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August 18, 2016

Via Electronic Mail

Mr. Jeff S. Jordan
Federal Election Commission
Office of Complaints Examination
and Legal Administration
999 E. Street, NW
Washington, DC 20436

Re: MUR 7092

Dear Mr. Jordan:

I have been retained by Socially Responsible Government ("SRG") to initially respond to the allegations made by Seth Ryan Gunning ("Gunning") in the above-referenced complaint (the "Complaint") and submit the following in response.

As an initial matter, it seems Gunning has a personal vendetta with Mr. Kyle Prall ("Prall"). While not relevant to his Complaint, Gunning spends several pages discussing Prall's involvement with litigation tied to a previous business unrelated to the issues relevant to the Complaint. This is clearly done in an effort to prejudice this Commission against a party with irrelevant fabrications.

While Gunning classifies Citizen Information Associates' ("CIA") nuisance-value settlement of a class action allegation for a mere \$7,500 as "reparations", he ignores that CIA, and Prall individually, prevailed on the merits on all five other lawsuits filed on substantially similar grounds. I think it is significant that Gunning would like this Commission to investigate Prall and several companies and in summarizing his argument his first complaint is what he calls "Prall's reputation for and history with online extortions and with infringement on publicity rights" [Complaint p. 8], allegations that are simultaneously false¹ and irrelevant to any issues with the PAC. At least three courts found Prall and his business have *not* infringed on anyone's right of publicity, and no court has ever found him or any of the entities he is involved with to have been involved in extortion. Gunning's fabrication of the outcomes of Prall's prior litigation belies Gunning's righteous proclamations regarding his intent in filing this complaint and its supplement.

¹ See *Dolemba v. Citizens Information Associates, LLC, et al.* 1:15-cv-00171-SS (W.D. Tex. 2015) (case voluntarily dismissed by plaintiff with no settlement after plaintiff lost key rulings); *Bilotta v. Citizens Information Associates, LLC, et al.*, 13-CA-011264; Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida (granting summary judgment in defendants favor against all plaintiff's claims, including unfair trade practices and misappropriation of a likeness); *Taha v. Bucks County, et al.*, 2:12-cv-06867-LFR (E.D.Pa. 2015) (granting summary judgment against plaintiff's claim for false-light invasion of privacy, after granting defendant's motion to dismiss with respect to plaintiff's claims for unauthorized dissemination of criminal records and unauthorized use of likeness); and *Wakefield v. Citizens Information Associates, LLC, et al.* 13-cv-23754 (S.D. Fla. 2014) (granting motion to dismiss against all plaintiff's claims, including misappropriating of a likeness and unfair trade practices).

Mr. Jeff Jordan
 August 18, 2016
 Page 2 of 4

Use of "Bern"

Gunning complains that SRG uses Sen. Sander's name in violation of 11 CFR 102.14. First, the name of the PAC – Socially Responsible Government – clearly does not reference the candidate's name. Gunning next complains of the use of the phrase "feel the bern" in various places violates the rule. "Bern" is clearly a pun of the word "burn", but Respondents have yet to find a single instance of Sen. Sanders or anyone referring to him as "Bern". While "bern" certainly has some commonality with "Bernie", it is not his nickname, and has never been used by the candidate or his campaign in reference to him. While use of the name "Bernie" – his recognized nickname – in the website name violates the rule,² "Bern" does not.

Gunning then complains that Bernie Sander's name is used "in the content of its website [and] ... in its logo, which is prominently displayed on every page of the website." [Complaint p.2] This is clearly allowed, as this Commission has noted that "this restriction only applies to the titles of the Committee's projects. The Committee is free to promote Senator Sanders (or any other candidate) by name in the body of any website or other communication." Advisory Opinion 2015-04 (emphasis added), citing 59 Fed. Reg. at 17,268.

Political Fundraising

Political fundraising is governed by 52 U.S.C.A. §30124. the FEC functionally has created two safe harbors under § 30124(b) which, if satisfied, indicate that "fraudulent misrepresentation" has not occurred

A. Use of Disclaimers

Because a violation of § 30124 requires the "intent to deceive," the FEC repeatedly has found that a communication which includes accurate disclaimer language does not constitute "fraudulent misrepresentation" under the statute.³ In short, "the inclusion of a disclaimer negates the requisite intent to deceive element of fraudulent misrepresentation, since the disclaimer discloses the source of the mailer."⁴ By including a disclaimer, the "intent is to expose themselves as the source ... Therefore, there is no deceit or fraud of the type required to violate Section [30124]."⁵ SRG's website, advertisements and other published materials all contained the disclaimers necessary to comply with this safe harbor.

B. Compliance with Registration and Reporting Requirements

Similarly, the FEC has looked at whether an organization accused of violating § 30124(b) is properly registered and reporting with the FEC, thereby publicly disclosing its contributions and expenditures as required under federal law. Noting that "[f]ailure to file reports with the Commission indicating on what, if anything, the money raised has been spent may be probative

² See Advisory Opinion 2015-04.

