



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 7, 2022

VIA ELECTRONIC MAIL

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Russell Duncan, Esq.
Clark Hill PLC
1001 Pennsylvania Avenue, NW
Washington, DC 20004

RE: MUR 7728
Shout Out America PAC and Mike McCauley
in his official capacity as treasurer
Karyn Kay Griffin

Dear Mr. Duncan:

On October 8, 2020, the Federal Election Commission notified your clients, Shout Out America PAC and Mike McCauley in his official capacity as treasurer (the "Committee") and Karyn Kay Griffin, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 24, 2022, the Commission dismissed as a matter of prosecutorial discretion the allegation that the Committee failed to register as a political committee or failed to include disclaimers on its communications in violation of 52 U.S.C. §§ 30103(a), 30120(a) and 11 C.F.R. §§ 102.1(d), 110.11. The Commission also found no reason to believe that the Committee failed to exercise best efforts to obtain contributors' identification information in violation of 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7. The Commission further found no reason to believe that Karyn Kay Griffin and the Committee solicited prohibited corporate contributions in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Karyn Kay Griffin, Executive Director **MUR 7810**
Shout Out America PAC and Mike McCauley
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) alleging Shout Out America PAC (“Shout Out”) failed to register with the Commission despite operating a website that solicited funds to support the reelection of Donald J. Trump for President.¹ It further alleges that Shout Out’s website, and a printed communication accessible through its website, failed to include disclaimers or best efforts language requesting contributor identification information, that it solicited prohibited corporate contributions, and that Shout Out’s director, Karyn Kay Griffin, committed wire fraud by soliciting funds based on fraudulent misrepresentations.²

In their Response, Shout Out and Griffin assert that Shout Out registered as a nonfederal political committee with the State of New Mexico in August 2020.³ Shout Out registered as an independent expenditure-only political committee (“IEOPC”) with the Commission shortly after being notified of the Complaint. Respondents assert that Shout Out did not make \$1,000 in federal expenditures until mid-September, and that its registration with the Commission was only 15 days late.⁴ Further, Respondents assert that Shout Out filed its first disclosure report in a timely fashion.⁵ Respondents deny the remaining allegations.⁶

¹ Compl. at 5-6 (Oct. 1, 2020).

² *Id.* at 7-13.

³ Resp. at 2 (Oct. 23, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2-4.

1 As discussed in further detail below, the Commission exercises its prosecutorial
2 discretion and dismisses the allegations that Shout Out failed to register with the Commission
3 and failed to include proper disclaimers in compliance with the Federal Election Campaign Act
4 of 1971, as amended (the “Act”), and Commission regulations.⁷ The Commission also finds no
5 reason to believe that Shout Out failed to follow the regulation’s “best efforts” provisions or that
6 Shout Out or Griffin solicited prohibited contributions.⁸

7 **II. FACTUAL BACKGROUND**

8 Shout Out was founded by Karyn Kay Griffin and registered with the State of New
9 Mexico as a nonfederal political committee on August 28, 2020.⁹ After the filing of the
10 Complaint in this matter, Shout Out registered with the Commission as an IEOPC on October 14,
11 2020.¹⁰ It filed its first disclosure report with the Commission on October 15, 2020.¹¹ During
12 the 2020 election cycle, Shout Out disclosed \$6,874.06 in receipts (consisting of \$624.06 in
13 unitemized contributions and \$6,250 in itemized contributions from three individuals) and
14 \$6,289.99 in disbursements, all of which were issued for operating expenditures.¹² Shout Out
15 has had no activity in 2021 or to date in 2022, and only has \$584.07 in cash on hand.¹³

⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁸ The Complaint’s allegation that Griffin committed wire fraud, in violation of 18 U.S.C. § 1343, by allegedly misrepresenting Shout Out’s association with Go Fas Racing on its website, is not within the Commission’s jurisdiction. Therefore, the Commission makes no findings regarding the alleged activity.

⁹ See Resp. at 2 and Ex. 1. According to Respondents, Shout Out acted on the advice of previous counsel when it registered with New Mexico. *Id.* at 2.

¹⁰ See Shout Out America PAC, Statement of Organization (Oct. 14, 2020); Compl. at 1. See also *Shout Out America, A New Political Action Committee, Overview*, available at <https://shoutoutamericapac.org/wp-content/uploads/2020/09/Shout-Out-America-PAC-One-Sheet-August-2020.pdf> (last accessed July 21, 2020) (listing Griffin as Executive Director).

