

**BEFORE THE
FEDERAL ELECTION COMMISSION**

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American Democracy Legal Fund

455 Massachusetts Avenue, NW

Washington, DC 20001

Complainant,

v.

Mr. John Ellis "Jeb" Bush
P.O. Box 14349
Tallahassee, FL 32317

Right to Rise PAC, Inc., and James P. Robinson, Treasurer
P.O. Box 14349
Tallahassee, FL 32317

Right to Rise Super PAC, Inc., and Charles R. Spies, Treasurer
601 Pennsylvania Avenue NW
North Building, Suite 1000
Washington, DC 20004

MUR # 6915

Respondents.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Mr. John Ellis "Jeb" Bush; Right to Rise PAC, Inc. and James P. Robinson, its treasurer, in his official capacity; and Right to Rise Super PAC, Inc., and Charles Spies, its treasurer, in his official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended ("the Act"), as described below. In light of recent news reports shedding new light on the fact that Mr. Bush is illegally maintaining and controlling an independent expenditure-only committee in violation of the law, we file this complaint to supplement the complaint we filed against Respondents on February 5, 2015 (hereinafter "the February Complaint").

Recent news reports provide additional support for one of the key contentions made in the February Complaint -- Mr. Bush has violated the Act by establishing, directing, and controlling an independent expenditure-only committee, Right to Rise Super PAC, Inc., and has been raising and spending soft money in violation of 52 U.S.C. § 30125(e)(1). In addition, as the February Complaint detailed, Mr. Bush has been raising money in excess of what could reasonably be necessary to explore his candidacy through his leadership PAC and Right to Rise Super PAC, Inc. since January 2015, but he still has yet to register and report as a candidate, and he has not designated an authorized campaign committee as the Act requires.

We urge the Commission to promptly investigate these violations. Without action, Mr. Bush will set harmful precedent that would allow candidates and their agents to establish candidate-specific independent expenditure-only committees and wholly finance their campaigns using funds that are not subject to the Act's limitations or requirements. This would be in clear violation of the Act's prohibition on federal candidates establishing, directing, and controlling a soft money entity.

A. FACTS

On December 16, 2014, Mr. Jeb Bush, former Governor of Florida, announced his decision to "actively explore the possibility of running for President of the United States."¹ In his announcement, Mr. Bush shared his plans to launch a leadership PAC.² Mr. Bush formed his leadership PAC, Right to Rise PAC, Inc., ("the leadership PAC") on January 6, 2015. Less than two weeks later, Mr. Bush established an independent expenditure-only committee under

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 *Id.*

the same name -- Right to Rise Super PAC, Inc. ("the independent expenditure-only committee") -- on January 16, 2015.

Mr. Bush has been raising money for his leadership PAC and Right to Rise Super PAC, Inc. since their formation.³ However, Mr. Bush still has not registered with the Commission as a candidate for president. Recent reports indicate that Mr. Bush's campaign team intends to keep raising large amounts of money for Right to Rise Super PAC, Inc. so that they can run the bulk of Mr. Bush's campaign out of the independent expenditure-only committee instead of a traditional campaign committee.⁴ Indeed, the *Associated Press* has reported that Mr. Bush and his allies intend to use the independent-expenditure only committee to take on many of the duties typically conducted by a campaign, including television advertising and direct mail, data gathering, highly individualized online advertising, and running phone banks.⁵ News reports suggest that Right to Rise Super PAC, Inc. will spend more money on Mr. Bush's campaign than his own yet to be formed campaign committee.⁶

Importantly, Right to Rise Super PAC, Inc. will be run by one of Mr. Bush's close advisors. News reports indicate that when Mr. Bush finally decides to register and report as a candidate, Mike Murphy, who has been described as Mr. Bush's "longtime political confidant," will run the committee.⁷ The *Associated Press* has reported that the only reason Mr. Bush and his agents are comfortable delegating many of the traditional campaign activities to Right to Rise

³ B. Reinhard, "Jeb Bush Gives Potential Big Donors a Price List," *The Wall Street Journal*, Jan. 23, 2015, available at <http://blogs.wsj.com/washwire/2015/01/23/jeb-bush-gives-potential-big-donors-a-price-list/>.

