



**VIA EMAIL**

November 27, 2015

Jeff S. Jordan, Esq.  
 Assistant General Counsel  
 Complaints Examination & Legal Administration  
 Federal Election Commission  
 999 E Street NW  
 Washington, DC 20463

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 FEDERAL ELECTION  
 COMMISSION

Re: MUR 6915 – Governor Jeb Bush, Jeb 2016, Inc. and William Simon in his official capacity as Treasurer of Jeb 2016, Inc.,

Dear Mr. Jordan:

We represent Governor Jeb Bush, Jeb 2016, Inc. (“Jeb 2016”), and William Simon in his official capacity as Treasurer of Jeb 2016 (collectively, the “Respondents”) in the above-captioned MUR.

We have reviewed the Complaint Amendment filed on September 21, 2015 by the American Democracy Legal Fund (“ADLF”) alleging further violations of the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”) and Federal Election Commission (“FEC” or the “Commission”) regulations by the Respondents.

The Complaint Amendment consists of nothing more than renewed speculation that Right to Rise PAC and Right to Rise USA paid for Governor Bush’s testing-the-waters activities, which we comprehensively rebutted in our August 8, 2015 submission on behalf of Governor Bush. Using FEC reports to feed their speculation, ADLF continues to take the position that Right to Rise PAC and Right to Rise USA did not have any expenses for their own activities and that all of their expenses must have been for Governor Bush’s testing-the-waters activities.

Governor Bush scrupulously complied with the Commission’s testing-the-waters regulations, and Governor Bush and Jeb 2016 paid for all of his testing-the-waters expenses. Accordingly, there is no reason to believe that the Respondents have violated the Act or Commission regulations. The Commission should promptly dismiss this matter.

**FACTS**

**I. Governor Bush and Jeb 2016**

Governor Bush began testing-the-waters for a possible presidential candidacy in June 2014 by making personal payments for:

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- Research and polling to determine the feasibility of a presidential campaign;
- Political consulting services for the purpose of providing advice on the feasibility and mechanics of constructing a potential presidential campaign;
- Public relations consulting services for the purpose of responding to press inquiries and providing advice on potential communications strategies of a presidential campaign; and
- Legal fees related to FECA compliance, personal financial disclosure requirements, and other legal matters related to a potential presidential campaign.

*See Jeb 2016, 2015 July Quarterly Report, at 1658-73, 1700-01, 1933.*

After privately testing-the-waters for a number of months, Governor Bush publicly announced on December 16, 2014, that he had “decided to actively explore the possibility of running for President of the United States.” Jeb Bush, A Note from Jeb Bush (Dec. 16, 2014), <https://www.facebook.com/notes/jeb-bush/a-note-from-jeb-bush/619074134888300>. Over the next six months, Governor Bush continued to test-the-waters and personally paid for these expenses. *See Jeb 2016, 2015 July Quarterly Report, at 1658-73.*

In early June 2015, Governor Bush decided to become a candidate for President of the United States. On June 5, 2015, Governor Bush signed a Statement of Candidacy designating Jeb 2016 as his principal campaign committee. Jeb Bush, Statement of Candidacy (dated June 5, 2015), <http://docquery.fec.gov/cgi-bin/fecimg?1503143174740>. Also on June 5, 2015, Jeb 2016’s treasurer signed a Statement of Organization. Jeb 2016, Statement of Organization (dated June 5, 2015), <http://docquery.fec.gov/cgi-bin/fecimg?1503143175140>. Both the Statement of Candidacy and Statement of Organization were timely filed with the Commission on June 15, 2015.

On July 15, 2015, Jeb 2016 filed its initial disclosure report with the Commission. Pursuant to the Act and Commission regulations, Jeb 2016’s July Quarterly Report disclosed all disbursements made and expenses incurred during the testing-the-waters period. *See Jeb 2016, 2015 July Quarterly Report, at 1658-73, 1700-01, 1933.* This report disclosed all of Governor Bush’s personal payments for testing-the-waters expenses. Jeb 2016 properly reported these expenses as in-kind contributions from Governor Bush, identifying the original payees in the additional text field. *See id.* at 1658-73. Jeb 2016 opted to pay for three testing-the-waters expenses for which Governor Bush received invoices after he had decided to become a candidate in early June 2015. For such expenses, Jeb 2016, in the interest of full transparency and disclosure, voluntarily included a notation in the additional text field identifying these as testing-the-waters expenses. *See id.* at 1700-01, 1933.

