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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Georgia Gun Owners,

MUR No. 7884

*Respondent.***RESPONSE TO COMPLAINT**

On behalf of respondent Georgia Gun Owners (“GGO”), the undersigned counsel hereby responds to the complaint filed with the Federal Election Commission (“Commission”) by John Cowan (MUR 7884). This response is submitted pursuant to 52 U.S.C. § 30109(a)(1), 11 CFR 111.6, and in accordance with the Commission’s letter to GGO.

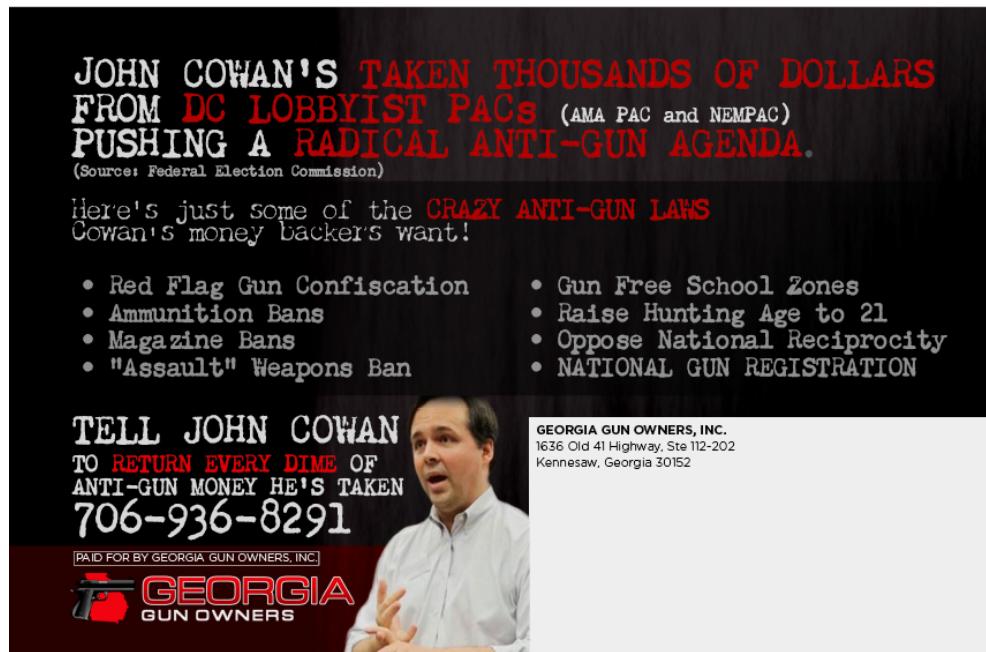
GGO respectfully requests, for the reasons discussed below, that the Commission find no reason to believe that GGO has violated the Federal Election Campaign Act, as amended (the “Act”), and that the Commission take no action on the basis of the complaint. Absent the existence of a violation of the Act, or facts indicating that a violation of the Act is likely to occur, the Commission should find no reason to believe that further proceedings are warranted in this matter.

THE COMPLAINT

The complaint alleges that GGO knowingly and willfully violated the Act by engaging in protected, core First Amendment speech, specifically by publishing a flyer that discusses John Cowan’s positions on gun rights (“the Flyer”). (Compl. ¶¶ 1-2.) The complaint alleges that the Flyer failed to include the disclaimer requirements in 52 U.S.C. § 30120(a)(3) and that GGO “has not registered or reported these contributions as independent expenditures and has not disclosed the sources of the donations financing the communication.” (Compl. ¶¶ 19-20.)

THE FACTS

GGO is a grassroots mobilization organization that fights aggressively in defense of the Second Amendment, including the rights of law-abiding citizens to carry concealed weapons and own efficient, effective rifles such as the AR-15. GGO is not under the control of any candidate or committee. In July 2021, GGO mailed the Flyer:



The content of the Flyer is transcribed here:

Front:

John Cowan has taken thousands from anti-gun DC lobbying groups tied to Michael Bloomberg. Why?? Call John Cowan[.] Tell Cowan to give the DC swamp money back! 706-936-8291.

Back:

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. [Full mailing address included.]