⁴ T. Beaumont, "Jeb Bush Prepares to Give Traditional Campaign A Makeover," *Associated Press*, Apr. 21, 2015, available at <http://bigstory.ap.org/article/409837aa09ee405493ad64a94b8c2c3d/bush-preparing-delegate-many-campaign-tasks-super-pac>.

⁵ *Id.*

⁶ *Id.*

⁷ See Beaumont *supra* note 4.

Super PAC, Inc. is because Mr. Murphy, someone with knowledge of the campaign's strategies and plans, will run the committee.⁸

B. LEGAL ARGUMENT

1. Mr. Bush has established and is directing and controlling an independent expenditure-only committee.

The Act prohibits federal candidates and their agents from establishing, directing, controlling, or soliciting money for an entity that raises money outside of the federal contribution limits such as an independent expenditure-only committee.⁹ When the Commission is considering whether a candidate has "established" an independent expenditure-only committee, the Commission focuses principally on whether the candidate "directly or through his agent, had an active or significant role in the formation of the entity."¹⁰ When considering whether a candidate "finances" or "maintains" an independent expenditure-only committee, the Commission considers a number of factors, including whether the candidate, directly or through his agent, provides funds or goods in a significant amount to the committee, or causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the committee.¹¹ Finally, when determining whether a candidate "controls" an independent expenditure-only committee, the Commission will consider factors such as (1) whether the candidate has the authority or ability to direct or participate in the governance of the entity; (2) whether the candidate has the authority to hire, appoint, demote, or otherwise control the officers or decision-makers of the committee; and (3) whether the candidate has a common or overlapping membership with the committee that indicates a formal or ongoing relationship

⁸ See *id.*

⁹ 52 U.S.C. § 30125(e)(1); *see also* FEC Advisory Opinion 2011-21 (Lee).

¹⁰ 11 C.F.R. § 300.2(c)(2)(ix).

¹¹ *Id.* § 300.2(c)(2).

between the candidate and the entity.¹² A federal candidate is also prohibited from soliciting, raising, and spending funds in excess of the contribution limits through an independent expenditure-only committee.¹³

Recent news reports clearly indicate that Mr. Bush and his agents have established and are controlling Right to Rise Super PAC, Inc. in violation of the Act. Mr. Bush established the independent expenditure-only committee at the same time that he launched his leadership PAC, which has the same name, Right to Rise PAC. Mr. Bush is also soliciting money for Right to Rise Super PAC, Inc. Indeed, he is purposefully failing to declare himself a candidate so that he can travel the country to raise money for the independent expenditure-only committee.¹⁴ When Mr. Bush declares his candidacy, he will direct and control Right to Rise Super PAC, Inc. through his agent Mike Murphy, who will run the committee.¹⁵ Mr. Murphy is a "Bush confidante" who has been "deeply involved in Bush's steps, courting donors, selecting staff and developing strategy."¹⁶ Thus, by the time Mr. Murphy takes full control of the independent expenditure-only committee, he will have spent enough time with Mr. Bush developing and organizing his campaign strategy to be able to operate Right to Rise Super PAC, Inc. in complete coordination with the plans, projects, activities, and needs of the campaign.¹⁷

These facts indicate that Mr. Bush and his agents are and will continue to be directly or indirectly involved in establishing, and controlling Right to Rise Super PAC, Inc. in violation of 52 U.S.C. § 30125(e)(1).

¹² 11 C.F.R. § 300.2.

¹³ 52 U.S.C. § 30125(e)(1).

¹⁴ F. Wertheimer, "Why Jeb Bush's Super PAC Plan is Potentially Illegal," *Reuters*, Apr. 23, 2015, available at <http://blogs.reuters.com/great-debate/2015/04/22/why-jeb-bushs-super-pac-plan-is-potentially-illegal/>.

¹⁵ See Beaumont *supra* note 4.

¹⁶ *Id.*

¹⁷ See Wertheimer *supra* note 14.

