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# CLARK HILL

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Russell D. Duncan  
T 202.640.6657  
F 202.552.2377  
Email: rduncan@clarkhill.com

Clark Hill PLC  
1001 Pennsylvania Avenue NW  
Suite 1300 South  
Washington, DC 20004  
T 202.772.0909  
F 202.772.0919  
  
clarkhill.com

October 23, 2020

**VIA ELECTRONIC MAIL** - [cela@fec.gov](mailto:cela@fec.gov)

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, N.E.  
Washington, DC 20463

**Re: MUR 7810: Shout Out America PAC's and Karyn Kay Griffin's Response to Complaint**

Dear Mr. Jordan:

We are responding on behalf of Shout Out America PAC (the "PAC") and Karyn Kay Griffin regarding the Complaint filed in the above-referenced matter by Dan Backer and Patriots of America PAC, in which Ms. Griffin served as co-chairman until she raised questions about the accuracy of the PAC's FEC filings that Mr. Backer intended to make. In short, the Complaint is a tactical and retaliatory filing by Mr. Backer in an attempt to silence the PAC's expression of its First Amendment rights, to harass Ms. Griffin, and deflect attention from his improper FEC filings. Most of the allegations in the Complaint are completely unfounded, and those that do have any validity have already been cured. Based on Commission precedent, the gravity of the alleged violations here is small and the matter is not worth the use of agency resources. For these reasons, we respectfully request that the Commission find no reason to believe a violation occurred, or exercise its prosecutorial discretion, to dismiss this matter, and close the file.

## **I. DISCUSSION**

### **A. Count 1 – Failure to Register with the Federal Election Commission**

In Count 1, the Complaint alleges that the PAC failed to properly register as a political committee when it raised or spent \$1,000. As the Complaint states, once political committee status is triggered by raising or spending \$1,000 to influence a federal election, the triggering entity must register with the Commission within 10 days and file periodic reports of its activity thereafter.

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Based on information and belief, it appears that previous counsel registered the PAC with the State of New Mexico but did not register with the Commission.<sup>1</sup> Upon receipt of the Complaint in this matter, the PAC retained new counsel who advised the PAC to, among other things, retain a professional compliance firm to serve as treasurer to ensure that all of the PAC's past and future filing obligations are met. To that end, the PAC filed its Statement of Organization on October 14, 2020, and its 2020 October Quarterly Report (the "October Report") the next day.

As indicated in the October Report, the PAC did not trigger the Commission's registration requirement until on or about September 19, 2020, when it first passed the \$1,000 threshold. The Statement of Organization, therefore, would have been due ten days later on September 29, 2020. Although technically late, the October 14 registration date is less than a week after the PAC was put on notice that it may need to register with the Commission and slightly over two weeks late overall. More importantly, by filing its October Report by the October 15 deadline, all of the PAC's activity was fully disclosed to the Commission and to the public at the same time it would have been had the PAC filed its Statement of Organization by the September 29 deadline. In other words, although there may be an unintentional small violation, no harm occurred.

The Commission has dismissed several cases in which a late registration did not cause other filings to be missed.<sup>2</sup> Despite the PAC's inadvertent mistake here, it is now fully compliant in its filings. Additionally, the PAC has retained a professional compliance firm to ensure that all future reporting obligations are met. Based on the foregoing, we respectfully request that the Commission exercise its prosecutorial discretion as it has done previously and dismiss the allegations contained in Count 1 of the Complaint.

## **B. Count 2 – Failure to Include Required Disclaimers**

In Count 2, the Complaint alleges that the PAC did not include the required "paid for by" disclaimer on its website. However, Exhibit B of the Complaint shows a screenshot of the PAC's disclaimer, which meets all federal requirements, and shows this allegation is false. To the extent that the Commission requires a disclaimer on every page of a political committee's website, to meet this requirement the PAC has added a disclaimer to each active page. The Commission should determine that any alleged violation is low priority, not worth the use of Commission resources, and dismiss the allegations contained in Count 2 of the Complaint.<sup>3</sup>

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<sup>1</sup> See Exhibit 1, State of New Mexico Committee Registration Form (Aug. 28, 2020).

<sup>2</sup> See, e.g., MUR 6449 (Bruning) (finding reason to believe that respondents did not timely file Statements of Candidacy and Organization and authorizing pre-probable cause conciliation); MUR 5693 (Aronsohn) (same); MUR 5363 (Sharpton) (same); see also MUR 6785 (Kwasman for Congress) (dismissing as a matter of prosecutorial discretion because the Statement of Candidacy was filed only a few days late and did not cause the committee to miss filing a scheduled disclosure report); MUR 6533 (Perry Haney) (dismissing as a matter of prosecutorial discretion because regardless of the dates of statements that may have triggered candidacy, the committee still timely filed its initial disclosure report).