Jeb 2016’s July Quarterly Report also disclosed a \$145,308 payment to Right to Rise PAC for “Repayment – Rent Deposit” and a \$484,384.12 payment to Right to Rise PAC for “Repayment – Rent/Equipment Purchase/Computer Purchase/Office Supply Purchase.” *See id.* at 1943.



Although not required by the Commission's reporting regulations, Jeb 2016 voluntarily reported memo entries identifying the underlying purposes of its two repayments to Right to Rise PAC. *See id.* at 1943-59.

## II. Right to Rise PAC

Right to Rise PAC (the "Leadership PAC") is a non-connected political action committee registered with the Commission. In his December 16, 2014 Facebook Post, Governor Bush explained that, separate and apart from his exploratory activities, he "plan[ned] to establish a Leadership PAC." Jeb Bush, A Note from Jeb Bush (Dec. 16, 2014), <https://www.facebook.com/notes/jeb-bush/a-note-from-jeb-bush/619074134888300>, "The PAC's purpose [would] be to support leaders, ideas and policies that will expand opportunity and prosperity for all Americans." *Id.* Governor Bush served as the Leadership PAC's honorary chairman since its inception in January 2015. *See* Right to Rise PAC, About, <https://righttorisepac.org/about>. *See also* Response of Right to Rise PAC, et al. in MUR 6915, at 2 (dated Feb. 20, 2015); Response of Right to Rise PAC, et al. in MUR 6927, at 4-5 (dated Apr. 24, 2015).

In furtherance of the Leadership PAC's mission "to support candidates who share our optimistic, conservative, positive vision for helping every American get ahead," Right to Rise PAC, About, <https://righttorisepac.org/about>, the Leadership PAC made 57 contributions totaling \$283,800 to other political committees and candidates, Right to Rise PAC, 2015 Mid-Year Report (amended July 31, 2015), at 4, 1331-60.

The Leadership PAC also supported conservative candidates, policies, and ideas by facilitating appearances by its honorary chairman, Governor Bush, at events sponsored by candidates, political parties, and non-profit organizations. *See, e.g., Jeb Bush to Attend Iowa Fundraiser*, Quad City Times (Feb. 23, 2015), [http://qctimes.com/news/local/government-and-politics/elections/jcb-bush-to-attend-iowa-fundraiser/article\\_c783fe06-1267-5b85-aa2c-6136d795aadc.html](http://qctimes.com/news/local/government-and-politics/elections/jcb-bush-to-attend-iowa-fundraiser/article_c783fe06-1267-5b85-aa2c-6136d795aadc.html) (noting that Governor Bush will be appearing at a fundraising event for U.S. Representative David Young); Press Release, Media Advisory: RNC Spring Meeting, Republican National Committee (May 8, 2015), <https://www.gop.com/media-advisory-2015-rnc-spring-meeting> (noting that Governor Bush will be speaking at an "RNC Reception and Dinner"). In his capacity as honorary chairman, Governor Bush also appeared at events sponsored by the Leadership PAC. Response of Right to Rise PAC, et al. in MUR 6915, at 2; Response of Right to Rise PAC, et al. in MUR 6927, at 4-5. None of the Leadership PAC's funds were used for Governor Bush's testing-the-waters activities. *Id.*

Although the Leadership PAC remains registered with the Commission, it appears to have begun winding-down its political activities. *See* Right to Rise PAC, Inc., 2015 Mid-Year Report (amended July 31, 2015) (reporting declining disbursements in June 2015 after Governor Bush became a candidate).