¹¹ Shout Out America PAC, 2020 October Quarterly Report (Oct. 15, 2020).

¹² See Shout Out America PAC, *2019-2020 Financial Summary Page*, FEC.gov (last accessed July 21, 2021).

¹³ See Shout Out America PAC, *2021-2022 Financial Summary Page*, FEC.gov (last accessed May 24, 2022). Griffin registered Shout Out with the State of New Mexico as an independent expenditure political committee on August 28, 2020 and filed its first state report on September 13, 2020, disclosing one \$500 contribution that it

1 According to the Respondents, Griffin previously served as a board member and co-chair
 2 of Patriots of America PAC, the Complainant in this matter, and that the Complaint was “a
 3 tactical and retaliatory filing” made “in an attempt to silence” Shout Out and harass Griffin.¹⁴
 4 Griffin explains that while she was associated with Patriots of America PAC, she raised \$1
 5 million for the committee and also helped negotiate a contract with Go Fas Racing.¹⁵ Griffin
 6 states that she left Patriots of America PAC following a disagreement with the Complainant after
 7 she “attempted to prevent him from filing improper FEC reports” for the PAC.¹⁶ She further
 8 explains that after departing Patriots of America PAC, she began negotiations with the owner of
 9 Go Fas Racing on behalf of Shout Out in order to run Trump 2020 ads on its #32 stock car, but
 10 the parties never entered into a contract.¹⁷ It appears that Go Fas Racing car #32 ran in a number
 11 of races wrapped with a Trump 2020 message, but that the advertisement was paid for by
 12 Patriots of America PAC.¹⁸

received on September 4, 2020. *See* State of New Mexico Committee Registration Form (Aug. 28, 2020) and Shout Out America PAC, 2020 First General Report, New Mexico Office of the Sec. of State (Sept. 13, 2020). For the 2020 election cycle, it disclosed \$6,975 in contributions and \$6,870.06 in expenditures on its state reports, which is \$101 in additional receipts and \$580 in additional disbursements than what was disclosed on its Commission filings; it has disclosed no state activity in 2021. *See* Shout Out America PAC filings, New Mexico Secretary of State, <https://login.cfis.sos.state> (search “Shout Out America PAC”).

¹⁴ Resp. at 4. Patriots of America PAC is a hybrid PAC registered with the Commission. *See* Patriots of America PAC, Statement of Organization and attached Miscellaneous Text (Feb. 18, 2020) (registering as an IEPOC); Statement of Organization and attached Miscellaneous Text (Apr. 14, 2020) (amending statement to indicate it would establish a separate non-contribution account, allowing it to operate as a hybrid political committee).

¹⁵ Resp. at 1, 4. Go Fas Racing is a stock car racing team that currently races car #32 in the NASCAR Cup Series. *See* <https://gofasracing.com/>; @GoFASRacing32, TWITTER, <https://twitter.com/GoFasRacing32> (describing itself as @FordPerformance team in the @NASCAR Cup Series); Kelly Crandall, *Go Fas to Run Part-Time in 2021* (Oct. 22, 2020), <https://racer.com/2020/10/22/go-fas-to-run-part-time-in-2021/>; *Go Fas Racing*, WIKIPEDIA, https://en.wikipedia.org/wiki/Go_Fas_Racing.

¹⁶ Resp. at 4.

¹⁷ *Id.* (explaining that Shout Out was unable to raise sufficient funds to meet the terms of the contract).

¹⁸ *See* Patriots for America PAC Website, <https://patriotsofamericapac.org/> (displaying car #32 wrapped with a Trump 2020 message). Archived pages of the Go Fas Racing team reveals that Shout Out America PAC was never one of its sponsors, but that Patriots of America PAC was. *See, e.g.*, <https://gofasracing.com/partner> (current page); <https://web.archive.org/web/20200930185309/https://gofasracing.com/partner> (Sept. 30, 2020 snapshot).

