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1 willfully violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing
2 to report as independent expenditures communications that expressly advocated for the defeat of
3 Complainant Dr. John Cowan, a candidate in Georgia’s 14th Congressional District. Relatedly,
4 the Complaints allege that the relevant communications — a video advertisement AFA posted
5 and disseminated on Facebook and a mailer sent by GGO — lacked required disclaimers.
6 Respondents deny the allegations, contending that their respective communications were not
7 independent expenditures because they do not contain express advocacy and, for the same
8 reason, did not require disclaimers.

9 As explained below, the AFA advertisement appears to contain express advocacy, but
10 given the apparently small amount in violation, we recommend that the Commission exercise its
11 prosecutorial discretion and dismiss with caution the allegations that AFA failed to report an
12 independent expenditure in violation of 52 U.S.C. § 30104(c), (g) and 11 C.F.R. § 109.10(b), (d)
13 and failed to include a disclaimer in violation of 52 U.S.C. § 30120(a)(3) and 11 C.F.R.
14 § 110.11. It does not appear that the GGO mailer contains express advocacy. Accordingly, we
15 recommend that the Commission find no reason to believe that GGO failed to report an
16 independent expenditure in violation of 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b), and no
17 reason to believe that GGO failed to include a disclaimer in violation of 52 U.S.C. § 30120(a)(3)
18 and 11 C.F.R. § 110.11.

19 **II. FACTUAL BACKGROUND**

20 Dr. John Cowan was a candidate for the Republican nomination in Georgia’s 14th
21 Congressional District.¹ Cowan and now-Congresswoman Marjorie Taylor Greene competed in

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.

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1 a primary runoff election on August 11, 2020.² AFA and GGO are 501(c)(4) non-profit
 2 corporations.³ They identify each other on their websites as “affiliated” organizations, and AFA
 3 board member Aaron Dorr serves as the Chief Financial Officer of GGO.⁴ Each describes itself
 4 as a “grassroots mobilization organization that fights aggressively in defense of the Second
 5 Amendment.”⁵

6 On July 20, 2020, three weeks before the runoff election, AFA published a thirty-second
 7 video on its Facebook page, images and a transcript of which are appended as Exhibit A.⁶ AFA
 8 also disseminated the video as a paid advertisement on Facebook from July 20-August 11, 2020,
 9 for which it spent an estimated \$2,500 to \$3,000.⁷ The video opens with images of Greene,
 10 interspersed with various graphics, and the narrator states: “Marjorie Taylor Greene is a fighter
 11 for the Second Amendment, always standing up against radical Antifa thugs who are burning our

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_GEORGIAOWNERSCINC_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).

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).

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

13 When the video was disseminated on Facebook, it was embedded in a post, which also
 14 stated that it was paid for by the American Firearms Coalition and included links to donate to or
 15 become a member of the organization.¹⁴ The text in the post also stated, among other things, that

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).

¹⁴ Ex. B; AFA Facebook Ad. The donation link provided is <https://secure.afaction.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.

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1 “Marjorie Taylor Greene for Congress is a fighter for our great Second Amendment, proudly
 2 calling out the Antifa thugs who are burning our cities and shooting at our cops!” The words
 3 “Marjorie Taylor Greene for Congress” link to Greene’s official Facebook page, which is
 4 maintained by Greene for Congress, her principal campaign committee.¹⁵ The post is appended
 5 as Exhibit B.

6 The Complaint in MUR 7884 states that, on or about July 21, 2020, GGO sent a mailer
 7 targeting Cowan, but it provides no information regarding the location in which the mailer was
 8 disseminated or number of recipients.¹⁶ The GGO mailer, appended as Exhibit C, states on one
 9 side that Cowan “has taken thousands from anti-gun DC lobbying groups tied to Michael
 10 Bloomberg. Why??” and urges recipients to call Cowan and tell him to “give the DC swamp
 11 money back!”¹⁷ It also shows pictures of Cowan and Bloomberg.¹⁸ On the back, the mailer
 12 specifies that Cowan has taken money from two groups, AMA PAC — the American Medical
 13 Association PAC — and NEMPAC, who are “pushing a radical anti-gun agenda,” and notes that
 14 the Federal Election Commission is the source of that information.¹⁹ It also lists a number of
 15 “crazy anti-gun laws” that “Cowan’s money backers want,” such as ammunition and magazine
 16 bans, and it again exhorts recipients to contact Cowan and tell him to “return every dime” of the