### III. Right to Rise USA

Right to Rise USA (“RTR Super PAC”) is an independent expenditure-only committee registered with the Commission. Right to Rise USA, Statement of Organization (amended June 12, 2015), <http://docquery.fec.gov/pdf/367/15951468367/15951468367.pdf>. According to its website, “Right to Rise USA is the leading independent political action committee strongly supporting Jeb Bush for President.” Right to Rise USA, About Us (last visited Nov. 20, 2015), <https://righttorisesuperpac.org/about/rtrusa?lang=en>.

“The extent of Governor Bush’s involvement with the Super PAC is his appearance as a special guest at Super PAC fundraising events.” Response of Right to Rise PAC, et al. in MUR 6915, at 4 (Feb. 20, 2015); Response of Right to Rise PAC, et al. in MUR 6927, at 5-6 (Apr. 24, 2015).

#### THE COMPLAINT AMENDMENT

The Complaint Amendment repeats ADLF’s allegations from its original complaint—that the Leadership PAC and RTR Super PAC paid for Governor Bush’s testing-the-waters expenses—while citing new purported facts and a new regulation.

##### **I. The Complaint Amendment offers additional speculation, not evidence, to support ADLF’s allegations.**

To support their allegations that the Leadership PAC and RTR Super PAC paid for testing-the-waters expenses on behalf of Governor Bush, ADLF cites to routine political committee expenses disclosed on the Leadership PAC’s and RTR Super PAC’s FEC reports and assumes that they must be related to Governor Bush’s testing-the-waters activities.

For example, the Complaint Amendment points to RTR Super PAC travel spending “of nearly \$200,000 in various localities during a time period in which Mr. Bush was speaking at those localities.” Complaint Amendment at 5. Yet, ADLF only cites the following examples totaling \$1,954:

- “[T]he Super PAC reported two expenditures (\$420 and \$403) at the Biltmore Hotel in Coral Gables, Florida on March 8, 2015, one day before a Bush fundraiser in that city.”<sup>1</sup> Complaint Amendment at 3.
- “The Super PAC also reported an expenditure (\$889) on May 15, 2015, to the Duke Mansion in Charlotte, North Carolina, and Mr. Bush met with donors in Charlotte on May 1, 2015.” *Id.*

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<sup>1</sup> It is worth noting that Governor Bush resides in Coral Gables, Florida and RTR Super PAC’s payments to the Biltmore Hotel could not have been for Governor Bush’s travel to a hotel in his hometown.



- “Mr. Bush spoke at the Henry Ford Academy in Michigan on May 29, 2015, and on June 2 the Super PAC reported an expenditure of \$242 to the Marriott in Grand Rapids, Michigan, for travel.” *Id.*

From ADLF’s perspective, the fact that RTR Super PAC paid for travel expenses in cities that coincide with Governor Bush’s travel to those cities somehow transforms such expenses into testing-the-waters expenses. ADLF does not consider the possibility that these travel expenses were for RTR Super PAC’s own staff in connection with RTR Super PAC events at which Governor Bush appeared as a special guest.

Indeed, ADLF offers no evidence that there is a link between these travel expenses—or any of the Leadership PAC and RTR Super PAC expenses cited in the Complaint Amendment—and Governor Bush’s testing-the-waters activities.

## II. The Complaint Amendment advances a new legal argument based on Section 110.2(l).

To buttress their argument that the Leadership PAC’s expenses were testing-the-waters expenses on behalf of Governor Bush, ADLF advances a new legal claim related to a multicandidate PAC’s payment of testing-the-waters expenses on behalf of presidential candidates.

Under this regulation, “[a] payment by a multi-candidate political committee” for certain goods or services “is deemed an in-kind contribution to and an expenditure by a Presidential candidate, even though made before the individual becomes a candidate,” if: (1) “[t]he expenditure is made on or after January 1 of the year immediately following the last Presidential election year;” and (2) “[w]ith respect to the goods or services involved, the candidate accepted or received them, requested or suggested their provision, was materially involved in the decision to provide them, or was involved in substantial discussions about their provision.” 11 C.F.R. § 110.2(l)(1).

However, “if the candidate, through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate, the payment shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an expenditure of the candidate.” *Id.* § 110.2(l)(2).