<sup>3</sup> The Commission has previously dismissed matters in which a committee did not include a "paid for" disclaimer on its website but later added them in response to receiving a complaint. See Factual & Legal Analysis, MURs 7112 &

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**C. Count 3 – Failure to Include Required Disclaimers**

In Count 3, the Complaint alleges that the PAC did not include the required “best efforts” disclaimer on the donation page of its website. Under the Act’s best efforts provision, when a treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act, any report submitted by the committee will be considered to be in compliance with the Act. The Commission has explained that “the best efforts provision is an affirmative defense that a respondent must establish.”<sup>4</sup> The Commission has further explained that while a committee may establish that it has exercised best efforts by including language requesting a contributor’s name, address, occupation, and other identifying information in its written solicitations, a committee’s failure to do so is not a violation where the Committee otherwise complied with the reporting requirements of the Act.<sup>5</sup> The Commission has found no reason to believe a violation occurred in matters in which a committee failed to include the “best efforts” disclaimer on its website but later added it in response to receiving a complaint.<sup>6</sup>

Since receipt of the Complaint in this matter, the PAC has retained counsel and a professional compliance firm to ensure compliance with all FEC disclaimer and reporting requirements. The required “best efforts” disclaimer has been added to the PAC website, and the PAC reported all required information about its donors in its October Report. The Commission should again determine that any alleged violation is low priority, not worth the use of Commission resources, and dismiss or find no reason to consider the allegations contained in Count 3 of the Complaint.

**D. Count 4 – Solicitations of Corporate Contributions**

In Count 4, the Complaint appears to allege that the PAC was somehow prohibited from accepting corporate contributions before registering with the Commission as a “Super PAC” or “hybrid PAC.” This is, of course, incorrect because before triggering federal committee status the PAC’s activities were not regulated by FECA or its corporate contribution prohibition. The PAC could have operated as a 527 political organization that reports to the IRS or a State that allows corporate contributions to political committees.

In any event, this is immaterial because, as shown in the PAC’s October Report, it has not accepted any corporate contributions (or soft money). Moreover, when the PAC registered as a political committee with the Commission it did so as a Super PAC and thus may accept

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7115 (AJ Kern for Congress, *et at*). Here the PAC *did* have the required disclaimer on the front page of its website, as evidenced by Exhibit B of the Complaint.

<sup>4</sup> See Statement of Policy Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438,31,440 (June 7,2007) (“The best efforts standard is an affirmative defense and the burden rests with the political committee and its treasurer to present evidence sufficient to demonstrate that best efforts were made.”).

<sup>5</sup> See, e.g., Factual & Legal Analysis at 9, MURs 7112 & 7115 (AJ Kern for Congress, *et at*).

<sup>6</sup> *Id.*

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unlimited corporate contributions pursuant to *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). The allegations in Count 4 should be dismissed.

### **E. Count 5 – Wire Fraud**

Under the Department of Justice guideline, proof of wire fraud requires evidence that shows beyond a reasonable doubt that an individual:

- (1) voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used.

No such evidence exists here, and the allegations that Ms. Griffin violated this law is merely an unethical attempt by a lawyer, Dan Backer, to intimidate her. Ms. Griffin previously was a board member and a co-chair with the POA PAC. She raised all the money, one million dollars, necessary to negotiate a contract with GoFas Racing to work with the POA PAC. She also played a major role in negotiating a contract between GoFas Racing and POA PAC. She worked directly with the manager and the owner of GoFas Racing. When most recently she referred to GoFas on her new PAC website she did so in good faith because she was again negotiating directly with the owner and the manager of GoFas, which provided her with a proposed contract. She was attempting to raise money to meet the terms of that contract. However, she did not raise the money needed and took the GoFas reference off of the site as soon as she realized she was not going to be able to work with GoFas. All reference to GoFas were removed from the PAC's website on September 17, 2020.