Commission records affirm that in 2020 John Cowan for Congress, Inc. received a total of \$10,000 from the National Emergency Medicine Political Action Committee / American College of Emergency Physicians and a total of \$7,500 from the American Medical Association Political Action Committee, respectively. The American College of Emergency Physicians “supports legislative and regulatory efforts that . . . [r]estrict the sale and ownership of weapons, munitions, and large-capacity magazines that are designed for military or law enforcement use[.]”¹ The American Medical Association endorses these and other anti-gun policies, literally down to bullet

¹ *Policy Statement - Firearm Safety and Injury Prevention*, AM. COLLEGE OF EMERGENCY PHYSICIANS, Oct. 2019, available at <https://www.acep.org/globalassets/new-pdfs/policy-statements/firearm-safety-and-injury-prevention.pdf>.

points on AMA’s website that will be familiar to readers of the Flyer.² The AMA’s frequent overlap with former New York City mayor Michael Bloomberg on numerous policies, including radical gun control, is a matter of public record.³

The website for the Cowan for Congress campaign published a statement that “Cowan [is] the only candidate to trust on gun rights – or on anything.” *See Attachment A*. The earliest cached version of this page dates to August 12, 2020.⁴

THE LAW

There are constitutional limits to the reach of campaign finance law that prevent the over-regulation of political advocacy, because political speech is a core purpose of the First Amendment. *See Buckley v. Valeo*, 424 U.S. 1, 80 (1976). These limits are largely reflected in the Act. The Supreme Court has explained that freedom to criticize public officials and oppose or support them constitutes the “central meaning” of the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). In the ordinary course of its business, the Commission scrutinizes the content of political expression and feeds upon speech—with many members who “almost ineluctably come to view unrestrained expression as a potential ‘evil’ to be tamed, muzzled or sterilized.” *Fed. Election Comm’n v. Cent. Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 55 (2d Cir. 1980) (Kaufman, C.J., concurring).

An independent expenditure under the Act is “an expenditure by a person . . . expressly advocating the election or defeat of a clearly identified candidate and . . . that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized

² *AMA recommends new, common-sense policies to prevent gun violence*, AM. MEDICAL ASS’N, June 12, 2018, <https://www.ama-assn.org/press-center/press-releases/ama-recommends-new-common-sense-policies-prevent-gun-violence>

³ *See, e.g.*, Vivian Wang, *Bloomberg Takes on Vaping After Giving \$1 Billion to Fight Tobacco*, N.Y. TIMES, Sept. 11, 2019, at A22, available at <https://www.nytimes.com/2019/09/10/nyregion/vaping-bloomberg-e-cigarette.html>.

⁴ <https://web.archive.org/web/20200812093848/https://cowanforcongress.com/cowan-the-only-candidate-to-trust-on-gun-rights-or-on-anything/>.

political committee, or their agents, or a political party committee or its agents.” 52 U.S.C. § 30101(18). The definition of express advocacy at issue is defined by Commission regulation:

[A]ny communication that— . . . (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
- (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

11 C.F.R. § 100.22(b) (emphasis added). Previous advisory opinions from the commission found an advertisement criticizing a candidate for “tak[ing] hundreds of thousands” of dollars from Wall Street and asking if she was “[a] leader you can believe in?” to not contain express advocacy under 100.22. Advisory Opinion (“AO”) 2012-27 (Nat’l Defense Cmte.).

DISCUSSION

I. UNDER THE ACT, GGO’S FLYER IS NOT AN INDEPENDENT EXPENDITURE

The Flyer is not an independent expenditure under section 100.22(a) or (b). It does not contain an electoral portion that is unmistakable, unambiguous and suggestive of only one meaning and it does not encourage action to defeat one or more clearly identified candidates.

There is no electoral portion in the communication. One might argue that merely referencing Cowan or his campaign contributions is an electoral portion, but with no reference to his candidacy or the upcoming election this does not rise to the level of “unmistakable, unambiguous, and suggestive of only one meaning[.]” Because a regulation subject to section 100.22(b) requires both an electoral portion and encouragement of the election or defeat of a candidate, the Commission may conclude its analysis of the Flyer here.

But neither does the Flyer “encourage[] actions to elect or defeat” Cowan. It explicitly encourages recipients to call John Cowan and return certain campaign contributions. As Cowan’s own complaint states, the ad “urged recipients to call Dr. Cowan and ask him to return those funds.” (Compl. ¶¶2, 6.) The Flyer otherwise extensively and accurately notes the anti-gun laws supported by the American Medical Association, the American College of Emergency Physicians, and Michael Bloomberg, the first two of which gave large contributions to Cowan’s campaign. The Flyer’s discussion of gun laws and Cowan’s campaign contributions are not “incidental[]”, but central to the ad. (Cf. Compl. ¶8.⁵) Reasonable minds could not—and, in fact, do not—differ as to the action called for in the Flyer. (See Compl. ¶2.) It is not express advocacy under section 100.22.

