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March 9, 2015

Via Hand Delivery

Mr. Jeff S. Jordan
 Supervisory Attorney
 Complaints Examination & Legal Administration
 Federal Election Commission
 999 E St., NW
 Washington, DC 20463

Re: MUR 6915

Dear Mr. Jordan

This letter responds on behalf of Governor Jeb Bush to the Complaint filed by the American Democracy Legal Fund (“ADLF”) assigned MUR 6915. Despite Complainants’ conclusory and/or speculative statements to the contrary, Governor Bush has not moved beyond actively exploring the possibility of running for President of the United States. Simply put, he is not a federal candidate or officeholder as his repeated statements and the public record make clear. However, as Governor Bush evaluates a *potential* candidacy, separately, he serves as the honorary chairman of Right to Rise PAC, Inc., a role in which he exercises his First Amendment right to discuss conservative policies and support candidates who believe in conservative principles. Right to Rise SuperPAC, Inc. is an independent organization that was formed by supporters of Governor Bush. Governor Bush and Respondents rely upon experienced counsel to comply with the law at issue here. The Complaint, filed by a partisan group formed to attack conservative organizations and causes, fails to describe a violation of law and therefore must be dismissed for the public relations stunt that it is.

FACTS

On December 16, 2014, Governor Bush announced his decision to “actively explore the possibility of running for President of the United States.”¹ He continues to evaluate a potential candidacy and has repeatedly made statements in public and in private indicating that he has not yet determined whether or not he will become a candidate.² His actions are consistent with this posture: Governor

¹ “A Note from Jeb Bush,” Dec. 16, 2014, available at: <https://www.facebook.com/notes/jeb-bush/a-note-from-jeb-bush/619074134888300>.

² J. Jacobs, “Jeb Bush reaches out to Iowa GOP Chairman,” Jan. 21, 2015, *Des Moines Register*, (stating, “During a telephone call with Iowa’s Republican party chairman, Bush repeatedly said he’s not a candidate, he’s just exploring a bid for the presidency.”), available at <http://www.desmoinesregister.com/story/news/2015/01/21/jeb-bush-calls-iowa-gop->

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Bush has not engaged in any activities that would trigger the filing requirements for federal candidacy under the Federal Election Campaign Act of 1971, as amended, (the “Act”), such as taking action to qualify for the ballot or using general public political advertising to publicize an intention to campaign for federal office. Should Governor Bush decide to seek federal office in the future, he will disclose any funds received and payments made for purposes of testing the waters in accordance with federal law and regulations. Unless Governor Bush reaches a decision to seek federal office, such activities are not reportable.

Separate and apart from this exploration, Governor Bush’s December 16, 2014 Facebook Post also announced his intention to form a PAC to “discuss the most critical challenges facing our exceptional nation.” On January 6, 2015, Governor Bush founded Right to Rise PAC, Inc. (the “PAC”), a nonconnected federal PAC registered with the Commission to support candidates who will restore the promise of America with a positive, conservative vision of reform and renewal. Governor Bush serves as the honorary chairman of the committee. Right to Rise PAC spends its funds in fully permissible ways. It makes contributions to federal candidates, funds Governor Bush’s travel around the country to raise money for the PAC and communicate on important policy topics, and pays PAC staff and consultants to support these fully permissible activities. All PAC expenditures will be properly and timely reported to the FEC in accordance with federal campaign finance law and regulations. Indeed, last month Right to Rise PAC announced that it had contributed \$122,800 to federal candidates and Republican party committees across the country.³ These contributions will appear on the PAC’s first FEC report, to be filed with the Commission on July 31, 2015.

Right to Rise SuperPAC, Inc., was registered with the Commission as an independent-only expenditure committee on January 6, 2015. The committee was formed by supporters of Governor Bush to provide independent support to him should he decide to seek federal office.⁴ Governor Bush is not affiliated with the Right to Rise SuperPAC nor does he direct the committee’s activities or expenditures. Governor Bush has appeared as a special guest at several Right to Rise SuperPAC, Inc. events, but, as a policy matter, he has not solicited funds for the group.

[chair/22116115/](#); K. McGrory, “Jeb Bush Hosts Education Summit, Raises Funds in Florida,” Feb. 10, 2015, *Tampa Bay Tribune*, (stating that “Gov. Jeb Bush insisted he had yet to make a decision on whether to run. ‘I’m moving forward methodically on this,’ he told reporters, adding that he doesn’t have ‘a particular time frame.’”), available at: <http://www.tampabay.com/news/politics/stateroundup/jeb-bush-hosts-education-summit-raises-funds-in-florida/2217098>.

