.<sup>35</sup> 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

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<sup>34</sup>        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).

<sup>35</sup>        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.<sup>36</sup>

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.”<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup>

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

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<sup>36</sup> 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).

<sup>37</sup> 11 C.F.R. § 104.4(a), (f).

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

<sup>39</sup> 11 C.F.R. § 104.11(a).

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1       IEs on Schedule D of the 2017 Pre-General Report.<sup>40</sup> 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.<sup>41</sup> 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).

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<sup>40</sup>       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”).

<sup>41</sup>       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>.

**DESCRIPTION OF PRELIMINARY PROCEDURES  
FOR PROCESSING POSSIBLE VIOLATIONS DISCOVERED BY  
THE FEDERAL ELECTION COMMISSION**

Possible violations discovered during the normal course of the Commission's supervisory responsibilities shall be referred to the Enforcement Division of the Office of the General Counsel where they are assigned to a staff member.

Following review of the information which generated the matter, a recommendation on how to proceed, based on a preliminary legal and factual analysis, shall be submitted to the Commission. This initial report shall recommend either: (a) that the Commission find reason to believe that a possible violation of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act") may have occurred or is about to occur; or (b) that the Commission find no reason to believe that a possible violation of the Act has occurred or is about to occur, and that the Commission close the file in the matter.

Thereafter, if the Commission decides by an affirmative vote of four Commissioners to open a Matter Under the Review (MUR) and finds that there is reason to believe that a violation of the Act has been committed or is about to be committed, the Office of the General Counsel shall conduct an investigation into the matter. Within 15 days of notification of the Commission's finding(s), a respondent(s) may submit any factual or legal materials relevant to the allegations. During its investigation, the Commission shall have the power to subpoena documents, to subpoena individuals to appear for depositions, and to order written answers to interrogatories. The respondent(s) may be contacted more than once by the Commission during its investigation.

If, during this period of investigation, the respondents(s) indicate a desire to enter into conciliation, the Office of the General Counsel may recommend that the Commission enter into conciliation prior to a finding of probable cause to believe a violation has been committed. Conciliation is an attempt to correct or prevent a violation of the Act by informal methods of conference and persuasion. Most often, the result of