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.*

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1 “anti-gun money he’s taken.”²⁰ Finally, there is a box containing a statement that the mailer was
 2 paid for by Georgia Gun Owners, Inc., and the mailer separately lists GGO’s address.²¹

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

16 **III. LEGAL ANALYSIS**

17 Independent expenditures are expenditures by a person for a communication that
 18 expressly advocates the election or defeat of a clearly identified candidate, and that is not made

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.

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1 in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, their
 2 authorized committee, their agents, or a political party committee or its agents.²⁷ The Act and
 3 Commission regulations set out reporting requirements for persons other than political
 4 committees who make independent expenditures aggregating more than \$250 in a given election
 5 in a calendar year.²⁸ Political committees and other persons that make or contract to make
 6 independent expenditures after the 20th day, but more than 24 hours before an election must
 7 disclose the activity within 24 hours each time that the expenditures aggregate \$1,000 or more.²⁹

8 Commission regulations provide that all public communications made by any person that
 9 expressly advocate the election or defeat of a clearly identified candidate must contain adequate
 10 disclaimers.³⁰ Public communications include mass mailings to the general public, and mass
 11 mailings, in turn, are defined to include more than 500 pieces sent by U.S. mail “of an identical
 12 or substantially similar nature within any 30-day period.”³¹ Public communications also
 13 encompass general public political advertising, including communications over the internet that
 14 are placed for a fee on another person’s website.³² Communications requiring disclaimers that
 15 are not authorized by a candidate or candidate’s committee must “clearly state the name and
 16 permanent street address, telephone number or World Wide Web address of the person who paid

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.

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1 for the communication and state that the communication is not authorized by any candidate or
 2 candidate's committee.”³³

3 The Commission's regulations define express advocacy in two ways. First, 11 C.F.R.
 4 § 100.22(a) provides that a communication contains express advocacy if it uses phrases like
 5 “Smith for Congress,” or “reject the incumbent,” or if it includes campaign slogans or words that
 6 “in context can have no other reasonable meaning than to urge the election or defeat of one or
 7 more clearly identified candidate(s).”³⁴ Second, the regulations include a broader definition
 8 under 11 C.F.R. § 100.22(b) designating a communication as express advocacy when, “taken as
 9 a whole and with limited reference to external events, such as the proximity to the election” a
 10 reasonable person could only interpret it to contain advocacy of the election or defeat of a clearly
 11 identified candidate because: (1) “[t]he electoral portion of the communication is unmistakable,
 12 unambiguous, and suggestive of only one meaning;” and (2) “[r]easonable minds could not differ
 13 as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s)
 14 or encourages some other kind of action.”³⁵ A candidate is clearly identified if, among other
 15 things, their name or photograph appears in the communication.³⁶

16 **A. The Commission Should Exercise its Prosecutorial Discretion and Dismiss
 17 the Allegations That AFA Failed to Report Independent Expenditures and
 18 Violated the Act's Disclaimer Requirements**

19 The AFA Facebook advertisement, comprised of text and video, clearly identifies two
 20 federal candidates, Cowan and Greene, by name and photo. It appears to contain express
 21 advocacy for Greene's election under 11 C.F.R. § 100.22(a) and express advocacy against

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.

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1 Cowan's election under the broader definition at 11 C.F.R. § 100.22(b), as explained below.

2 But, given the small amount at issue, we believe AFA's failure to report the Facebook

3 advertisement as an independent expenditure and failure to include an adequate disclaimer do not

4 merit further use of the Commission's limited resources.