The specific goods and services that are subject to this regulation are:

- Polling expenses for determining the favorability, name recognition, or relative support level of the candidate involved;
- Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate’s home state and in or near the District of Columbia;



- Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate's home state and in or near the District of Columbia; or
- Expenses of individuals seeking to become delegates in the Presidential nominating process.

*Id.* § 110.2(l)(1).

To advance its argument that the Leadership PAC paid for a number of *per se* testing-the-waters expenses, ADLF appears to have scoured the Leadership PAC's FEC report for any and all consulting and vendor payments. The Complaint Amendment presumes that these expenses were in connection with "staffing offices in various states other than Florida or the District of Columbia," without providing evidence of any such connection or evidence that Governor Bush opened any such field offices.

## DISCUSSION

### **I. The Leadership PAC and RTR Super PAC did not pay for any of Governor Bush's testing-the-waters expenses.**

ADLF suggests that the Leadership PAC's and RTR Super PAC's expenses are somehow testing-the-waters expenses for Governor Bush, but their claim is belied by the fact that (1) Governor Bush and Jeb 2016 paid for all of Governor Bush's testing-the-waters expenses and (2) leadership PACs and Super PACs conduct their own political activities and must pay for their own expenses.

As explained above and in our August 8, 2015 submission, Governor Bush and Jeb 2016 paid for all of Governor Bush's testing-the-waters expenses. Governor Bush's testing-the-waters expenses were accounted for and duly reported on Jeb 2016's 2015 July Quarterly Report. *See Jeb 2016, 2015 July Quarterly Report*, at 1658-73, 1700-01, 1933. The expenses cited by ADLF are not testing-the-waters expenses, but rather are expenses consistent with the normal operation of a leadership PAC and Super PAC.

For example, the Complaint Amendment presumes that payments to various consultants and vendors by the Leadership PAC and RTR Super PAC were for Governor Bush's testing-the-waters activities simply because these consultants and vendors subsequently provided services to Jeb 2016. However, Governor Bush and Jeb 2016 paid for and reported all of the consulting services provided in connection with Governor Bush's testing-the-waters activities. The payments cited by ADLF—such as payments for communications consulting, fundraising consulting, travel, rent, and database services—are all typical expenses of a leadership PAC and Super PAC.



## II. Section 110.2(l) does not apply to any of the Leadership PAC's expenses.

Citing a little-known regulation related to the payment of testing-the-waters expenses on behalf of Presidential candidates, ADLF suggests that nearly all of the Leadership PAC's payments to consultants and vendors are *per se* testing-the-waters expenses on behalf of Governor Bush. However, ADLF has not identified any Leadership PAC expenses that fall under this regulation.

*First*, Governor Bush personally paid for his testing-the-waters polling expenses. *See Jeb 2016, 2015 July Quarterly Report, at 1658-73, 1700-01, 1933*. The Leadership PAC's payments for "research," for example, were not for "[p]olling expenses for determining the favorability, name recognition, or relative support level" of Governor Bush; he paid for those expenses himself. 11 C.F.R. § 110.2(l)(1)(iii)(A).

*Second*, ADLF provides no evidence that the Leadership PAC opened any field offices while Governor Bush was testing the waters, and we are aware of none. In any event, Governor Bush and Jeb 2016 paid for all of the consulting services related to Governor Bush's testing-the-waters activities. *See Jeb 2016, 2015 July Quarterly Report, at 1658-73, 1700-01, 1933*. To the extent the Leadership PAC made payments for its own consulting services and administrative expenses, they were not "in connection with establishing and staffing offices" in presidential primary states. *Id.* § 110.2(l)(1)(iii)(B), (C).<sup>2</sup>

Put simply, the expenses identified by ADLF are basic expenses that any leadership PAC would incur and were in no way related to Governor Bush's testing-the-waters activities.

## CONCLUSION

For all of the reasons set forth above, the Commission should find that there is no reason to believe that a violation occurred and should promptly dismiss this matter.

Sincerely,

  
 Megan L. Sowards, General Counsel  
 Brandis L. Zehr, Deputy General Counsel

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<sup>2</sup> We are also not aware of any expenses of individuals seeking to become delegates in the presidential nomination process per 11 C.F.R. § 110.2(l)(1)(iii)(D).