## **II. MR. BACKER'S LACK OF CREDIBILITY**

The Commission should see the Complaint for what it is—a set of frivolous allegations intended to intimidate the PAC and Ms. Griffin to chill their participation in the political process. The Complaint was filed because: (1) Backer sees the PAC as a competitor to his own committee, by its attempting to operate in the professional racing circuit, and (2) Backer is retaliating against Ms. Griffin because she attempted to prevent him from filing improper FEC reports for the POA PAC. When she challenged him, Backer removed her from the POA PAC even though she raised the only substantial money given to the POA PAC. It should come as no surprise that Backer would file such a retaliatory Complaint. Backer has a history of using the FEC's enforcement process as a sword to go after his perceived enemies.<sup>7</sup> Several media entities have written about Mr. Backer's association with so-call "Scam PACs," articles which were cited in a public statement by two Commissioners discussing how to best attack such activity.<sup>8</sup> The frivolous nature of the Complaint is apparent on its face. Backer knows, for instance, that the Commission does not have jurisdiction over wire fraud, but he included that allegation to scare a layperson who may not. Backer took several hours out of his day, during the busiest time for the campaign finance industry, to compile and draft several pages of small technical

<sup>7</sup> See, e.g., MUR 6775 (Ready for Hillary PAC).

<sup>8</sup> [https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/2016-09\\_Memo--Scam-PACs.pdf](https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/2016-09_Memo--Scam-PACs.pdf).

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violations against a political committee that has raised less than \$7,000. The Commission should decline to be the edge to Backer's sword and dismiss the Complaint.

**III. CONCLUSION**

For the foregoing reasons, the Commission should dismiss this Complaint in its entirety and close this matter.

Respectfully submitted,

CLARK HILL PLC



Russell D. Duncan



FEDERAL ELECTION COMMISSION  
1050 First Street, NE  
Washington, DC 20463

**STATEMENT OF DESIGNATION OF COUNSEL**

*Provide one form for each Respondent/Witness*

EMAIL [cela@fec.gov](mailto:cela@fec.gov)

FAX 202-219-3923

AR/MUR/RR/P-MUR# 7810

Name of Counsel: Russell D. Duncan, Esq.

Firm: Clark Hill PLC

Address: 1001 Pennsylvania Avenue, N.W., Suite 1300 South  
Washington, DC 20004

Office#: (202) 640-6657 Fax#: (202) 552-2377

Mobile#: \_\_\_\_\_

E-mail: rduncan@clarkhill.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10-19-20 K. Kay Griffin Chairman of the Board  
Date (Signature - Respondent/Agent/Treasurer) Title  
K. Kay Griffin  
(Name - Please Print)

**RESPONDENT:** Shout Out America PAC, Karyn Kay Griffin  
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: P.O. Box 2583  
(Please Print)

Eagle, ID 83616

Home#: \_\_\_\_\_ Mobile#: (303) 523-3344

Office#: \_\_\_\_\_ Fax#: \_\_\_\_\_

E-mail: Griffin.kk@gmail.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

# EXHIBIT 1



OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

POLITICAL COMMITTEE REGISTRATION FORM

PLEASE SELECT ONE:

[ x ] New Registration [ ] Information Update Date: 8/28/2020

A. COMMITTEE NAME : Shout Out America PAC

For Acronyms (spell out full committee name):

Mailing Address (P.O. Box or street address): PO Box 2583

City: Eagle State: ID Zip: 83616

Telephone 1: (303)523-3344 Telephone 2: Email Address: griffin.kk@gmail.com

Statement of Purpose: (Provide specific purpose for which the Political Committee was organized)

Educate the public about Donald Trump's agenda and the work he is doing as President.

B. TYPE OF COMMITTEE (please select one):

- [ ] Contribution or Coordination [ x ] Independent Expenditure
[ ] Legislative Caucus Committee [ ] Mixed (Independent & Contribution/Coordination)
[ ] Other (Please explain below.)

C. SPONSORING ORGANIZATION(S): (if any)

Name :

Relationship:

Address:

City: State: Zip:

D. ASSOCIATED ORGANIZATION(S): (if any)



Name : \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**E.TREASURER:** (A committee must appoint and maintain a treasurer.)Full Name of a Committee Treasurer: Karyn K GriffinMailing Address: PO Box 2583City: Eagle State: ID Zip: 83616Telephone 1: (303)523-3344 Telephone 2: \_\_\_\_\_ EmailAddress: griffin.kk@gmail.com**F.OFFICERS:** (If more than two, attach additional pages.)

Full Name of officer and position held: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone 1: \_\_\_\_\_ Telephone 2: \_\_\_\_\_ EmailAddress: \_\_\_\_\_

**G.BANK:** (Full name of Bank and/or financial institution.)Name: US Bank Telephone: (208)939-8241Address: 150 W. State St.City: Eagle State: NM Zip: 83616**CERTIFICATION**

I hereby swear or affirm under penalty of law that all the information on this form is true, correct and complete to best of my knowledge.

Karyn K. Griffin 8/28/2020

Signature of Treasurer or appointed officer Date