

PATTON BOGGS LLP

RECEIVED
FEDERAL ELECTION
COMMISSION

2013 JAN 25 PM 1:45

2550 M Street, NW
Washington, DC 20037
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

CELA

January 25, 2013

William J. McGinley
202-457-6561
wmcginley@pattonboggs.com

VIA E-MAIL

Jeff S. Jordan, Esquire
Supervisory Attorney
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6698
The Honorable Charles Boustany, Jr.
Charles Boustany, Jr., M.D. for Congress, Inc.
and Alan D. Hebert, as Treasurer

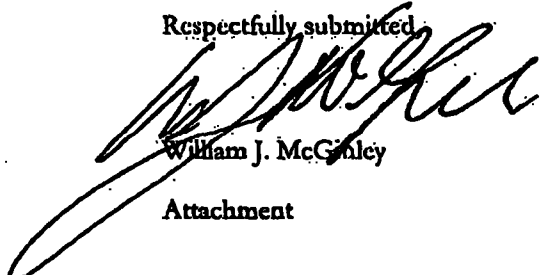
Dear Mr. Jordan:

Please find attached the response of our clients, The Honorable Charles Boustany, Jr., Charles Boustany, Jr., M.D. for Congress, Inc. and Alan D. Hebert, as Treasurer, to the Complaint filed against them in the above-captioned matter.

Also attached is a Statement of Designation of Counsel Form for Representative Charles Boustany, Jr.

Please do not hesitate to contact us with any questions.

Respectfully submitted,


William J. McGinley

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

MUR 6698

The Honorable Charles W. Boustany, Jr.
Charles Boustany, Jr., M.D. for Congress, Inc.
and Alan D. Hebert, as Treasurer

RESPONDENTS' RESPONSE TO THE COMPLAINT

Respondents Congressman Charles Boustany, Jr., Charles Boustany, Jr., M.D. for Congress, Inc. and Alan D. Hebert, as Treasurer ("Respondents" or "Campaign"), hereby respond to the complaint filed against them in the above-captioned matter. As explained more fully below, the complaint is without merit and we respectfully request that the Commission dismiss the complaint, take no further action, and close the file.

The complaint was filed by Christian Gil, a supporter of Congressman Boustany's political opponent in the 2012 election, Congressman Jeff Landry. *See* Exhibit A. It is legally deficient because it relies on the unsworn statements made by a Democratic political opponent citing anonymous sources to score political points during a political radio interview. The individual making the statements during the radio show is Mike Stagg, Congressman Boustany's Democratic opponent in the 2006 congressional elections. *See* Exhibit B. The identities of Mr. Stagg's sources are undisclosed and their credibility is unverifiable, rendering the complaint deficient under the Federal Election Campaign Act (the "Act") and Federal Election Commission ("Commission") regulations and precedents. The complaint also mischaracterizes the disclosure of payments for get-out-the-vote services to the Boustany campaign manager's company in an effort to concoct a theory on which to assert an actual violation of law by these Respondents. John Porter, the Boustany campaign manager, owns a company called Campaign Counsel, LLC. Mr. Porter, as campaign manager, was tasked with various duties including get-out-the-vote, message management, and other duties. Sometime during fall 2012 as the November general election approached, the Boustany

1604436012M

160474360124

campaign made the decision to devote more resources to messaging and get-out-the-vote activities in African-American communities in the congressional district. As a result, Campaign Counsel LLC hired Southwest Solutions LLC as a sub-vendor to conduct outreach, grassroots and GOTV services on behalf of the campaign. It is well settled that the Boustany Campaign was not required to report Campaign Counsel's payments to its sub-contractor Southwest Solutions. Thus, even if one erroneously were to credit the improper anonymous factual allegations in the Complaint, it still does not describe an actual violation of any law within the Commission's jurisdiction with respect to these Respondents. The Complaint must be dismissed.

DISCUSSION

Under the Act, regulations, and Commission precedents, a complaint cannot rest on undisclosed sources and must describe an actual violation of law. The Commission must dismiss any complaint that fails to meet these basic standards and close the file.