5 The Facebook advertisement text contains the phrase "Marjorie Taylor Greene for

6 Congress," which falls squarely within the type of phrases, such as "Smith for Congress," that

7 constitute express advocacy under 11 C.F.R. § 100.22(a).³⁷ The Commission has explained that

8 such phrases "have no other reasonable meaning than to urge the election or defeat of clearly

9 identified candidates."³⁸

10 The ad also constitutes express advocacy under 11 C.F.R. § 100.22(b). Although it does

11 not expressly reference the upcoming election, its electoral portion is unmistakable and

12 unambiguous. The video discusses campaign contributions and displays FEC disclosure forms

13 showing contributions made to John Cowan for Congress, Cowan's principal campaign

14 committee, and the text of the Facebook post refers to "Marjorie Taylor Greene for Congress,"

15 thus referencing the electoral contest between them. Indeed, AFA posted the video

³⁷ 11 C.F.R. § 100.22(a).

³⁸ Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-95 (July 6, 1995) ("Express Advocacy E&J"); *see* Factual & Legal Analysis ("F&LA") at 4-5, MUR 6170 (Tuscola County Democratic Committee) (determining that advertisements contained express advocacy under 11 C.F.R. § 100.22(a) because "[t]he use of the words "Elect" and "Re-elect" next to the names of Federal candidates fall squarely within the definition of express advocacy"); Conciliation Agreement ¶ 8, MUR 4313 (Coalition for Good Government, Inc.) ("By prominently displaying Senator Lugar's image and campaign bumper sticker reading "Lugar for President" in a television advertisement, the [Respondent] expressly advocated Senator Lugar's election."); *see also* First Gen. Counsel's Rpt. at 7, MUR 6697 (League of Conservation Voters, *et al.*) (arguing that the website address www.DanCox4Senate.com, which was included on a mailer, constituted a phrase "all but identical to 'Smith for Congress'" but noting the Commission's option to exercise prosecutorial discretion if application of the express advocacy regulation led to "formalistic or absurd results"); Certification ¶¶ 1-2 (July 17, 2015), MUR 6697 (League of Conservation Voters, *et al.*) (closing the file after voting 3-3 on recommendations).

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1 approximately three weeks before the runoff election and disseminated it as a paid advertisement
 2 in Georgia for a three-week period leading up to the day of the election.⁴⁰ Additionally, the bulk
 3 of the spoken narration in the advertisement appears to question aspects of Cowan's character
 4 and qualifications relevant to his candidacy, for instance, by labeling him a "fake conservative"
 5 in comparison to his opponent, Greene, who is called a "fighter for the Second Amendment."⁴¹

6 The Commission has stated that communications that comment on a candidate's
 7 character, qualifications, or accomplishments are express advocacy under the broader definition
 8 "if, in context, they have no other reasonable meaning than to encourage actions to elect or
 9 defeat the candidate in question."⁴² AFA contends that the advertisement is issue advocacy
 10 about the Second Amendment merely "intermingled with candidates for office."⁴³ Yet, the video
 11 also contains commentary about election issues unrelated or tangential to the Second
 12 Amendment, namely how Greene stands against Antifa and supports the police, "but not John

⁴⁰ Commission regulations specify that "proximity to the election" is a permissible external event to consider when determining whether a communication has a reasonable, non-electoral meaning. 11 C.F.R. § 100.22(b); *FEC v. Furgatch*, 807 F.2d 857, 865 (9th Cir. 1987) ("The ad . . . fails to state expressly the precise action called for, leaving an obvious blank that the reader is compelled to fill in. . . . Timing the appearance of the advertisement less than a week before the election left no doubt of the action proposed.").

⁴¹ AFA Resp. at 2-3; *cf. F&LA* at 12, MUR 7839 (Westerleigh Press, Inc., *et al.*) (finding communications were not express advocacy under 11 C.F.R. § 100.22(b) when, among other factors, they "do not refer to the incumbents as candidates in a federal election and do not mention their political opponents" and the "focus of the communications is on the incumbents' stances on policy or pending legislation, and the target of the advertisement is a current officeholder with the ability to effect change on the policy").

⁴² Express Advocacy E&J at 35,295. In MURs 5511, 5525 (Swift Boat Veterans, *et al.*), the Commission concluded that attacks on a candidate's character, fitness for public office, and capacity to lead, including phrases such as "JOHN KERRY CANNOT BE TRUSTED" and "unfit for command" were indicative of an electoral portion. Conciliation Agreement ¶¶ IV.25-28, MURs 5511, 5525.3A

⁴³ AFA Resp. at 7-9.