³ N. Confessore, “Bush’s PAC Spreads Money Around to Other Republicans,” Feb. 13, 2015, *New York Times*, available at: <http://www.nytimes.com/politics/first-draft/2015/02/13/bushs-pac-spreads-money-around-to-other-republicans/>.

⁴ B. Reinhard, “Jeb Bush Registers Right to Rise PAC,” Jan. 6, 2015, *Wall Street Journal* (stating that “Mr. Bush’s allies are simultaneously launching a SuperPAC by the same name that can accept unlimited funds.”), available at: <http://blogs.wsj.com/washwire/2015/01/06/jeb-bush-registers-right-to-rise-pac/>.

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LEGAL ARGUMENT

ADLF's Complaint has no basis in law or fact. Complainants' conclusory assertion that "publicly available news reports indicate that Mr. Bush has begun his campaign for President," does not make it so. As described above, Governor Bush is actively exploring the possibility of seeking federal office. He has not begun a campaign for federal office. Under the Federal Election Campaign Act of 1971, as amended, (the "Act"), funds received or payments made solely for the purpose of determining whether an individual should become a candidate are considered "testing the waters expenses" that need not be reported to the Commission unless and until the individual decides to become a candidate.⁵ Furthermore, such activities do not satisfy the \$5,000 candidacy threshold that triggers the requirement for an individual to file a Statement of Candidacy with the Commission. Should Governor Bush decide to seek federal office, he will abide by the law and regulations and file all required forms and disclosures to properly detail any funds spent on testing the waters activities.

Right to Rise PAC has not used and will not use any resources to fund Governor Bush's "testing the waters" activities. These activities are being conducted independently of any Right to Rise PAC activities in accordance with federal campaign finance law and regulations. In fact, Complainants offer no evidence to support their partisan thesis other than a press account detailing Governor Bush's decision to resign from corporate and nonprofit positions to "focus toward political activity" and a news story detailing fundraising goals for potential supporters of Right to Rise PAC. It is hardly surprising that in anticipation of founding a political action committee to support conservative candidates and causes that Governor Bush would resign from prior business commitments to make time for a new undertaking. Nor is it shocking that a PAC that aims to support conservative candidates would set fundraising goals. The reporters' (and Complainants') speculation about other motivations for these actions is just that --- speculation.

Complainants also allege that Governor Bush, through Right to Rise PAC, Inc., has raised funds "in excess of what could reasonably be expected to be used for exploratory activities." Since none of the funds raised by Right to Rise PAC have been or will be used to finance testing the waters activities by Governor Bush, any discussion of the funds that Right to Rise PAC has raised is irrelevant to a determination as to whether Governor Bush is a candidate for federal office. Fundraising events and discussions sponsored by Right to Rise PAC, Inc. regarding the challenges facing our nation are not "testing the waters" events. They are examples of protected speech in which Governor Bush and Right to Rise PAC, Inc. have a First Amendment right to participate. It is astounding that ADLF would assert that there can be "no legitimate non-campaign purpose" for a fundraising effort undertaken by the Right to Rise PAC. Surely whatever ideological differences exist between Complainants and Governor Bush, Complainants would agree that a major purpose of the First Amendment is to protect the right to support of similarly aligned candidates and to engage in an open and robust discussion of candidates, policies and the political process.

Moreover, Governor Bush is not the only potential presidential candidate who chairs a political action committee for purposes of helping candidates across the country and advocating for policy

⁵ See, e.g., Advisory Op. 1981-32 (Askew); Advisory Op. 1979-26 (Grassley).

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change. This is legal and commonplace. Many of the individuals discussed in the media as potential candidates for President have raised funds for leadership PACs that they chair.⁶

ADLF's unsubstantiated allegations throughout its Complaint simply underscore its partisan motivations. Indeed, according to press accounts, ADLF was formed with an eye toward "engag[ing] in more political activity than [its predecessor]."⁷ Its recent activities have certainly furthered the group's stated mission. Since January 2015, ADLF has also filed complaints against two other potential Republican presidential candidates including Governors Scott Walker and Chris Christie.⁸