2. Mr. Bush has failed to declare himself a candidate in order to raise soft money in violation of the Act.

Under the Act, an individual becomes a candidate for federal office, triggering the Act's registration and reporting requirements, when his campaign exceeds \$5,000 in contributions or expenditures.¹⁸ Among other requirements, a candidate must file a statement of candidacy within 15 days of becoming a candidate.¹⁹ However, the regulations permit an individual who has not made the decision to run for office to raise funds for "testing the waters" to make that decision.²⁰ An individual crosses the line from exploratory efforts to candidacy if he takes actions relevant to conducting a campaign; those actions include "rais[ing] funds in excess of what could reasonably be expected to be used for exploratory activities or undertak[ing] activities designed to amass campaign funds that would be spent after he or she becomes a candidate."²¹ Once an individual becomes a federal candidate, he is prohibited from soliciting, raising, and spending funds in excess of the contribution limits through an independent expenditure-only committee.²²

Mr. Bush and his allies established his leadership PAC and independent expenditure-only committee in January 2015. Since then, Mr. Bush has been traveling the country raising money for both entities, including large sums of funds for the independent expenditure-only committee.²³ As we made clear in the February Complaint, the donor pledge forms for Mr. Bush's leadership PAC alone indicate that he has triggered candidate status by raising money in excess of what could reasonably be expected to be used for his exploratory efforts.²⁴ Recent news reports confirm this fact. They indicate that Mr. Bush is raising money for Right to Rise

¹⁸ 52 U.S.C. § 30101(2).

¹⁹ 11 C.F.R. § 101.1(a).

²⁰ *Id.* § 100.72.

²¹ 11 C.F.R. § 300.2(c)(2)(ix).

²² 52 U.S.C. § 30125(e)(1).

²³ See Wertheimer *supra* note 14.

²⁴ See Reinhard, *supra* note 3.

Super PAC, Inc. to support his candidacy.²⁵ Indeed, Mr. Bush's allies have indicated that it is very likely the independent expenditure-only committee will spend more money in support of Mr. Bush's candidacy than his yet to be formed campaign committee.²⁶ Despite raising funds in excess of what could reasonably be expected to be used for exploratory activities, Mr. Bush still has yet to declare himself a candidate or designate a campaign committee in violation of the law.

Mr. Bush's motivation for failing to declare his candidacy is to skirt the prohibition on federal candidates raising soft money.²⁷ By failing to declare himself a "candidate," he takes the position that he can fundraise for Right to Rise Super PAC, Inc. without violating the law. But as discussed in detail in the February Complaint, Mr. Bush triggered candidate status several months ago when he began traveling the country raising money for his leadership PAC and independent expenditure-only committee in excess of what is reasonably necessary to "test the waters."²⁸ Mr. Bush is no longer in the exploratory phase of his campaign and thus, he has violated the law by (1) failing to declare himself a candidate and register and report with the Commission, and (2) raising money for Right to Rise Super PAC, Inc., a soft money entity.

C. REQUESTED ACTION

As we have shown, Mr. Bush and Respondents have violated the Act by establishing, directing, controlling, and raising funds for an independent expenditure-only committee. Additionally, Mr. Bush has failed to register and report as a candidate despite amassing more funds than what is reasonably necessary to "test the waters." Mr. Bush's egregious failure to declare himself a candidate in an effort to use an independent expenditure-only committee to skirt the contribution limits and the prohibitions on raising soft money warrants an investigation.

²⁵ See Wertheimer *supra* note 14.

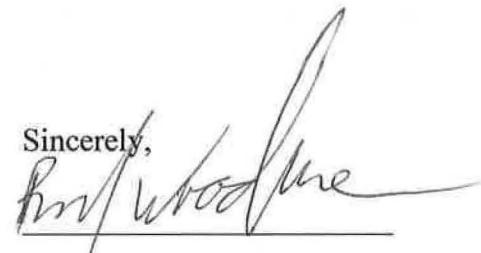
²⁶ See Beaumont *supra* note 4.

²⁷ See 52 U.S.C. § 30125(e)(1).

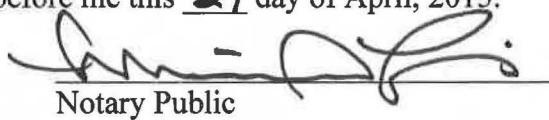
²⁸ See Wertheimer *supra* note 14.

As such, we respectfully request that the Commission investigate these violations, and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,


Brad Woodhouse

SUBSCRIBED AND SWORN to before me this 27 day of April, 2015.


Notary Public



My Commission Expires:

JAN 14, 2020