Cowan instead advances arguments that are irrelevant to the express advocacy analysis—indeed, arguments that have been rejected by the United States Supreme Court as unconstitutional. Cowan complains that “[t]he sole purpose of the communication was to influence the 2020 primary runoff election.” (Compl. ¶10.) It is unconstitutional for the Commission to consider the purpose behind an advertisement. *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 468 (2007) (“Far from serving the values the First Amendment is meant to protect, an intent-based test would chill core political speech by opening the door to a trial on every ad . . . on the theory that the speaker actually intended to affect an election, no matter how compelling the indications that the ad concerned a pending legislative or policy issue.”). Likewise, “the effect of advocating for [Cowan’s] defeat” is an inappropriate analysis. *See id.* at 467 (citing *Buckley*, 424 U.S. at 43) (Compl. ¶¶ 2, 12.).

⁵ Perhaps acting in haste to file an FEC complaint against GGO by repurposing his complaint against the American Firearms Association (MUR 7883), Cowan asserts here that “[t]he flyer references Dr. Cowan and Congresswoman [Marjorie Taylor] Greene[.]” (Compl. ¶8.) The Flyer contains no reference to Rep. Greene whatsoever.

The Flyer contains no express advocacy under 11 CFR 122. It is thus not an independent expenditure, and not subject to disclaimer or reporting requirements under the Act. Cowan's complaint is wholly without merit. (See Compl. ¶¶19-20.)

II. UNDER CONTROLLING FIRST AMENDMENT PRECEDENT AND MATTERS UNDER REVIEW, THE FLYER IS NOT REGULABLE EXPRESS ADVOCACY

Under relevant Matters Under Review ("MUR") following Supreme Court First Amendment precedent, there is no reason to believe a violation of the Act has occurred.

Even under the expansive reach of Section 100.22(b), as long as reasonable minds can plausibly interpret an ad in some way other than as encouraging actions to elect or defeat a clearly identified candidate, the ad does not contain "express advocacy" under this section. Any suggestion that an examination of what a "reasonable person" would interpret an ad to mean has been decisively rejected. *Wisconsin Right to Life*, 551 U.S. at 469–70. And so, independent groups who mail flyers about policies they care about intermingled with candidates for office receive the full protection of the First Amendment against the Commission's labyrinth of speech regulations. This has been recognized by the Commission with some regularity.

In American Future Fund, the Commission could not find a violation of 11 CFR 100.22(b) with advertisements focusing on Senator Norm Coleman. MUR 5988 (American Future Fund). These ads discussed infrastructure, national guard issues, and consumer protection policy. They also asked viewers to "Call Norm Coleman and thank him for his agenda for Minnesota." True enough, the Office of General Counsel argued this constituted regulable express advocacy, but the Commission failed on a vote of 3-3 to find any violation of the Act.

In Americans for Job Security, a group ran one ad in support of Senator Santorum's position on taxes. It asked viewers to call Senator Santorum to thank him. Another ad focused on

Santorum's position on social security reform and, again, asked viewers to call and thank him. MURs 5916 & 5694 (Americans for Job Security). The FEC also examined earlier advocacy by Americans for Job Security, including an ad in North Carolina praising Richard Burr for his positions on economic and trade issues. Once again, it included a request that viewers call and thank him. Because the ads did not contain "an 'unmistakable' or 'unambiguous' message urging viewers to vote one way or another" the Commission could not conclude a violation of the Act occurred. Rather, these ads were part of a larger advocacy campaign that drew attention to the "need for tax relief and retirement security." Since reasonable minds would likely come to different conclusions about whether the ads as something other than an appeal to vote for or against a candidate, they could not be deemed express advocacy.

The Commission has been equally clear in Sierra Club, Inc. and the Lantern Project that independent groups are free to run advertisements discussing policy and candidates for office without running afoul of the Act. (MUR 5634; MUR 5854.) In MUR 5634, Sierra Club, Inc., the group invited people to become more informed about issues and candidates but presented one candidate more favorably than another. In MUR 5854, the Lantern Project asked critical questions about Senator Santorum that cast him in a negative light. None of these ads constituted express advocacy, but were, rather, broad discussions of policy involving candidates fully protected as issue advocacy under the First Amendment.

The Flyer in question lines up nicely with the facts of American Future Fund, Americans for Job Security, Sierra Club, and Lantern Project. That is, the Flyer, on its face, plainly communicates a message about public policy issues relevant to the Second Amendment to the Constitution. Flyer examines the extensive gun control record of large contributors to John Cowan and asks why he's taken their money. As the Commission recognized in Lantern Project, the fact

that GGO decided to highlight candidates for federal office to discuss Second Amendment issues does not diminish those issues or make them subject to the Act's regulations. In other words, the ad criticizes a candidate for office about policies GGO cares about. Protection against regulating this sort of speech constitutes the "central meaning" of the First Amendment. *New York Times Co.*, 376 U.S. at 270.