Finally, Complainants' erroneous claim that Governor Bush has established a SuperPAC in violation of the soft money ban is also inapt. Governor Bush does not direct or participate in the governance of Right to Rise SuperPAC, nor does he solicit funds on its behalf. However, as Complainants' surely understand, as a non-candidate and non-federal officeholder, Governor Bush is not subject to the prohibition in the Act that bars federal candidates and their agents from establishing, directing, controlling or soliciting money for an entity that raises money outside the federal contribution limits. Indeed, under Complainants' novel formulation of the law, any potential presidential candidate would be barred from associating with ---- even as a special guest --- an independent-expenditure only committee at any point in the process of evaluating whether to seek federal office in the future. This is not the legal standard and for good reason. It would be wholly unworkable, not to mention constitutionally problematic, to abridge a private citizens' right to associate with an independent expenditure-only committee on the chance that individual might, at a later date, become a federal candidate. In fact, the law makes clear that even federal officeholders and candidates (which Governor Bush is not) may appear at non-federal fundraising events as special guests.⁹

In addition, the Commission's recent decision in MUR 6775 acknowledges that its regulations regarding a federal candidate's interactions with independent expenditure-only committees do not sweep so broadly that they apply to private citizens considering the possibility of becoming a

⁶ See, e.g., P. Svitek, "Rick PAC raises \$100k as money race intensifies," Feb. 1, 2015, *Houston Chronicle*, available at: <http://blog.chron.com/texaspolitics/2015/02/rickpac-raises-100k-as-focus-on-2016-money-race-intensifies/>; H. Haddon and R. Epstein, "Chris Christie Joins Crowded GOP Fight for Donors," Jan. 25, 2015, *Wall Street Journal*, available at: <http://www.wsj.com/articles/chris-christie-joins-crowded-gop-fight-for-donors-1422248464>; K. Glueck, "Rand Paul Makes 'Audit the Fed' Fundraising Push," Feb. 10, 2015, *Politico*, available at: <http://www.politico.com/story/2015/02/rand-paul-federal-reserve-audit-115064.html>.

⁷ K. Vogel, "Media Matters' David Brock Expands Empire," Aug. 13, 2014, *Politico*, available at: <http://www.politico.com/story/2014/08/david-brock-citizens-for-responsibility-and-ethics-in-washington-110003.html#ixzz3RYtpZLTt>.

⁸ See M. Arco, "Group with Ties to Hillary Clinton Files Another Complaint over Chris Christie's Dallas Trip," Jan. 12, 2015, *National Journal*, available at: http://www.nj.com/politics/index.ssf/2015/01/group_with_ties_to_hillary_clinton_files_another_complaint_over_chris_christies_dallas_trip.html; G. Neumann, "Democratic Legal Watchdog Group Files FEC Complaint Against Gov. Scott Walker," Feb. 10, 2015, WKOW.com, available at: <http://www.wkow.com/story/28074436/2015/02/10/democratic-legal-watchdog-group-files-fec-complaint-against-gov-scott-walker>.

⁹ 11 CFR §300.64. See also, Advisory Op. 2011-12 (Majority PAC and House Majority PAC).

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candidate at some point in the future. In that matter, the Commission found that there was no reason to believe that the independent expenditure-only Committee, "Ready for Hillary PAC" violated the law by failing to register as Hillary Clinton's authorized presidential campaign committee when it distributed an email solicitation via an email address registered to Clinton's authorized 2008 presidential campaign committee encouraging a list of donors that the SuperPAC obtained from Clinton's authorized committee to support Clinton's possible 2016 presidential candidacy. Hillary Clinton has indicated that she is "thinking about" running for President in 2016, but has not yet made a decision.¹⁰ The Commission found that "because neither Clinton nor Ready for Hillary PAC appear to have received contributions or made expenditures in excess of \$5,000 in connection with seeking her nomination or election to federal office, Clinton would not have triggered candidate status under the Act even if she had consented to the activities of Ready for Hillary PAC." Therefore, the Commission found that there was no reason to believe that the SuperPAC or Clinton's 2008 candidate committee violated the law.¹¹ The Commission must follow this precedent and conclude that Governor Bush has acted in compliance with the law with respect to Right to Rise SuperPAC.

CONCLUSION

For the aforementioned reasons, ADLF's Complaint should be dismissed and no further action should be taken.

Sincerely,



Raquel A. Rodriguez

¹⁰ CBS/AP, "Hillary Clinton: I'll Decide on 2016 Presidential Bid Early Next Year," CBS.com, available at: <http://www.cbsnews.com/news/hillary-clinton-ill-decide-on-2016-presidential-bid-early-next-year/>.

¹¹ FEC Factual and Legal Analysis, MUR 6775, Ready for Hillary PAC and Amy Wills Gray in her Official Capacity as Treasurer, Feb. 12, 2015.