1 Shout Out operated a website at www.shoutoutamericapac.org, which the Complaint
2 alleges failed to display disclaimers.¹⁹ Screenshots attached to the Complaint show that a
3 disclaimer appears on its homepage, while the “Learn More,” “Donate,” and payment pages did
4 not include disclaimers.²⁰ A PDF document accessible through the site’s “Learn More” button
5 also did not display a full disclaimer.²¹ The disclaimer on the homepage states “Paid for by
6 Shout Out America PAC, Not authorized by any candidate or candidate’s committee,
7 ShoutOutAmericaPAC.org.”²² The current version of Shout Out’s website now displays the
8 disclaimer on each of its active pages and includes “best efforts” language on its donation page;
9 Respondents indicate that the disclaimers and “best efforts” language were added after receipt of
10 the Complaint.²³

11 **III. LEGAL ANALYSIS**

12 The Complaint alleges that Shout Out failed to register as a political committee with the
13 Commission, failed to include disclaimers on its website and on a printed communication
14 accessible through the website, failed to include best efforts language on the donation page of its
15 website, and improperly solicited corporate contributions.²⁴

16 **A. Failure to Register as a Political Committee**

17 The Act and Commission regulations define a “political committee” as “any committee,
18 club, association, or other group of persons which receives contributions aggregating in excess of
19 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000

¹⁹ See *infra* Sec. III.B (discussing alleged disclaimer violations).

²⁰ Compl. at Exs. B, D, E, and F.

²¹ *Id.* at Ex. D.

²² *Id.* at Ex. B.

²³ See Resp. at 2-3; <https://shoutoutamericapac.org/> and <https://shoutoutamericapac.org/donate/>; see *infra* Sec. III.C (discussing alleged best efforts violation).

²⁴ Compl. at 1, 7-11.

1 during a calendar year.”²⁵ Political committees are required to register with the Commission by
2 filing a statement of organization with the Commission no later than 10 days after designation,
3 meet organizational and recordkeeping requirements, and file periodic disclosure reports.²⁶

4 Shout Out acknowledges that it should have registered with the Commission at an earlier
5 point. It registered with the State of New Mexico on August 28, 2020, but did not register with
6 the Commission until October 14, 2020, after receipt of the Complaint in this matter.²⁷

7 Respondents concede that Shout Out’s registration was untimely because it passed the Act’s
8 \$1,000 threshold for political committee status on September 19, 2020.²⁸ Based on that date,
9 Shout Out’s Statement of Organization was due on September 29, 2020, but was filed 15 days
10 late.

11 We have no information that Shout Out’s registration was triggered at an earlier date.
12 The Complaint alleges, however, that the website was likely designed at a considerable cost, and
13 because the website URL was obtained on July 24, 2020, Shout Out may have triggered political
14 committee status around that date.²⁹ Whether Shout Out’s registration requirement was triggered
15 around July 24 or September 19 would not change the fact that the 2020 October Quarterly
16 Report was its first disclosure report due to the Commission and was timely filed.³⁰ Based on
17 the short period involved with Shout Out’s untimely registration and the fact that it still timely
18 filed its initial disclosure report, the Commission dismisses as a matter of prosecutorial discretion

²⁵ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

²⁶ *See* 52 U.S.C. §§ 30102, 30103, 30104.

²⁷ Resp. at 2 and Ex. 1; Shout Out America PAC, Statement of Organization (Oct. 14, 2020).

²⁸ Resp. at 2.

²⁹ Compl. 6 and Ex. C.

³⁰ *See* Shout Out America PAC, 2020 October Quarterly Report (Oct. 15, 2020).

1 the allegation that Shout Out violated 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d) by filing a
2 late registration.

3 **B. Failure to Include Disclaimers**

4 All public communications made by a political committee and all public communications
5 made by any person that expressly advocate the election or defeat of a clearly identified
6 candidate are required to include a disclaimer as set forth in the Act and Commission
7 regulations.³¹ Disclaimers are required on all Internet websites of a political committee available
8 to the general public.³² If the communication, including any solicitation, is not authorized by a
9 candidate, authorized committee of a candidate, or an agent of either, the disclaimer must clearly
10 state the full name and permanent street address, telephone number, or World Wide Web address
11 of the person who paid for the communication, and that the communication is not authorized by
12 any candidate or candidate's committee.³³ In addition, disclaimers in printed materials must be
13 presented in a clear and conspicuous matter and meet specific requirements, such as being of
14 sufficient type size to be clearly readable and being placed in a printed box set apart from the
15 other parts of the communication.³⁴

16 Shout Out's website included a full disclaimer on its homepage that stated that it was
17 "Paid for by Shout Out America PAC," "Not Authorized by any candidate or candidate's
18 committee," and listed the PAC's website address, ShoutOutAmericaPAC.org.³⁵ At the time of
19 the Complaint, the donation page, which sought \$2 million in contributions to help "accomplish
20 [Shout Out's] mission" in reelecting President Trump, and the payment page on the site did not

³¹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1), (a)(2).

