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BEFORE THE
FEDERAL ELECTION COMMISSION ~~5/26~~ AM 9:46

American Democracy Legal Fund
455 Massachusetts Ave. NW
Washington, DC 20001

OFFICE OF GENERAL
COUNSEL

Complainant,

v.

Mr. John Ellis "Jeb" Bush
P.O. Box 440669
Miami, FL 33144,

Jeb 2016, Inc. and William Simon, Treasurer
P.O. Box 440669
Miami, FL 33144,

Right to Rise USA and Charles Spies, Treasurer,
6230 Wilshire Blvd. #1790
Los Angeles, CA 90048,

Respondents.

MUR # 6915
(SUPP¹)

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Mr. John Ellis "Jeb" Bush; his principal campaign committee, Jeb 2016, Inc., and its treasurer in his official capacity; and Right to Rise USA and its treasurer in his official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission (the "FEC") regulations, as described below. In light of Mr. Bush recently admitting that he privately decided in January 2015 to become a candidate for president, we file this complaint to supplement and highlight the allegations made in the complaints we filed against Respondents on February 5, 2015, May 12, 2015, May 20, 2015, and June 3, 2015.

A. FACTS

In May 2014, Mr. Bush began spending large sums of his own money on testing the waters for a presidential campaign in 2016;¹ for example, in October 2014, he spent \$17,978.48 on research consulting for testing the waters.² He formed his leadership PAC, Right to Rise PAC, Inc. (the “Leadership PAC”) on January 6, 2015.³ Less than two weeks later, Mr. Bush established an independent expenditure-only committee under the same name, Right to Rise USA (the “Super PAC”).⁴

That very same month, according to a recent interview Mr. Bush gave on MSNBC’s “Morning Joe” program, he had a private conversation with Mitt Romney, who was then considering another run for president in 2016.⁵ During that conversation, in an obvious attempt to dissuade Mr. Romney from making another run for president and hurting his own chances at winning, Mr. Bush assured Mr. Romney that that he was “all in” to win the presidency.⁶ In full, Mr. Bush admitted to MSNBC: “Look, Mitt Romney’s a great guy, and I do consider him a friend, and in that private conversation, we talked about the campaign ‘cause he was thinking

¹ See FEC July Quarterly Report, Amend, Jeb, 2016, Inc. (Dec. 10, 2015), at 1676 (recording payment of \$1,875 from Jeb Bush to Jeb 2016, Inc. for “In Kind (Testing the Waters) Communications Consulting,” through Kristy Campbell).

² *Id.* at 1679.

³ See FEC Form 1, Statement of Organization (amended), Right to Rise PAC, Inc. (Jan. 16, 2015). Though the FEC form does not report its status as a leadership PAC, Mr. Bush has himself referred to the organization as a leadership PAC. Jose A. DelReal, “Jeb Bush Forms PAC to Explore Presidential Run,” *The Washington Post* (Dec. 16, 2014); available at <http://www.washingtonpost.com/news/post-politics/wp/2014/12/16/jeb-bush-forms-pac-to-explore-presidential-run/>; see Robert Costa, “Jeb Bush and His Allies Form Leadership PAC and Super PAC, Both Dubbed Right to Rise,” *The Washington Post* (Jan. 6, 2015), available at <http://www.washingtonpost.com/news/post-politics/wp/2015/01/06/jeb-bush-forms-new-pac-right-to-rise/>.

⁴ See FEC Form 1, Statement of Organization, Right to Rise USA (June 12, 2015); Right to Rise USA, available at <https://righttorisesuperpac.org/#/home?lang=en> (“Right to Rise USA is the leading independent super PAC supporting Jeb Bush’s campaign for President.”).

⁵ K. Cheney, “Watchdog Accuses Bush of Illegally Conveying His Intention to Run,” *Politico*, Jan. 5, 2016, available at <http://www.politico.com/story/2016/01/jeb-bush-running-president-romney-217374>.

⁶ *Id.*

about running and I went out to see him. . . . I wanted him to know that I was all in and had a plan to win this, and I still do.”⁷

Despite the fact that Mr. Bush had made a decision to become a candidate, news reports at the time indicated that Bush’s “plan” involved him raising money for the Leadership PAC and Super PAC from the very beginning of their formation.⁸ As alleged in previous complaints, this strategy was unprecedented: (1) his campaign team would raise large amounts of money for the Super PAC so that they could run the bulk of the campaign out of the independent expenditure-only committee instead of a traditional campaign committee;⁹ (2) he and his allies would 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;¹⁰ and (3) Mike Murphy, Mr. Bush’s “longtime political confidant,” would run the committee once Mr. Bush officially entered the race.¹¹

Mr. Bush’s intentions have been satisfied. He raised significant sums of money for the Super PAC before he formally announced his candidacy, filed his Statement of Candidacy, and established his principal campaign committee (Jeb 2016, Inc.), on June 15, 2015.¹² Indeed, according to *Politico*, Mr. Bush set the timing of his official campaign announcement “around a cross-country fundraising tour” for the Super PAC, and he had plans to “accelerate the cash

⁷ *Id.*

⁸ 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/>.