- I. **Those allegations in the complaint based on unidentified sources in the "Mornings with Ken and Bernie" Radio Program are an insufficient basis for a reason to believe finding under the Act.**

The Act provides, and Commission precedents hold, that allegations based on anonymous sources are not credible and thus legally are an insufficient basis for the Commission to find reason to believe. The Commission must adhere to the Act and follow its precedents and find no reason to believe in this matter. The Complaint here fails to meet these basic standards since the vague allegations rest on a radio interview of a former political opponent of Congressman Boustany who cites anonymous sources as the basis for his statements.

The Act specifically provides that the "Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." 2 U.S.C. § 437g(a)(1). The plain language and spirit of this provision provides that anonymous sources cannot sustain a reason to believe finding. See MUR

6296 (Kenneth R. Buck, et al.), Statement of Reasons of Commissioners Caroline C. Hunter, Donald F. McGahn and Matthew S. Petersen at 6-7 ("[T]he Commission must identify the sources of information and examine the facts and reliability of those sources to determine whether they

'reasonably [give] rise to a belief in the truth of the allegations presented.'" (second alteration in original)). Moreover, this statutory provision means that Congress clearly intended that the identity of the sources of the allegation must be disclosed so that the Respondent has a fair and meaningful opportunity to respond. If a Respondent is denied the source's identity, such as here, where the allegations are based on anonymous sources cited by a political opponent on a morning radio talk show, finding reason to believe under such circumstances would manifestly violate Respondent's due process rights and the principles of fundamental fairness.

The Commission also needs each source's identity so that it has the information necessary to weigh the credibility of allegations. "The Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB and thereby commence an investigation." MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn at 6, n. 12; see also MUR 5141 (James P. Moran, Jr., et al.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold at 2 ("Unless based on a complainant's personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified."). "Plainly, mere 'official curiosity' will not suffice as the basis for FEC investigations, as it might in [other agencies]." *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981). Here, the allegations are not based on the complainant's personal knowledge, but rather on the statements made by one of Congressman Boustany's political opponents relying on anonymous sources to further a political attack during a contested campaign.

100-200000-1000

The unambiguous statutory command requiring that a complaint meet basic standards of credibility are echoed in the Commission's own regulations. These provide procedural safeguards to ensure that complaints meet minimum thresholds of accountability, specificity and credibility before the Commission may vote to authorize an investigation. Specifically, Commission regulations provide, *inter alia*, that the contents of the complaint must be sworn to and signed in the presence of a notary; the complaint shall be notarized; all statements contained in the complaint are subject to the statutes governing perjury and false statements (18 U.S.C. § 1001); the complaint must differentiate between statements based on personal knowledge and those based on information and belief; statements that are not based upon personal knowledge must be accompanied by an identification of the source of the information giving rise to the complainant's belief in the truth of such statements; and the complaint must clearly recite facts describing an actual violation of a statute or regulation over which the Commission has jurisdiction. 11 C.F.R. § 111.4(b)-(d); *see also* 2 U.S.C. § 437g(a)(1). Complaints based on anonymous sources fail those requirements. *See* MURs 5977 and 6005 (American Leadership Project), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn at 6, n. 20 ("[A]dherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the statements of anonymous sources (especially since the Commission's regulations expressly prohibit the consideration of anonymous complaints)."). Here, the complainant does not identify a single allegation against these Respondents based on his personal knowledge, nor does he provide the requisite "identification of the source of information which gives rise to the complainant's belief in the truth" of his allegations as required by 11 C.F.R. § 111.4(d)(2). Instead, he simply attaches and mischaracterizes the transcript of a radio interview of one of Congressman Boustany's political opponents who cites anonymous sources to spread baseless rumors against the Respondents in the

days before an election. The complainant does not identify any information in the complaint based on personal information, as distinct from the dubious gossip he obtained from the radio talk show.