³² 11 C.F.R. § 110.11(a)(1).

³³ *Id.* § 110.11(b)(3).

³⁴ *Id.* § 110.11(c)(2).

³⁵ Compl. at Ex. B.

1 contain disclaimers.³⁶ However, the allegations in the Complaint specifically point to a
2 document entitled “Shout Out America, A New Political Action Committee, Overview”
3 (“Overview Document”), which consisted of a separate PDF document that was accessible and
4 could be downloaded through the “Learn More” button on the website’s homepage.³⁷ The
5 Overview Document expressly advocated the reelection of President Trump and solicited
6 contributions to meet a \$2 million fundraising goal to pay for advertising on Go Fas Racing’s
7 fully wrapped car #32, voter registration, marketing, event promotion, and merchandise.³⁸ While
8 the last page of the document identifies Shout Out and provides the website address
9 (ShoutOutAmericaPAC.org), it does not specifically state who paid for the communication,
10 whether it was authorized by a candidate, or contain a printed box listing any of that information,
11 as required by the Act and Commission regulations.

12 Since the date of the Complaint, Shout Out has removed the “Learn More” button from
13 its site, thereby effectively removing access to the Overview Document through the website
14 homepage, and has further added full disclaimers on each remaining active page of the website.³⁹
15 However, the Overview Document still remains accessible through a direct hyperlink and can be
16 downloaded as a separate printed communication.⁴⁰

17 While a disclaimer was required on the Overview Document, because the document
18 contained some identifying information and appeared on a website that did include a full
19 disclaimer on its homepage, it is unlikely that the general public would have been misled as to

³⁶ *Id.* at Ex. E and F.

³⁷ *Id.* at 4 and Ex. D.

³⁸ *Id.* at Ex. D.

³⁹ *See Resp.* at 2; *see also* <https://shoutoutamericapac.org/> (last accessed July 21, 2021).

⁴⁰ *Compl.* at 4; <https://shoutoutamericapac.org/wp-content/uploads/2020/09/Shout-Out-America-PAC-One-Sheet-August-2020.pdf> (last accessed July 21, 2021).

1 who was responsible for the communication. Accordingly, the Commission dismisses as a
2 matter of prosecutorial discretion the allegation that Shout Out violated 52 U.S.C. § 30120(a)
3 and 11 C.F.R. § 110.11.⁴¹

4 **C. Use of Best Efforts**

5 The Complaint alleges that because the website failed to request contributor information
6 on the donation page, Shout Out failed to exercise best efforts to obtain contributors'
7 identification information in violation of 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7(b)(1)(i-
8 ii).⁴² The Act requires authorized committees to identify persons who make a contribution in
9 excess of \$200 within the calendar year.⁴³ "Identification" means a person's full name, mailing
10 address, occupation, and the name of their employer.⁴⁴ Under the Act's best efforts provision,
11 when a treasurer of a political committee shows that best efforts have been used to obtain,
12 maintain, and submit the information required by the Act, any report submitted by the committee
13 will be considered to be in compliance with the Act.⁴⁵ The Commission has further explained
14 that "the best efforts provision is an affirmative defense that a respondent must establish."⁴⁶
15 Thus, while a committee may establish that it has exercised best efforts by including language
16 requesting a contributor's name, address, occupation and other identifying information in its

⁴¹ *Heckler*, 470 U.S. 821 (1985).

⁴² Compl. at 8-9.

⁴³ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

⁴⁴ 52 U.S.C. § 30101(13); 11 C.F.R. § 100.12.

⁴⁵ 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7(a).

