



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

August 2, 2022

Stephen Klein
Benjamin Barr
Barr & Klein PLLC
1629 K St. NW, Suite 300
Washington, DC 20006
steve@barrklein.com
ben@barrklein.com

RE: MUR 7883
American Firearms Association

Dear Mr. Klein and Mr. Barr:

On March 9, 2021, the Federal Election Commission notified your client, the American Firearms Association, of a complaint alleging that it had violated certain sections of the Federal Election Campaign Act of 1971, as amended. On July 26, 2022, the Commission considered the complaint and dismissed as a matter of prosecutorial discretion the allegations that American Firearms Association violated 52 U.S.C. § 30104(c), (g) and 11 C.F.R. § 109.10(b), (d) by failing to properly report independent expenditures and 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 by failing to include a required disclaimer. Accordingly, the Commission closed the file in this matter. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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). If you have any questions, please contact Laura Conley, the attorney assigned to this matter, at (202) 694-1475 or lconley@fec.gov.

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: American Firearms Association MURs 7883, 7884
f/k/a American Firearms Coalition
Georgia Gun Owners, Inc.

I. INTRODUCTION

The Complaints in these matters allege that the American Firearms Association (“AFA”) and Georgia Gun Owners, Inc. (“GGO”), two 501(c)(4) non-profit corporations, knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to report as independent expenditures communications that expressly advocated for the defeat of Complainant Dr. John Cowan, a candidate in Georgia’s 14th Congressional District. Relatedly, the Complaints allege that the relevant communications — a video advertisement AFA posted and disseminated on Facebook and a mailer sent by GGO — lacked required disclaimers. Respondents deny the allegations, contending that their respective communications were not independent expenditures because they do not contain express advocacy and, for the same reason, did not require disclaimers.

As explained below, the Commission exercises its prosecutorial discretion and dismisses the allegations that AFA failed to report an independent expenditure in violation of 52 U.S.C. § 30104(c), (g) and 11 C.F.R. § 109.10(b), (d) and failed to include a disclaimer in violation of 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 as well as the allegations that GGO failed to report an independent expenditure in violation of 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b), and failed to include a disclaimer in violation of 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11.

II. FACTUAL BACKGROUND

Dr. John Cowan was a candidate for the Republican nomination in Georgia’s 14th Congressional District.¹ Cowan and now-Congresswoman Marjorie Taylor Greene competed in a primary runoff election on August 11, 2020.² AFA and GGO are 501(c)(4) non-profit corporations.³ They identify each other on their websites as “affiliated” organizations, and AFA board member Aaron Dorr serves as the Chief Financial Officer of GGO.⁴ Each describes itself as a “grassroots mobilization organization that fights aggressively in defense of the Second Amendment.”⁵

On July 20, 2020, three weeks before the runoff election, AFA published a thirty-second video on its Facebook page, images and a transcript of which are appended as Exhibit A.⁶ AFA also disseminated the video as a paid advertisement on Facebook from July 20-August 11, 2020,

¹ John Bailey, *Cowan Announces Run for U.S. Rep. Seat, Taps Locals McNiece and Garner for His Staff*, ROME NEWS-TRIB. (Jan. 14, 2020), https://www.northwestgeorgianews.com/rome/news/local/cowan-announces-run-for-u-s-rep-seat-taps-locals-mcniece-and-garner-for-his/article_b8cc2e60-36d8-11ea-ba36-2f2737b20c17.html.

² *Georgia’s 14th Congressional District Election, 2020 (August 11 Republican Primary Runoff)*, BALLOTPEdia, [https://ballotpedia.org/Georgia%27s_14th_Congressional_District_election_2020_\(August_11_Republican_primary_runoff\)](https://ballotpedia.org/Georgia%27s_14th_Congressional_District_election_2020_(August_11_Republican_primary_runoff)) (last visited June 23, 2022).