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1 Cowan.”⁴⁴ The singular focus of the video, at least in the first twenty-six seconds of the thirty-
 2 second ad, is Cowan’s perceived shortcomings in contrast to Greene, his election opponent, who
 3 is identified in the advertisement text accompanying the video as “Marjorie Taylor Greene for
 4 Congress,” with a link to a Facebook page maintained by her campaign, thus giving rise to an
 5 unmistakable electoral portion.

6 Finally, the video asks viewers to call Cowan to ask: “What’s wrong with [you]?” and
 7 “Why would [you] support liberal politicians who hate our guns and attack our president?”⁴⁵
 8 AFA contends that the video’s “implicit call to action is to ask Cowan about his own positions
 9 on gun rights” and that it does not “encourage[] viewers to vote for or against particular
 10 candidates.”⁴⁶ Yet, given the overall context of the video as well as the caustic nature of the
 11 suggested questions to call and ask Cowan, it is unclear whether the reasonable viewer would
 12 take this request to call Cowan literally. Even so, a request to call Cowan and confront him
 13 about his record, tucked into the last four seconds of a thirty-second ad, does not erase what
 14 appears to be an unmistakable and unambiguous electoral portion in the first twenty-six seconds
 15 of the video.⁴⁷ Moreover, the call to action here is not limited to Second Amendment issues, but
 16 also covers Cowan’s alleged support for “liberal politicians who . . . attack our president,” again
 17 relating back to the election. Accordingly, it appears that the advertisement may contain express
 18 advocacy and, given the approximately \$2,500 to \$3,000 spent on it, AFA likely triggered
 19 independent expenditure reporting obligations because its spending aggregated more than \$1,000

⁴⁴ *Id.* at 2-3.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 6, 9.

⁴⁷ Express Advocacy E&J at 35,295 (“The final rules . . . treat communications that include express electoral advocacy as express advocacy, despite the fact that the communications happen to include issue advocacy, as well.”).

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1 and the advertisement was largely disseminated within 20 days of but more than 24 hours before
 2 the election.⁴⁸

3 AFA's advertisement was placed for a fee on Facebook, and therefore as a public
 4 communication containing express advocacy it was required to include an appropriate
 5 disclaimer.⁴⁹ For example, AFA was required to state that the advertisement was not paid for by
 6 any candidate or candidate's committee, which it did not do. Instead, the video and text simply
 7 stated that it was paid for by the American Firearms Coalition, as AFA was known at the time of
 8 the advertisement.⁵⁰ However, given the apparently modest amount at issue and the fact that
 9 AFC (now AFA) was clearly identified as having paid for the advertisement, we do not believe it
 10 would be a prudent use of the Commission's resources to further pursue the reporting or
 11 disclaimer violations.⁵¹ Therefore, we recommend that the Commission exercise its
 12 prosecutorial discretion to dismiss the allegations that AFA violated 52 U.S.C. § 30104(c), (g)
 13 and 11 C.F.R. § 109.10(b), (d) by failing to properly report independent expenditures and
 14 violated 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 by failing to include a proper

⁴⁸ 52 U.S.C. § 30104(g); *see How Facebook Charges for Ads*, META BUSINESS HELP CENTER, <https://www.facebook.com/business/help/716180208457684?id=1792465934137726> (last visited June 30, 2022) (indicating that ads are generally paid for over time and pricing is based on “the number of clicks or the number of impressions” each ad receives). Facebook's Ad Library provides an estimate of the total amount spent on the advertisement. However, it is unclear whether the advertisement was professionally produced or created in-house and what additional amount, if any, AFA may have spent on that process.

⁴⁹ *See* Advisory Opinion 2017-12 at 1 (Take Back Action Fund) (advising that Facebook image and video advertising described in request must include disclaimer information specified in 52 U.S.C. § 30120(a)).

⁵⁰ *Supra* note 13 and accompanying text.