⁴⁶ *See, e.g.*, F&LA at 8-9, MURs 7112 and 7115 (AJ Kern for Congress, *et al.*); F&LA at 5, MUR 7043 (Put Alaska First); *see also* Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) ("The best efforts standard is an affirmative defense and the burden rests with the political committee and its treasurer to present evidence sufficient to demonstrate that best efforts were made.").

1 written solicitations, a committee's failure to do so is not a violation where the committee
2 otherwise complied with the reporting requirements of the Act.⁴⁷

3 Here, the Complaint does not allege that Shout Out failed to include contributor
4 identification information on its disclosure reports, and there is no available information
5 indicating that Shout Out reported inaccurate information.⁴⁸ Respondents acknowledge that
6 prior to receipt of the Complaint, the website donation page did not include best efforts language
7 seeking contributor identification information, but that such language has since been added.⁴⁹
8 Nevertheless, simply not including such language on its original solicitation does not indicate
9 that Shout Out violated the best efforts provision. Accordingly, the Commission finds no reason
10 to believe that Shout Out violated 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7.

11 **D. Solicitation of Corporate Contributions**

12 The Complaint alleges that Shout Out may have improperly solicited corporate
13 contributions based in part that at the time of the Complaint there was no information regarding
14 whether it was operating as an IEOPC or a hybrid PAC.⁵⁰ Under the Act, corporations are
15 prohibited from making contributions in connection with a federal election and a candidate,
16 political committee, or other person is prohibited from knowingly accepting or receiving such
17 prohibited contributions.⁵¹ However, an IEOPC is permitted to accept unlimited contributions as

⁴⁷ See 11 C.F.R. § 104.7(b)(1)(i)(A) (providing examples of acceptable best efforts statements).

⁴⁸ Shout Out disclosed itemized contributions from three individuals and appears to have listed all of their identification information. See Shout Out America PAC, Amended 2020 October Quarterly Report at 6 (Oct. 17, 2020).

⁴⁹ Resp. at 3.

⁵⁰ Compl. at 9-11.

⁵¹ 52 U.S.C. § 30118; 11 C.F.R. § 114.2(b), (d).⁵² See Advisory Opinion 2010-11 (Commonsense Ten) (corporations and labor organizations may contribute without limit to political committees that make only independent expenditures); see also *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010) (corporate-funded independent expenditures are constitutionally protected speech); *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010) (*en banc*) (individuals may contribute without limit to political committees that make only independent expenditures).

1 well as corporate contributions;⁵² a hybrid political committee, which makes both independent
2 expenditures and direct contributions, can also accept unlimited and corporate contributions but
3 must maintain a separate non-contribution account for the purpose of making independent
4 expenditures and a separate contribution account that is subject to the Act's amount and source
5 limitations from which to make contributions to federal candidates.⁵³ Since the date of the
6 Complaint, Shout Out has registered with the Commission as an IEOPC.⁵⁴ Therefore, because it
7 was permitted to solicit and accept corporate contributions, the Commission finds no reason to
8 believe that Shout Out violated the prohibition against accepting such contributions in the Act
9 and Commission's regulations at 52 U.S.C. § 30118 and 11 C.F.R. § 114.2.⁵⁵

⁵² See Advisory Opinion 2010-11 (Commonsense Ten) (corporations and labor organizations may contribute without limit to political committees that make only independent expenditures); see also *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010) (corporate-funded independent expenditures are constitutionally protected speech); *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010) (*en banc*) (individuals may contribute without limit to political committees that make only independent expenditures).

⁵³ See *Types of nonconnected PACs* at <https://www.fec.gov/help-candidates-and-committees/registering-pac/types-nonconnected-pacs/>). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. See Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011) (requiring non-connected committees that make independent expenditures to maintain a separate "contribution" account to be able to make contributions to federal candidates from receipts that are subject to the Act's limitations and source prohibitions).

⁵⁴ See Shout Out America PAC, Statement of Organization and attached Miscellaneous Text (Oct. 14, 2020) (stating that it intends to raise funds in unlimited amounts but would not use those funds to make contributions, whether direct, in-kind or via coordinated communications, to federal candidates or committees).

⁵⁵ Despite being permitted to accept such contributions, based on its disclosure reports filed with the Commission, Shout Out does not appear to have accepted any corporate contributions. See Shout Out America PAC, Amended 2020 October Quarterly Report (Oct. 17, 2020) (disclosing only three itemized contributions from individuals).