³ IRS, DETERMINATION LETTER (July 26, 2019), https://apps.irs.gov/pub/epostcard/dl/FinalLetter_83-3362766_AMERICANFIREARMSCOALITION_03262019_01.tif (determining that American Firearms Coalition is a 501(c)(4) organization); *Search by Business Name*, OHIO SEC’y OF STATE, <https://businesssearch.ohiosos.gov/> (last visited June 23, 2022) (search for “American Firearms Association”) (identifying American Firearms Coalition as prior business name); IRS, DETERMINATION LETTER (Aug. 10, 2010), https://apps.irs.gov/pub/epostcard/dl/FinalLetter_27-2546848_GEORGIAGUNOWNERSINC_07262010_01.tif (determining that GGO is a 501(c)(4) organization).

⁴ *Affiliated Groups*, GGO, <https://www.georgiagunowners.org/affiliated-groups/> (last visited June 23, 2022); *Affiliated Groups*, AFA, <https://www.americanfirearmsassociation.org/affiliated-groups/> (last visited June 23, 2022); *Board of Directors*, AFA, <https://www.americanfirearmsassociation.org/board-of-directors/> (last visited June 23, 2022); *Business Search*, GA. CORPS. DIV., <https://ecorp.sos.ga.gov/BusinessSearch/> (last visited June 23, 2022) (search for “Georgia Gun Owners, Inc.”) (returning list of officers).

⁵ AFA Resp. at 2 (Apr. 21, 2021); GGO Resp. at 2 (May 12, 2021).

⁶ AFA notes that the video link in the Complaint does not work and supplies a link to the referenced video. AFA Resp. at 2; AFA, FACEBOOK, <https://www.facebook.com/AmericanFirearmsAssociation/videos/596112824612948> (last visited June 23, 2022) (“AFA Video”). AFA later posted the same video to YouTube. AFA, *Why Would John Cowan Support Gun-Grabbers Who Attack President Trump?*, YOUTUBE (Oct. 22, 2020), https://www.youtube.com/watch?v=f2_tNyG5hEY (cited in AFA Resp. at 2 n.1).

1 for which it spent an estimated \$2,500 to \$3,000.⁷ The video opens with images of Greene,
 2 interspersed with various graphics, and the narrator states: “Marjorie Taylor Greene is a fighter
 3 for the Second Amendment, always standing up against radical Antifa thugs who are burning our
 4 cities and shooting at our cops.”⁸ The video then displays photos of Cowan, Chris Christie, and
 5 Donald Trump, and the narrator states: “But not John Cowan. Cowan is a fake conservative,
 6 who gave Chris Christie thousands of campaign dollars in 2015, even though Christie opposes
 7 concealed carry and wants to ban our AR-15s. What’s wrong with John Cowan? Why would he
 8 support liberal politicians who hate our guns and attack our president?”⁹ The video also displays
 9 images of Federal Election Commission reports showing that John Cowan for Congress,
 10 Cowan’s principal campaign committee, received a contribution from the National Emergency
 11 Medicine PAC (“NEMPAC”).¹⁰ The video ends by displaying a phone number and photo of
 12 Cowan, and the narrator states: “Call Cowan and ask him. Paid for by the American Firearms
 13 Coalition.”¹¹ It also displays a box containing the statement “Paid for by the American Firearms
 14 Coalition.”¹² American Firearms Coalition was AFA’s official name at the time the video was
 15 posted.¹³

⁷ AFA, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=280468056553212> (last visited June 23, 2022) (“AFA Facebook Ad”) (indicating video was shown to an estimated 50,000-100,000 people, primarily in Georgia).

⁸ AFA Video; AFA Resp. at 2.

⁹ AFA Video; AFA Resp. at 2-3.

¹⁰ AFA Video; AFA Resp. at 3; John Cowan for Congress, Inc., Statement of Organization at 2 (Jan. 14, 2020).

¹¹ AFA Video; AFA Resp. at 3.

¹² AFA Video; AFA Resp. at 3.