⁵¹ *See* Second Gen. Counsel's Rpt. at 1-3, MUR 7286 (Indivisible Kentucky, Inc.) (recommending no further action given amount in violation for failing to report \$10,100 independent expenditure and further recommending the Commission issue a letter of caution); Certification ¶ 2 (June 24, 2019), MUR 7286 (Indivisible Kentucky, Inc.) (taking no further action and issuing letter of caution); F&LA at 6, MUR 7131 (Senior Votes Count) (exercising prosecutorial discretion to dismiss \$3,000 independent expenditure reporting violations and cautioning respondent); F&LA at 12-13, MUR 6683 (Fort Bend County Democratic Party) (dismissing disclaimer violation as a matter of prosecutorial discretion because partial disclaimer clearly identified who paid for communication but issuing letter of caution); F&LA at 19-23, MUR 6438 (Art Robinson for Congress) (same).

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1 disclaimer.⁵² We further recommend that the Commission issue a letter of caution to AFA
 2 regarding the Act's requirements to report independent expenditures and include sufficient
 3 disclaimers.⁵³

4 **B. The Commission Should Find No Reason to Believe That GGO Failed to**
 5 **Report Independent Expenditures and Violated the Act's Disclaimer**
 6 **Requirements**

7 The GGO mailer clearly identifies Cowan, a federal candidate, by name and photograph,
 8 but it does not contain the types of phrases or campaign slogans that constitute express advocacy
 9 under 11 C.F.R. § 100.22(a).⁵⁴ Additionally, it does not appear that the mailer satisfies the
 10 broader definition of express advocacy at 11 C.F.R. § 100.22(b).

11 The mailer discusses contributions that Cowan received from certain political action
 12 committees, information it states was sourced from the Commission, and GGO reportedly sent
 13 the mailer three weeks before the election, suggesting a relationship to the election or Cowan's
 14 candidacy for office.⁵⁵ However, the mailer does not show or refer to Cowan's opponent, or his
 15 campaign committee, nor does it overtly comment on his character or qualifications. The only
 16 explicit criticisms are directed towards his contributors, who are said to favor "crazy anti-gun
 17 laws" and deal in "DC swamp money."⁵⁶ Moreover, the committees identified in the mailer, the
 18 National Emergency Medicine PAC and the American Medical Association PAC, are not, on
 19 their face, associated with gun-control issues. Accordingly, while the Complaint in MUR 7884

⁵² See *Heckler v. Chaney*, 470 U.S. 821 (1985). The Complaint in MUR 7883 alleges that AFA's violations of the Act were knowing and willful. AFA Compl. ¶ 1. However, because we do not recommend pursuing the alleged violations, there is no need to consider whether the conduct met the knowing and willful standard.

⁵³ See *supra* note 51.

⁵⁴ GGO Resp. at 2.

⁵⁵ *Id.*; GGO Compl. ¶ 7.

⁵⁶ GGO Resp. at 2.

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1 contends that the mailer encourages recipients to vote against Cowan, another reasonable
 2 interpretation may be that recipients should make Cowan aware of the positions NEMPAC and
 3 AMA PAC have taken on Second Amendment issues and ask that he disassociate himself from
 4 them by returning their contributions.⁵⁷ Accordingly, reasonable minds could differ as to
 5 whether the mailer encourages actions to defeat Cowan or some other action and, consequently,
 6 whether it contains express advocacy.⁵⁸

7 Therefore, we recommend that the Commission find no reason to believe that GGO
 8 violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) by failing to properly report
 9 independent expenditures and no reason to believe it violated 52 U.S.C. § 30120(a)(3) and
 10 11 C.F.R. § 110.11 by failing to include a required disclaimer.⁵⁹

11 **IV. RECOMMENDATIONS**

- 12 1. Dismiss as a matter of prosecutorial discretion the allegation that the American
 13 Firearms Association violated 52 U.S.C. § 30104(c), (g) and 11 C.F.R.
 14 § 109.10(b), (d) by failing to properly report independent expenditures and issue a
 15 letter of caution;
- 16 2. Dismiss as a matter of prosecutorial discretion the allegation that the American
 17 Firearms Association violated 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 by
 18 failing to include a required disclaimer and issue a letter of caution;