³ E.g., Factual & Legal Analysis, MUR 5886, at 3 (citing Statement of Reasons at 2, Matta Tuchman for Congress, MUR 5089 (Fed. Election Comm'n Sept. 6, 2000) [hereinafter Statement of Reasons, MUR 5089]); First Gen. Counsel's Report, MUR 3690 at 6; First Gen. Counsel's Report, MUR 3700 at 6; First Gen. Counsel's Report, MUR 2205 at 2.

⁴ Factual & Legal Analysis, MUR 5886 at 3 (citing Statement of Reasons, MUR 5089 at 2).

⁵ First Gen. Counsel's Report, MUR 3690 at 7; see First Gen. Counsel's Report, MUR 3700 at 6.

Mr. Jeff Jordan
 August 18, 2016
 Page 3 of 4

of the Committee's intent to misrepresent itself to the public,"⁶ the FEC found that proper registration and reporting weighs against finding that the organization violated § 30124(b).⁷

As with the disclaimer requirement, compliance with federal registration and reporting requirements not only indicates that the organization has displayed at least some intent to follow federal law, but also provides would-be donors with information enabling them to understand the means by which the organization has spent its money.⁸ Gunning has based almost his entire complaint on information he found *based on filings made by SRG*. SRG has complied with federal reporting laws and is within the safe harbor.

C. Gunning's Complaints

Gunning complains that, i) SRG has not spent the money it raised sufficiently on voter identification transportation services, voter transportation drive initiatives, and training volunteers for "Get Out the Vote" efforts [Complaint pp. 3-5]; and ii) that the committee has misused committee funds and accounts. However, no federal law requires independent committees to spend money they raise in a certain way, nor does the prohibition on personal use of campaign funds apply to individuals and organizations that are not candidates. See 52 U.S.C.A § 30124 (West 2015) (previously codified at 2 U.S.C. § 437g); 11 C.F.R. §§ 113.1, 113.2(e) (2015).

Gunning next complains that the *content* of the advertisements was not sufficiently issue-oriented. Clearly SRG has the discretion to choose the content of its own advertisements. The advertisements are limited in space and not the appropriate place to discuss complicated issues; they were designed to drive individuals to the website where they could both donate and learn about the issues relevant to the candidate in greater detail.

Gunning also complains about expenditures to NHT Productions, LLC, upwork.com, DMF Marketing Solutions, LLC and LCGM LLC and concludes that "less than 1% of PAC funds [were] used to support its stated objectives." [Complaint p. 8] His "analysis" clearly ignores that creating the content and the technology infrastructure for the website and advertisements require the PAC to spend money. When all those expenditures are included to support the objective, which is ultimately to increase popularity for the candidate and help to get him elected, the majority of the funds were used to support its purpose (Gunning admits that the cost of publication on Facebook and Google alone constitutes roughly a third of the PAC's expenditures, and has not alleged those expenditures to be fraudulent).

Because of the work and spending on the content of the advertisements and website, as well as the expenditures through social media to get those advertisements to reach potential voters, hundreds of thousands of individuals were able to learn more about the candidate. None

⁶ First Gen. Counsel's Report, MUR 6633 at 16 (citing First Gen. Counsel's Report at 12, Republican Victory 2004 Comm., Inc., MUR 5472 (Fed. Election Comm'n Jan. 31, 2005), <http://eqs.fec.gov/eqsdocsMUR/11044291111.pdf>).

⁷ *Id.* at 21.

⁸ *Cf.* Buckley v. Valeo, 424 U.S. 1, 66-68 (1974) (explaining that disclosure serves three compelling governmental interests: (1) "providing the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office"; (2) deterring "actual corruption" and avoiding "the appearance of corruption by exposing large contribution and expenditures to the light of publicity"; and (3) providing an "essential means of gathering the data necessary to detect violations of the contribution limitations" (Internal quotations omitted)), *superseded by statute*, BCRA of 2002, Pub. L. No. 107-155, 116 Stat. 81, *as recognized in* McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003).

Mr. Jeff Jordan
August 18, 2016
Page 4 of 4

of that would have been possible without paying contractors to maintain the website, marketing consultants to design and implement and advertising strategy (both related to content and distribution channels), and individuals to monitor and update the content of the website to remain current with the candidate's positions (to name but a few relevant expenditures). Mr. Gunning's allegations are based on nothing more than misinformed speculation where he admittedly takes partial information available to him publicly and fills in the gaps with his often erroneous guesses.⁹

Mr. Gunning's Complaint should be dismissed. Please feel free to contact me if you have any questions.

Sincerely,



JOSEPH F. CENTRICH

JFC/yd

⁹ As an example, Gunning included me in the Complaint because I filed paperwork to create one of the entities complained of in this action, apparently unaware of the common practice of lawyers creating entities on behalf of clients and not having any ownership interest in the company. As I have stated in a prior response, I do not, nor have I ever, have any ownership or financial interest in any business named in this Complaint.