¹³ Filings with the State of Ohio show that the Ohio Secretary of State certified American Firearms Coalition’s filing to change its name to the American Firearms Association on December 2, 2020. STATE OF OHIO, CERTIFICATE (Dec. 2, 2020), <https://bizimage.ohiosos.gov/api/image/pdf/202033703544> (approving amendment to AFA’s articles of incorporation).

MURs 7883, 7884 (American Firearms Association, *et al.*)

Factual and Legal Analysis

Page 4 of 8

When the video was disseminated on Facebook, it was embedded in a post, which also stated that it was paid for by the American Firearms Coalition and included links to donate to or become a member of the organization.¹⁴ The text in the post also stated, among other things, that “Marjorie Taylor Greene for Congress is a fighter for our great Second Amendment, proudly calling out the Antifa thugs who are burning our cities and shooting at our cops!” The words “Marjorie Taylor Greene for Congress” link to Greene’s official Facebook page, which is maintained by Greene for Congress, her principal campaign committee.¹⁵ The post is appended as Exhibit B.

The Complaint in MUR 7884 states that, on or about July 21, 2020, GGO sent a mailer targeting Cowan, but it provides no information regarding the location in which the mailer was disseminated or number of recipients.¹⁶ The GGO mailer, appended as Exhibit C, states on one side that Cowan “has taken thousands from anti-gun DC lobbying groups tied to Michael Bloomberg. Why??” and urges recipients to call Cowan and tell him to “give the DC swamp money back!”¹⁷ It also shows pictures of Cowan and Bloomberg.¹⁸ On the back, the mailer specifies that Cowan has taken money from two groups, AMA PAC — the American Medical Association PAC — and NEMPAC, who are “pushing a radical anti-gun agenda,” and notes that the Federal Election Commission is the source of that information.¹⁹ It also lists a number of

¹⁴ Ex. B; AFA Facebook Ad. The donation link provided is <https://secure.afcaction.org/cd14-cowan-greene>, the end portion of which appears to specifically reference the contest between Greene and Cowan by the inclusion of their names and “cd14,” which likely refers to the 14th Congressional District in which they were competing.

¹⁵ Ex. B; AFA Facebook Ad; Marjorie Taylor Greene, FACEBOOK, <https://www.facebook.com/MarjorieTaylorGreene> (last visited June 23, 2022) (stating “GREENE FOR CONGRESS is responsible for this Page”); Greene for Congress, Amended Statement of Organization at 2 (Nov. 16, 2021).

¹⁶ MUR 7884 Compl. ¶ 7 (Mar. 2, 2021) (“GGO Compl.”); GGO Resp. at 2 (providing copy of mailer).

¹⁷ GGO Resp. at 2.

¹⁸ *Id.*

¹⁹ *Id.*

1 “crazy anti-gun laws” that “Cowan’s money backers want,” such as ammunition and magazine
 2 bans, and it again exhorts recipients to contact Cowan and tell him to “return every dime” of the
 3 “anti-gun money he’s taken.”²⁰ Finally, there is a box containing a statement that the mailer was
 4 paid for by Georgia Gun Owners, Inc., and the mailer separately lists GGO’s address.²¹

5 The Complaints allege that the AFA advertisement and GGO mailer contained express
 6 advocacy and, as a result, AFA and GGO were required to report independent expenditures
 7 associated with the communications and ensure that each included an appropriate disclaimer.²²
 8 The Complaints further contend that the communications “only incidentally discussed gun
 9 rights” and that their “sole purpose” was to influence the runoff election by expressly advocating
 10 for Cowan’s defeat.²³ AFA and GGO, however, argue that the communications do not satisfy
 11 the definitions of express advocacy set out in the Commission’s regulations because they contain
 12 no “electoral portion” and do not encourage actions to defeat Cowan.²⁴ AFA claims that the
 13 purpose of the advertisement is instead to ask viewers to contact Cowan and learn more about his
 14 stance on Second Amendment issues.²⁵ Similarly, GGO argues that the mailer “on its face,
 15 plainly communicates a message about public policy issues relevant to the Second Amendment
 16 to the Constitution,” and exhorts recipients to contact Cowan and ask him to refund contributors
 17 with certain records on gun control.²⁶

²⁰ *Id.*

²¹ *Id.*

²² AFA Compl. ¶¶ 18-20 (Mar. 2, 2021); GGO Compl. ¶¶ 18-20.