The Commission may not shift the burden of proof to Respondents in the instant matter by requiring them to respond to unverifiable allegations from anonymous, unidentified sources that are not based in any way on the complainant's personal knowledge. *See* MUR 4850 (Deloitte & Touche, LLP, et al.), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 ("The burden of proof does not shift to a respondent merely because a complaint is filed."). Allegations made by a political operative citing anonymous sources on a radio show are inherently unreliable; because political radio interviews are not subject to the procedural safeguards of 18 U.S.C. § 1001 or other laws prohibiting false statements, such sources are free to lie to talk show hosts and listeners with impunity. It would completely pervert the purpose of 11 C.F.R. § 111.4(c) if its requirements could so easily be circumvented by simply attaching an anonymously sourced talk radio transcript and submitting it as an FEC complaint, and proceeding on such a complaint would violate the Act's express limitation that "[t]he Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." 2 U.S.C. § 437g(a)(1).

Accordingly, there is no statutory or regulatory basis, or Commission precedent, for finding reason to believe based on these flawed allegations made by complainant that are not based on personal knowledge, but that are based on unsworn statements made by a political opponent citing anonymous sources during a political radio interview. *See, e.g.*, MUR 5141 (James P. Moran, Jr., et al.) Statement of Reasons at 2 ("Unless based on a complainant's personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified."); MUR 6296 (Kenneth R. Buck, et al.) Statement of Reasons at 5, n. 21 ("In this respect, the standard for finding reason to believe is higher than the Federal Rules of Civil Procedure 12(b)(6) standard –

16004200127

which allows discovery on virtually every complaint that states a potential legal or equitable claim.”);

MUR 6371 (Friends of Christine O'Donnell, et al.) Statement of Reasons of Commissioners

Caroline C. Hunter, Donald E. McGahn, and Matthew S. Petersen at 4 (“Therefore, under the Act,

before making a reason-to-believe determination, the Commission must assess both the law and the credibility of the facts alleged.”).

II. The Campaign's disclosure reports showed its payments to Campaign Counsel LLC. There is no statutory or regulatory requirement for a campaign to disclose its primary vendor's payments to sub-vendors.

The Federal Election Campaign Act, as amended (the “Act”), and Commission regulations do not require a candidate's authorized committee to disclose on its reports the payments made by a primary vendor to its sub-contractors. Rather, the Act and Commission regulations merely require authorized committees to disclose “the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount and purpose of such operating expenditure.”¹ Since the Campaign contracted only with Campaign Counsel LLC to provide services, there is no requirement that the Campaign list all the sub-vendors with whom Campaign Counsel LLC may have agreements to perform the services Campaign Counsel LLC contracted to perform for the campaign.

Similarly, Commission regulations provide in relevant part:

(4) Itemization of disbursements by authorized committees. Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.

¹ 2 U.S.C. § 434 (b)(5)(A) (emphasis added); see also § 434 (b)(6)(A) (“for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement”).

16047360128

(i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.²

In addition, in Advisory Opinion 1983-25, the Commission held that a campaign is required to disclose its payments to a media vendor, but there is no requirement to disclose the payments to the media vendor's sub-contractors in connection with the services provided to the campaign. *Id.* ("[P]ayments to Consultants may be reported as Committee expenditures without further itemization of other entities that receive payments from Consultants in connection with services under the Committee contract").³

In this matter, the Complainant specifically acknowledges that the Campaign reported a \$35,000 payment to Campaign Counsel LLC as "Door to Door GOTV". Campaign Counsel LLC hired Southwest Solutions LLC to conduct grassroots outreach and get-out-the-vote services on behalf of the campaign in African-American communities. There is no cognizable basis for a reporting violation against the Campaign since there is no statute, regulation or Commission precedent requiring the Campaign to disclose payments made by a primary vendor to that vendor's sub-vendors. Accordingly, the Campaign satisfied the reporting requirements under the Act and Commission regulations and the allegations concerning this matter do not describe an actual violation and therefore should be dismissed.