⁵⁷ See *id.*

⁵⁸ In its Explanation and Justification for the express advocacy regulations, the Commission noted that “exhortations to contribute time or money to a candidate” constitute express advocacy because the “expressions enumerated in *Buckley [v. Valeo]* included ‘support,’ a term that encompasses a variety of activities beyond voting.” Express Advocacy E&J at 35,294. Similarly, the terms “defeat” and “reject” are enumerated in *Buckley* and the Commission’s regulations, and they do not on their face appear to be limited to the activity of voting against a candidate. *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); 11 C.F.R. § 100.22(a). However, the Explanation and Justification does not speak to whether calls to return contributions should also be considered express advocacy.

⁵⁹ The Complaint in MUR 7884 alleges that GGO’s violations of the Act were knowing and willful. GGO Compl. ¶ 1. However, because we do not recommend pursuing the alleged violations, there is no need to consider whether the conduct met the knowing and willful standard.

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

First General Counsel's Report

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3. Find no reason to believe that Georgia Gun Owners, Inc., violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) by failing to properly report independent expenditures;
4. Find no reason to believe that Georgia Gun Owners, Inc., violated 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 by failing to include a required disclaimer;
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letters; and
7. Close the files.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

06/30/22

Date

Claudio J. Pavia
Deputy Associate General Counsel for Enforcement

Ana Peña-Wallace
Ana J. Peña-Wallace
Assistant General Counsel

Laura Conley
Laura Conley
Attorney

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!

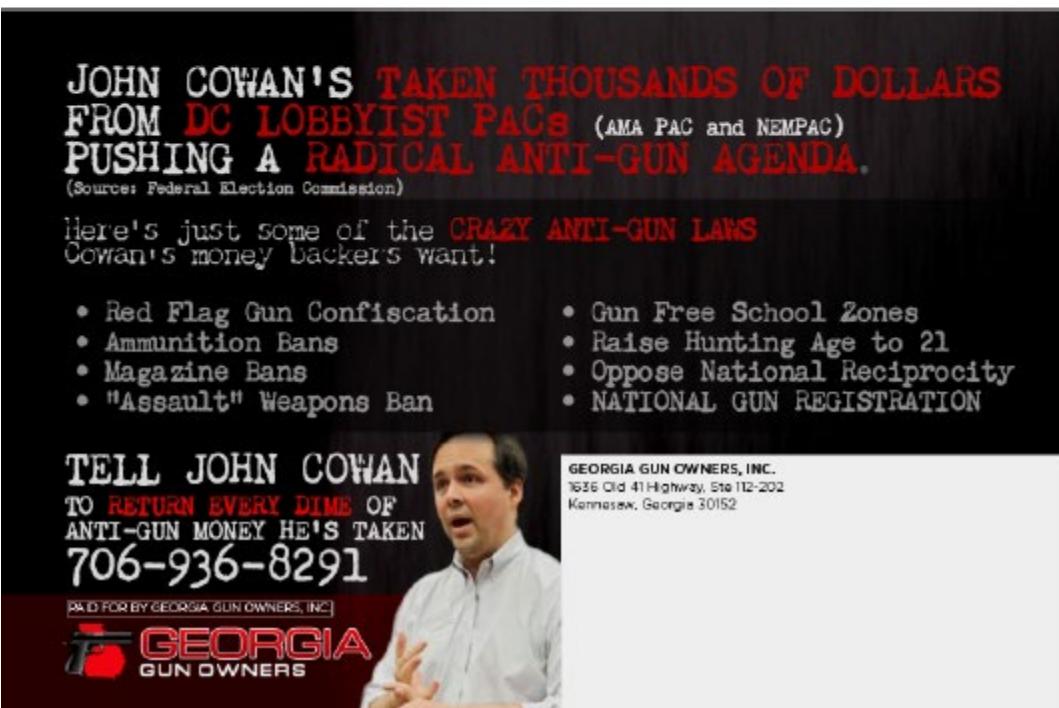
To make a donation to AFC, go here: <https://secure.afcaction.org/cd14-cowan-greene>

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



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