²³ AFA Compl. ¶¶ 8, 10, 12; GGO Compl. ¶¶ 8, 10, 12.

²⁴ AFA Resp. at 5-6; GGO Resp. at 5-6.

²⁵ AFA Resp. at 6.

²⁶ GGO Resp. at 6, 8.

1 **III. LEGAL ANALYSIS**

2 Independent expenditures are expenditures by a person for a communication that
 3 expressly advocates the election or defeat of a clearly identified candidate, and that is not made
 4 in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, their
 5 authorized committee, their agents, or a political party committee or its agents.²⁷ The Act and
 6 Commission regulations set out reporting requirements for persons other than political
 7 committees who make independent expenditures aggregating more than \$250 in a given election
 8 in a calendar year.²⁸ Political committees and other persons that make or contract to make
 9 independent expenditures after the 20th day, but more than 24 hours before an election must
 10 disclose the activity within 24 hours each time that the expenditures aggregate \$1,000 or more.²⁹

11 Commission regulations provide that all public communications made by any person that
 12 expressly advocate the election or defeat of a clearly identified candidate must contain adequate
 13 disclaimers.³⁰ Public communications include mass mailings to the general public, and mass
 14 mailings, in turn, are defined to include more than 500 pieces sent by U.S. mail “of an identical
 15 or substantially similar nature within any 30-day period.”³¹ Public communications also
 16 encompass general public political advertising, including communications over the internet that
 17 are placed for a fee on another person’s website.³² Communications requiring disclaimers that

²⁷ 11 C.F.R. § 100.16(a).

²⁸ 52 U.S.C. § 30104(c); *see also* 11 C.F.R. § 109.10(b), (e) (requiring the filing of disclosure reports containing, among other things, the reporting person’s identification information; identification of the person to whom the expenditure is made, and the amount, date, and purpose of the expenditure; and whether the expenditure was in support of or in opposition to a candidate, together with the candidate’s name and office sought).

²⁹ 52 U.S.C. § 30104(g); 11 C.F.R. § 109.10(d).

³⁰ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11.

³¹ 11 C.F.R. §§ 100.26, 100.27.

³² *Id.* § 100.26.

1 are not authorized by a candidate or candidate's committee must "clearly state the name and
2 permanent street address, telephone number or World Wide Web address of the person who paid
3 for the communication and state that the communication is not authorized by any candidate or
4 candidate's committee."³³

5 The Commission's regulations define express advocacy in two ways. First, 11 C.F.R.
6 § 100.22(a) provides that a communication contains express advocacy if it uses phrases like
7 "Smith for Congress," or "reject the incumbent," or if it includes campaign slogans or words that
8 "in context can have no other reasonable meaning than to urge the election or defeat of one or
9 more clearly identified candidate(s)."³⁴ Second, the regulations include a broader definition
10 under 11 C.F.R. § 100.22(b) designating a communication as express advocacy when, "taken as
11 a whole and with limited reference to external events, such as the proximity to the election" a
12 reasonable person could only interpret it to contain advocacy of the election or defeat of a clearly
13 identified candidate because: (1) "[t]he electoral portion of the communication is unmistakable,
14 unambiguous, and suggestive of only one meaning;" and (2) "[r]easonable minds could not differ
15 as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s)
16 or encourages some other kind of action."³⁵ A candidate is clearly identified if, among other
17 things, their name or photograph appears in the communication.³⁶

³³ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

³⁴ 11 C.F.R. § 100.22(a).

³⁵ *Id.* § 100.22(b).

³⁶ *Id.* § 100.17.