CONCLUSION

The Complaint fails to satisfy the minimum requirements of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, and thus is legally insufficient to support a reason to believe finding. The Act

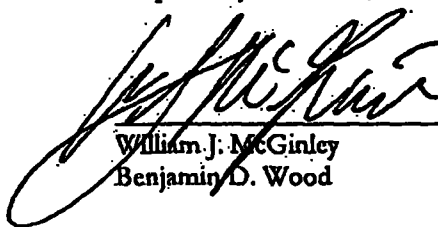
² 11 C.F.R. § 104.3(b)(4) (emphasis added).

³ The FEC did make legislative recommendations to Congress from 1985 through 1997 to "clarify" whether the reporting of "secondary payees" was required. See, e.g., 1997 Legislative Recommendations. Available at <http://www.fec.gov/law/feca/feca.shtml#legislation>. But the fact that the FEC unsuccessfully requested clarification on this subject for 12 years is also indicative of current law.

198043601206

mandates — and Commission precedents hold — that anonymous sources are not a sufficient basis for the Commission to make a reason to believe finding. Moreover, the Campaign satisfied its reporting obligations under the Act and Commission regulations by disclosing its payment to Campaign Counsel LLC for get-out-the-vote and grassroots outreach services, thus the improper anonymous allegations in the Complaint do not even describe a violation of law. For all the reasons set forth above, the Commission must follow the Act and adhere to its precedents by finding no reason to believe, taking no further action, and closing the file.

Respectfully submitted,



William J. McGinley
Benjamin D. Wood

PATTON BOGGS LLP
2550 M Street, NW
Washington, DC 20037
P: (202) 457-6000
F: (202) 457-6315

January 25, 2013

16044100-1

Exhibit A



Everything New Orleans

Louisiana Republican lodges campaign finance complaint against Rep. Boustany



By [Lauren McGaughy, NOLA.com/The Times Picayune](#)

on December 05, 2012 at 3:59 PM, updated December 05, 2012 at 8:10 PM

[Print](#)

[View/Post Comments](#)

A supporter of U.S. Rep. [Jeff Landry](#) has filed a complaint accusing U.S. Rep. [Charles Boustany](#), R-Lafayette, of paying a Democratic political action committee to secure its endorsement and not disclosing the payments on federal campaign finance forms. Christian Gil, a realtor in Houma and also head of the St. Mary Parish Republican Party Executive Committee, lodged a complaint with the Federal Elections Commission.

The complaint says Boustany gave \$35,000 to campaign manager John Porter who then funneled the money to the pro-Democrat United Ballot PAC in exchange for its endorsement, an allegation Porter rejects.



Christian Gil

[LinkedIn](#)

United Ballot issued a mailer before the Nov. 6 primary urging 3rd District residents to vote for Boustany and President Barack Obama.

In his complaint, Gil cited recent remarks about the \$35,000 payment made by Mike Stagg, a member of the Democratic Party executive committee in Lafayette Parish, on a local radio broadcast.

Boustany faces fellow Republican incumbent Landry, R-New Iberia, in a runoff election Saturday. Gil is a Landry supporter.

Porter denied he gave money to United Ballot and said the complaint was filed by Gil in an attempt to damage Boustany before the runoff.

"Anyone with a stamp can file submit a complaint to the FEC, whether it has merit or not," Porter said in an emailed statement.

"The timing of this and (the) relationship between Jeff Landry and Christian Gil should certainly be examined. I think this is just another desperate, false last-minute attack by Jeff Landry and his campaign."

Landry spokesman Phillip Joffrion, said the alleged United Ballot-Boustany partnership is further evidence of the four-term congressman's lack of conservative credentials.

13004241001-102

"This is another example of how Charles Boustany is willing to do and say anything and tie himself to President Barack Obama because he feels like that will help him get elected," Joffrion said.

Without commenting on the validity of Gil's complaint, Joffrion added, "the facts are the facts. There has been a complaint made and that's now with the FEC and that's for them to determine."

