



DIRECT DIAL NUMBER:
215-575-7017

Timothy J. Ford
tford@dilworthlaw.com

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Via Overnight Delivery and Electronic Mail **Via Overnight Delivery**

Paul Kilgore
Treasurer and Custodian of Records
Defending America PAC, Inc.
824 S. Milledge Avenue, Suite 101
Athens, GA 30605
defendingamerica@pdscompliance.com
admin@pdscompliance.com

Chris Pack
Breakwall Group
233 Sunset Court
Buffalo, NY 14228

Dear Mr. Kilgore and Mr. Pack:

I write on behalf of Bob Harvie, the Democratic Party nominee for Representative in Congress for Pennsylvania's 1st Congressional District, and Bob Harvie for Congress, his principal campaign committee.

Over the past year, Defending America PAC, Inc. has repeatedly and recklessly published false and defamatory statements calling Bob an "FBI corruption subject" on a dedicated website, <http://www.fireharvie.com>, in a produced video, and in more than thirty social media posts. Bob is prepared to defend himself the same way that he will fight for the residents of Pennsylvania's 1st Congressional District. You must immediately cease and desist from falsely calling Bob an "FBI corruption subject," remove any such references on websites and social media accounts controlled by Defending America PAC or Chris Pack, and issue a public apology to set the record straight for the voters of Pennsylvania's 1st Congressional District.

Calling Bob an "FBI corruption subject" is not only a blatant lie but actionable as defamation under Pennsylvania law. As you undoubtedly know, "subject" has a very specific meaning in criminal investigations. The United States Department of Justice Manual defines "'subject' of an investigation" as "a person whose conduct is within the scope of the grand jury's investigation." JM 9-11.151. Your repeated use of the phrase "FBI corruption subject" appears calculated to

impute criminal conduct to Bob, without any substantiation, to damage his reputation in his community.

Statements “implicating a person committed a crime, as could be inferred from . . . the context at issue, are capable of a defamatory meaning as a matter of law.” *Burns v. Cooper*, 244 A.3d 1231, 1237 (Pa. Super. Ct. 2020). A statement can be defamatory without charging a particular criminal offense by name or description. Restatement (Second) of Torts § 571, cmt. c. Pennsylvania’s Superior Court has affirmed defamation per se by a publication that “directly or implicitly indicat[ed] that Appellees were engaged in a broad range of criminal enterprises uncovered by an investigation when in fact the investigation targeted other individuals and businesses.” *Joseph v. Scranton Times L.P.*, 959 A.2d 322, 332 (Pa. Super. Ct. 2008). Because the publication imputed the commission of crimes, the court held that the words were actionable per se. *Id.* at 344. So too are your words here.

To be clear, calling Bob an “FBI corruption subject” is not politics as usual. It is not a mere opinion. And even if it were, such an opinion is actionable defamation because it “impl[ies] the existence of undisclosed defamatory facts.” *Kuwait & Gulf Link Transp. Co. v. Doe*, 216 A.3d 1074, 1086 (Pa. Super. Ct. 2019) (citing *Kurowski v. Burroughs*, 994 A.2d 611, 618 (Pa. Super. Ct. 2010)). You imply undisclosed defamatory statements because there are no facts to support your characterization. As has been reported, Bob appeared before a federal grand jury in 2022 as a witness—not a subject—along with other Falls Township officials. He is not and has never been under investigation and has not been accused or charged with a crime. Articles factually reporting on Bob’s testimony—presumably the basis for your defamatory statements—do not use your brazen language in calling Bob an “FBI corruption subject” and provide no basis for you to do so.¹

Accordingly, your repeated statements rise to the level of actual malice, even for an ongoing political campaign. Actual malice has a specific definition: your knowledge that the statement is false or reckless disregard whether the statement is true or false. *McCafferty v. Newsweek Media Grp.*, 955 F.3d 352, 359 (3d Cir. 2020). A defendant who republishes a claim after it has been publicly and specifically denied by its subject, and after press reporting has corroborated the denial, cannot easily disclaim awareness of serious doubts as to its truth. *See St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (reckless disregard may be found where a defendant “publishes the statement in spite of his awareness of its probable falsity”).

When the Republican Party of Pennsylvania distributed a mailer stating that Bob was “wrapped up in an FBI investigation” in September 2023, Bob immediately and publicly denied this claim as categorically false: “I am not now and never have been the target of any criminal investigation.”² *LevittownNow* contemporaneously reported that sources close to the probe “had not seen evidence Harvie was the target of the investigation.”³ This reporting was publicly available. The Republican candidates for Bucks County Commissioner denounced the mailer and apologized to union

¹ *E.g.*, Tom Sofield, “Exclusive: County Commissioner Harvie, Other Former & Current Falls Twp. Officials Testify Before Grand Jury,” *LevittownNow.com* (Sept. 13, 2022), <https://levittownnow.com/2022/09/13/exclusive-county-commissioner-harvie-other-former-current-falls-twp-officials-testify-before-grand-jury/wnNow.com>.

² *Id.*

³ Tom Sofield, “Union Officials: Candidates Apologized for Mailer,” *LevittownNow.com* (Oct. 6, 2023), <https://newtownpanow.com/2023/10/06/union-backlash-over-gop-mailer-sparks-tensions-in-county-commissioners-race/>.

officials.⁴ Bob further stated publicly that Gene DiGirolamo, one of the Republican candidates promoted in the mailer, had privately acknowledged to a fellow commissioner that the attacks were lies.⁵

You have been on notice that Bob denies ever being under FBI investigation, yet you built a website, produced a video, and parroted the same baseless attack over thirty times on social media. In addition, your consultant, Chris Pack, has called Bob Harvie an FBI corruption subject or under FBI investigation on X.com at least twenty-seven times. Campaign finance reports also reveal payments by Defending America PAC to Chris Pack's firm, Breakwall Group, for various reasons including "strategy consulting." My client understands that Mr. Pack has repeatedly told reporters that Bob is an FBI corruption subject or under FBI investigation. For these reasons, my client understands that Mr. Pack has been involved in Defending America PAC's publications calling Bob an "FBI corruption subject." These repeated statements evidence your reckless disregard whether Bob was an "FBI corruption subject" or not. And if you somehow had not already been on notice of Bob's public denials and other statements around the grand jury testimony, this letter now puts you on notice.

Bob is prepared to defend his rights as he continues to make his case to the voters. Guide your actions accordingly.

Sincerely,

/s/ Timothy J. Ford

Timothy J. Ford

⁴ *Id.*

⁵ *Id.*