A. The Commission Exercises its Prosecutorial Discretion and Dismisses the Allegations That AFA and GGO Failed to Report Independent Expenditures and Violated the Act’s Disclaimer Requirements

The AFA Facebook advertisement, comprised of text and video, clearly identifies two federal candidates, Cowan and Greene, by name and photo. But, given the small amount at issue and the fact that AFA (then known as the American Firearms Coalition) was clearly identified as the advertisement’s sponsor, AFA’s alleged failure to report the Facebook advertisement as an independent expenditure and its alleged failure to include an adequate disclaimer do not merit further use of the Commission’s limited resources.

The GGO mailer clearly identifies Cowan, a federal candidate, by name and photograph. However, the complaint identifies only a single mailer and provides no information concerning the cost of the mailer or how widely it was distributed. The mailer clearly states: “Paid for by Georgia Gun Owners, Inc.” and GGO’s name and address appear again as the return address. In consideration of the more significant matters on the Commission’s agenda and in the proper ordering of its priorities, further use of the Commission’s limited resources on this matter is not warranted.

The Commission need not address the question of whether the ad or the mailer contains express advocacy. Therefore, the Commission exercises its prosecutorial discretion to dismiss the allegations that AFA and GGO violated 52 U.S.C. § 30104(c), (g) and 11 C.F.R. § 109.10(b), (d) by failing to properly report independent expenditures and violated 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 by failing to include proper disclaimers.³⁷

³⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985). The Complaints allege that AFA’s and GGO’s violations of the Act were knowing and willful. AFA Compl. ¶ 1; GGO Compl. ¶ 1. However, because the Commission is not pursuing the alleged violations, there is no need to consider whether the conduct met the knowing and willful standard.

Exhibit A – AFA Video

Video:	Audio:
	<p>Marjorie Taylor Greene is a fighter for the Second Amendment, always standing up against radical antifa thugs who are burning our cities and shooting at our cops.</p>
	<p>But not John Cowan. Cowan is a fake conservative--</p>
	<p>--who gave Chris Christie thousands of campaign dollars in 2015, even though Christie opposes concealed carry and wants to ban our AR-15s.</p>
	<p>What's wrong with John Cowan? Why would he support liberal politicians who hate our guns and attack our President?</p>
	<p>Call Cowan and ask him. Paid for by the American Firearms Coalition.</p>

Exhibit B – AFA Facebook Advertisement**American Firearms Association**

Sponsored • Paid for by American Firearms Coalition

ID: 280468056553212

...

[Marjorie Taylor Greene for Congress](#) is a fighter for our great Second Amendment, proudly calling out the Antifa thugs who are burning our cities and shooting at our cops!

How about John Cowan?

Cowan has never lifted a finger to defend our Second Amendment. On the contrary, Cowan has given THOUSANDS of dollars to anti-gun politicians like Chris Christie – even though he supports radical gun control and attacks President Trump!

Watch this video, and then share it with every gun owner you know!

To make a donation to AFC, go here: <https://secure.afcaction.org/cd14-cowan-greene>

To become a member of AFC, go here:
<https://secure.afcaction.org/joinafcshirt>



Why Would John Cowan Support Gun-Grabbers Who Attack President Trump?

Exhibit C – GGO Mailer



JOHN COWAN'S TAKEN THOUSANDS OF DOLLARS
FROM DC LOBBYIST PACs (AMA PAC and NEMPAC)
PUSHING A RADICAL ANTI-GUN AGENDA.
 (Source: Federal Election Commission)

Here's just some of the **CRAZY ANTI-GUN LAWS**
 Cowan's money backers want!

- Red Flag Gun Confiscation
- Ammunition Bans
- Magazine Bans
- "Assault" Weapons Ban
- Gun Free School Zones
- Raise Hunting Age to 21
- Oppose National Reciprocity
- NATIONAL GUN REGISTRATION

TELL JOHN COWAN
TO RETURN EVERY DIME OF
ANTI-GUN MONEY HE'S TAKEN
706-936-8291

PAID FOR BY GEORGIA GUN OWNERS, INC.

GEORGIA
 GUN OWNERS

GEORGIA GUN OWNERS, INC.
 7636 Old 41 Highway, Ste 112-202
 Kennesaw, Georgia 30152