There is no unmistakable or unambiguous communication where GGO encourages viewers to vote for or against particular candidates. The Supreme Court has long recognized that the "distinction between campaign advocacy and issue advocacy may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions." *Buckley*, 424 U.S. at 42. The Flyer speaks to various gun control issues the Georgia electorate was interested in 2020 and remains interested in 2021. This is core issue advocacy protected at the heart of the First Amendment which lays beyond the purview of this Commission.

Because the Flyer does not contain express advocacy, GGO did not make an "expenditure" under the Act and thus was not required to include any disclaimers under 52 U.S.C. § 30120(a)(3). Consequently, GGO was not required to report contributions supporting the Flyer or to report it as an independent expenditure. 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. 104.4. All the Commission is left with is a frivolous, recycled complaint by an upset candidate. Since "sour grapes" is not a cognizable claim under the Act, the Commission should find no reason to believe here.

CONCLUSION

For the foregoing reasons, GGO requests that the Commission find that there is no reason to believe that a violation of the Act occurred or will occur with respect to the allegations of the Complaint and close the file in this matter.

Date: May 12, 2021

Respectfully submitted,

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ATTACHMENT A

This is Google's cache of <https://cowanforcongress.com/cowan-the-only-candidate-to-trust-on-gun-rights-or-on-anything/>. It is a snapshot of the page as it appeared on Feb 7, 2021 16:57:38 GMT. The [current page](#) could have changed in the meantime. [Learn more](#).

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COWAN THE ONLY CANDIDATE TO TRUST ON GUN RIGHTS — OR ON ANYTHING

In Congress, John Cowan will do more than stop the Far Left's gun-grabbing agenda. He's outlined an aggressive agenda for defending the Second Amendment with an expansion of gun rights.

"Marjorie Taylor Greene knows she can't win this election by telling the truth, so she lies about my record and my positions — even when her lies are easily disproved. Voters simply can't trust anything she says.

"My position is clear: I will always stand up for northwest Georgians' right to bear arms," said Cowan. "I am a lifetime member of the NRA, a sworn reserve deputy sheriff, a loyal supporter of law enforcement heroes, and I have owned a firearm since I was in elementary school. I fully support Constitutional Carry and you will never have to guess where I stand on our gun rights.

"Every group and individual who has chosen back my campaign knows that I am 100 percent pro-gun. They choose to support me because they know I have the background and conservative record to get the job done in Washington."

Unlike Greene — whose grasp on policies doesn't go past her talking points — Cowan outlined specific gun rights proposals early in his campaign that he would support in Congress:

- Oppose unconstitutional "Red Flag" laws. While an advocate for better mental

healthcare in America, John cannot support any law that robs Americans of their constitutional rights without due process based on the subjective opinions of friends, family or a colleague. These laws could lead to rampant abuse, government overreach and an erosion of personal liberty.

- **Oppose efforts to ban so-called “assault weapons.”** Although the leftist media claim otherwise, the Clinton-era “assault weapon ban” had no impact on crime, according to government studies. In fact, murder rates were higher during the ban, which ended in 2004.
- **Support Concealed Carry Reciprocity legislation.** Our Second Amendment rights should not disappear at state lines. John supports the federal Concealed Carry Reciprocity Act to allow citizens to carry or possess concealed firearms in other states that also allow concealed carry.
- **Oppose efforts to limit “large” ammunition magazines.** Many common handguns and rifles used for self-defense have ammunition magazines of at least 10 rounds, exceeding the arbitrary size restriction the Democrats continue to seek.
- **Oppose efforts to use tax dollars to conduct biased firearm studies by liberal universities.** Federal funding to the CDC should not be allocated to research by leftist institutions that advocate or promote gun control policies. John will not allow taxpayer dollars to be spent to advance Democrats’ political objectives.

“My opponent continues to fire ridiculously inaccurate claims about my positions in a desperate attempt to detract voters from her own past. She has lied about her record on illegal immigration and lied about supporting Trump from the beginning when she refused to vote in the 2016 presidential primary. If she will so blatantly lie to northwest Georgians about obvious facts, we can’t trust her to keep her word in Congress.”

Follow John Cowan



PAID FOR BY JOHN COWAN FOR CONGRESS, INC.
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