⁹ T. Beaumont, “Jeb Bush Prepares to Give Traditional Campaign A Makeover,” *Associated Press*, Apr. 21, 2015, available at <http://bigstory.ap.org/article/409837aa09ce405493ad64a94b8c2c3d/bush-preparing-delegate-many-campaign-tasks-super-pac>.

¹⁰ *Id.*

¹¹ *Id.*

¹² M. Barbaro and J. Martin, “Jeb Bush Announces White House Bid, Saying ‘America Deserves Better.’” *N.Y. Times* (June 15, 2015), available at http://www.nytimes.com/2015/06/16/us/politics/jeb-bush-presidential-campaign.html?_r=0; FEC Form 2, Statement of Candidacy, Jeb Bush (June 15, 2015); FEC Form 2, Statement of Candidacy, Jeb Bush (June 15, 2015).

flow” the month before his official launch.¹³ The Super PAC raised more than \$100 million in the first half of 2015.¹⁴ Moreover, as planned, Mr. Murphy took over the Super PAC in June 2015 around the time Mr. Bush formally declared candidacy.¹⁵ And, according to news reports, as of January 15, 2016, the Super PAC already has spent nearly \$61 million supporting Mr. Bush or attacking his opponents.¹⁶

B. LEGAL ARGUMENT

1. Mr. Bush failed to register with the FEC within fifteen days of deciding to run for president.

Candidate means an individual who seeks nomination for election, or election, to federal office.¹⁷ An individual becomes a candidate whenever he or she has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.¹⁸ Once a person becomes a candidate, he or she must register and report as such with the FEC within fifteen days, using a “Statement of Candidacy” on FEC Form 2.¹⁹

As explained in our June complaint, individuals may delay registering and reporting as a candidate for federal office while making expenditures for “testing the waters” of a

¹³ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico*, May 8, 2015, available at <http://www.politico.com/story/2015/05/jeb-bush-right-to-rise-super-pac-campaign-117753>.

¹⁴ A. Narayanswamy, “Bush-aligned Super PAC Nets More Than \$100 Million, *The Washington Post*, July 31, 2015, available at <https://www.washingtonpost.com/news/post-politics/wp/2015/07/31/bush-aligned-super-pac-nets-more-than-100-million/>.

¹⁵ S. Issenberg, “Mike Murphy of Right to Rise Explains His Theory That Jeb Bush Is Still the Candidate to Beat,” *Bloomberg Politics*, Oct. 20, 2015, available at <http://www.bloomberg.com/politics/features/2015-10-20/mike-murphy-of-right-to-rise-explains-his-theory-that-jeb-bush-is-still-the-candidate-to-beat>; M. Jordan, “Mike Murphy Plots a Win for Jeb Bush In the Land of Hollywood Liberals,” *The Washington Post*, June 12, 2015, available at https://www.washingtonpost.com/politics/jeb-bushs-man-in-hollywood/2015/06/12/febca268-0584-11e5-a428-c984eb077d4e_story.html.

¹⁶ F. Schouten, “Spending Heavily, Jeb Bush super PAC Lobs Last-Minute Attacks,” *USA Today*, Jan. 15, 2016, available at <http://www.usatoday.com/story/news/2016/01/13/jeb-bush-super-pac-lobbs-last-minute-attacks-marco-rubio/78750792/>.

¹⁷ 52 U.S.C. § 30101(2).

¹⁸ *Id.*; 11 C.F.R. §§ 100.3(a).

¹⁹ See 11 C.F.R. §§ 100.3(a); 101.1(a); FEC Form 2, Statement of Candidacy, FEC, available at <http://www.fec.gov/pdf/forms/fecfrm2.pdf>.

campaign,²⁰ but Commission regulations limit this exemption to individuals who have not decided to become candidates.²¹ Indeed, a recent advisory opinion makes clear that “an individual who has raised or spent more than \$5000 on ‘testing-the-waters’ activities would become a candidate when he or she makes a private determination that he or she will run for private office.”²²

This situation describes Mr. Bush as of at least January 2015. Previous complaints include copious evidence that Mr. Bush made the private decision to become a candidate well before he filed his Statement of Candidacy in June 2015; but now Mr. Bush has directly admitted it. By discussing “the campaign” with Mr. Romney and making the assurance that he was “all in and had a plan to win this” – for the stated purpose of responding to Mr. Romney’s “thinking about running” himself – he clearly indicated his private decision to run for president. Mr. Bush did not tell Mr. Romney that he might run, or that he was evaluating a run, or that he was lukewarm about a run; he said his “campaign” was “all in” to win the presidency. Indeed, anything less may not have served the very purpose of Mr. Bush having this private conversation with Mr. Romney, convincing the former presidential candidate not to run again.