Gil is an open Landry supporter in St. Mary Parish, an area of Louisiana's newly redrawn 3rd District that heavily supports Landry, a freshman tea party member elected by a sizable majority in 2010.

"Jeff has done a great job representing the current 3rd district and has proven that he is a true conservative willing to stand up for our principles," Gil said in a Landry press release.

"That is why the St. Mary RPEC has endorsed Jeff Landry for re-election. Jeff Landry has been a true champion for our conservative values," Gil added.

Voters in the 3rd District will decide Saturday which of the two incumbent Republicans will represent them in the U.S. House of Representatives after slow population growth in Louisiana caused the loss of a House seat after 2010.

View/Post Comments

Related Stories



Jeff Landry leaves Congress upbeat about his future despite loss to Boustany



Boustany defeats Landry in Louisiana's 3rd District runoff

© NOLA.com. All rights reserved.

Exhibit B

RECEIVED
FEC MAIL
OPERATIONS CENTER

2806 AUG 15 A 11:30

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

NOTE: This declaration should be filed with the copyrights office listed in the instructions.

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(Including Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal election committee.


(a) Name of Contributor (in full)


(b) Address (number and street)

(c) City, State, and ZIP Code

DECLARATION OF INTENT TO EXPEND PERSONAL FUNDS (House or Senate Only)

9. I intend to spend personal funds exceeding the threshold amount (see 11 C.F.R. 400.9) by

9A  0.00 for the primary election, and

9B  0.00 for the general election.

If you do not intend to expend personal funds exceeding the threshold amount for either election, you must enter "0.00" for each.

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate

Box

August 14, 2006

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. §437d.

--	--	--	--	--	--	--	--	--

28039164782

OPERATIONS CENTER

FEC FORM 2

STATEMENT OF CANDIDACY

2004 DEC 28 A 10:26

1. Name of Candidate (in full) Charles W. Boustany, Jr.		2. Identification Number H41A07029	
3. Address (Number and street) 331 Beverly Drive		4. Is this Candidate's home address? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
5. City, State, and ZIP Code Lafayette, LA 70503		6. Date of Birth of Candidate Louisiana District 7	
7. Party Affiliation Republican	8. Office Sought House	9. State & District of Candidate Louisiana District 7	

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the **2006** election(s).
(year of election)

NOTE: This designation should be filed with the appropriate office (and in the instance

(a) Name of Committee (in full)

Charles Boustany, Jr. For Congress

(b) Address (Number and street)

Post Office Box 80126

(c) City, State, and ZIP Code

Lafayette, LA 70598-0126

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(providing Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in full)

N/A

(b) Address (Number and street)

(c) City, State, and ZIP Code

DECLARATION OF INTENT TO EXPEND PERSONAL FUNDS (House or Senate Only)

9. I intend to expend personal funds exceeding the threshold amount (see 11 C.F.R. 400.05) by:

2A. For the primary election, and	0.00
2B. For the general election.	0.00

If you do not intend to expend personal funds exceeding the threshold amount for either election, you must enter "0.00" for each.

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate

C. W. Boustany, Jr.

Date

12/22/2004

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. 9407g.

--	--	--	--	--	--	--	--

FEC FORM 2

FEC FORM 2 (REV 10/03)

10041100-1110



FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

Statement of Designation of Counsel

MUR 6698

Name of Counsel: William J. McGinley
Benjamin L. Ginsberg
Benjamin Wood
Glenn Willard

Firm: Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

Telephone: (202) 457-6000

Fax: (202) 457-6315

RECEIVED
FEDERAL ELECTION
COMMISSION
2013 JAN 25 PM 1:46
CELA

The above named individuals are hereby designated as counsel and are authorized to receive any notifications and other communications from the Commission and to act on behalf of The Honorable Charles Boustany, Jr. before the Commission.

1/24/2013
Date

Ch. Boustany Jr.
Signature

Name (Print): The Honorable Charles Boustany, Jr.

Address: PO Box 80126
Lafayette, LA 70598

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(2)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

100-410000-1