And there is no question Mr. Bush spent more than \$5,000 on testing the waters activities by this point. Jeb 2016, Inc.’s July Quarterly Report shows that it made several disbursements to Mr. Bush to reimburse him for payments for testing the waters in 2014. The first such entry reports a \$1,875 payment to Mr. Bush for the stated purpose of “In-Kind (TTW): Communications Consulting” through Kristy Campbell, and a notation describes it as

²⁰ See 11 C.F.R. §§ 100.72(a) (exempting “[f]unds received solely for the purpose of determining whether an individual should become a candidate” from the definition of contribution); *id.* at § 100.131(a) (exempting “[p]ayments made solely for the purpose of determining whether an individual should become a candidate” from the definition of expenditure).

²¹ *Id.* § 100.72(b).

²² FEC Advisory Opinion 2015-09 (Senate Majority PAC and House Majority PAC), at 5.

“TESTING THE WATERS (TTW).”²³ There are dozens of entries with this notation describing testing-the-waters activities in 2014. One such notation, describing a payment for “research consulting” on October 31, 2014, was for \$17,978.48²⁴ – that expenditure alone put Mr. Bush over the threshold for triggering candidacy.

These facts, and those described in previous complaints, demonstrate that Mr. Bush had a legal duty to register with the FEC within fifteen days of his private conversation with Mr. Romney in January 2015, and likely sooner. Mr. Bush’s failure to so register constitutes a violation of the Act and FEC regulations.

2. Mr. Bush raised funds for the Super PAC, an independent expenditure-only committee that he and his agents established, directed, and controlled, and the Super PAC is receiving and spending money outside of the federal contribution limits, in clear violation of the law.

The Act prohibits federal candidates 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.²⁵ Moreover, federal law prohibits an entity established, directed, or controlled by a federal candidate from receiving and spending money outside of the federal contribution limits.²⁶ Specifically, under 52 U.S.C. § 30125(e)(1), “[a] candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained, controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office shall not solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office,

²³ FEC July Quarterly Report, Amend, Jeb, 2016, Inc. (Dec. 10, 2015), at 1676.

²⁴ *Id.* at 1679.

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

²⁶ *Id.*

including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”²⁷

Mr. Bush’s recent admission that he had made the private decision to run for president by January 2015 alleviates any and all doubt that he was violating § 30125(e)(1) from the very beginning of the Super PAC’s formation. His conversation with Mr. Romney occurred the very month the Super PAC was formed, and he already had begun traveling the country raising money for the independent expenditure-only committee. And this activity continued right up until Mr. Bush formally announced candidacy in June 2015. As noted earlier, Mr. Bush specifically planned his official campaign announcement “around a cross-country fundraising tour” for the Super PAC.²⁸ It was clear before that Mr. Bush had violated the Act, and given Mr. Bush’s significant fundraising and recent comments to MSNBC, it is now clear that Mr. Bush is publicly flouting these violations.

Similarly, Right to Rise has violated § 30125(e)(1) by raising funds outside of the federal limits because it was established by Mr. Bush and his agents and is currently directed and controlled by the same. Mr. Bush established the Super PAC at the same time that he launched his leadership PAC, which has the same name, Right to Rise PAC. By the time Mr. Murphy, Mr. Bush’s agent, took full control of the independent expenditure-only committee in June 2015,²⁹ he had spent enough time with Mr. Bush developing and organizing his campaign strategy to be able to operate the Super PAC in complete coordination with the plans, projects, activities, and needs of the campaign.³⁰ Though Mr. Bush may have stopped raising money for the super PAC, it is still in violation of the law by raising and spending soft money. As noted previously, the law

²⁷ 52 U.S.C. § 30125(e)(1).

²⁸ Isenstadt, *supra* note 13.

²⁹ Issenberg, *supra* note 15.

³⁰ See 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/>.

forbids any entity established by a federal candidate from *ever* soliciting, receiving, or spending funds outside of the limits and source restrictions of the Act.³¹ Indeed, the Super PAC has already spent nearly \$61 million supporting Mr. Bush or attacking his opponents.³²

C. REQUESTED ACTION

As shown, the facts above clearly demonstrate that Mr. Bush and Right to Rise USA have violated 52 U.S.C. § 30125(e)(1) because Mr. Bush, a federal candidate, and Right to Rise USA, an independent expenditure-only committee that was established and is directed and controlled by Mr. Bush and his agents, have solicited, received, or spent funds that are not subject to the limitations and restrictions of the Act.

Sincerely,



SUBSCRIBED AND SWORN to before me this 16 day of February, 2016.



Notary Public

My Commission Expires:




³¹ See 52 U.S.C. § 30125(e)(1)

³² Schouten, *supra* note 16.