

**VIA EMAIL**

March 31, 2016

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

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 Supplemental Complaint filed on February 16, 2016 by the American Democracy Legal Fund (“ADLF”). Recognizing that nearly all of their prior allegations hinge on Governor Bush becoming a candidate prior to June 2015, ADLF now claims that Governor Bush “recently admitt[ed] that he privately decided in January 2015 to become a candidate for president.” Supplemental Complaint at 1. The Supplemental Complaint, therefore, re-alleges that the Respondents violated the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”) and Federal Election Commission (“FEC” or the “Commission”) regulations by: (1) failing to timely register and report with the Commission; and (2) raising funds for an independent expenditure-only committee that Governor Bush and his agents established, directed, and controlled.

These renewed allegations—which twist Governor Bush’s words to fit ADLF’s flawed theory and which were made just three days prior to the South Carolina Republican Primary—have no basis in fact or law. Governor Bush scrupulously complied with the Commission’s testing-the-waters regulations and timely registered and reported as a candidate. And because Governor Bush was not a “candidate” until early June 2015, FECA’s prohibitions on establishing, directing, controlling, and raising funds for an independent expenditure-only committee did not apply to him until early June 2015 as a matter of law. Out of an abundance of caution, Governor Bush has not solicited any contributions on behalf of Right to Rise USA. *See* Response of Governor Bush in MURs 6915/6927 at 8 (Aug. 6, 2015).



In the Supplemental Complaint, ADLF is still unable to proffer any credible evidence to support their claims. Accordingly, there is no reason to believe that the Respondents have violated the Act or Commission regulations. The Commission should promptly dismiss this matter.

**I. Governor Bush did not make statements in which he referred to himself as a candidate for President during his January 2015 conversation with Governor Romney.**

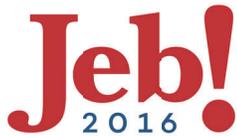
As previously explained in the August 6, 2015 response submitted on behalf of Governor Bush, Governor Bush did not decide to become a candidate for President until early June 2015. While Governor Bush was testing the waters, he repeatedly stated—both in public and in private—that he was not a candidate for President and had not decided whether to run for President. *See* Response of Governor Bush in MURs 6915/6927 at 3-5 (Aug. 6, 2015).

Commission regulations state that an individual may be a candidate if he makes or authorizes written or oral statements that refer to him as a candidate for a particular office. *See* 11 C.F.R. §§ 100.72(b)(3), 100.13(b)(3). The Commission has extensively analyzed whether an individual’s statements indicate that the individual has, in fact, decided to become a candidate.<sup>1, 2</sup>

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<sup>1</sup> *See, e.g.*, MUR 6776 (Innis) (finding no reason to believe that an individual had decided to become a candidate by stating “[a]s I prepare to declare for the race, please know that your support at this early state is of the utmost importance” because such a statement was “not [] enough to indicate that Innis had become a candidate”); MUR 6735 (Sestak) (finding reason to believe that an individual had decided to become a candidate by sending fundraising emails with statements suggesting that “Sestak was seeking office in combination with other phrases further indicating that Sestak had decided to become a candidate for federal office, such as ‘I will win because of you [] and your support’”); Statement of Reasons of Commissioner Ellen L. Weintraub in MUR 5945 (Lalor) at 3 (Mar. 16, 2009) (explaining that Commissioner Weintraub voted to find reason to believe that an individual had decided to become a candidate by making unqualified “present tense references to ‘my candidacy’ and ‘my campaign’” which “suggest that he was no longer testing the waters, but running for office”); MUR 5693 (Aronsohn) (finding reason to believe that an individual had decided to become a candidate by sending a solicitation letter that included statements such as “But I have the energy, the experience, and the determination to win this race. And as evidenced by the attached news article, I am ready to begin fighting for our future . . . now”; “Every dollar we receive in the next few weeks can help us prepare for this fight against Scott Garrett”; and “We have come a long way in just a few short weeks. And with your support, we can go the distance”); MUR 5363 (Sharpton) (finding reason to believe that an individual had decided to become a candidate by publishing a book including statements such as “It is on these qualities that I am seeking the Presidency of the United States in 2004”); MUR 5251 (Rogers) (finding reason to believe that an individual had decided to become a candidate after reportedly saying “I want to be your congressman and need your help to win the seat” at a fundraising event, and sending a fundraising letter that stated “I know that I will effectively serve your interests in Congress and that because of the close working relationship with the President and the leadership of Congress that I will immediately work for the benefit of Colorado”).

<sup>2</sup> The Commission has further explained that an individual’s inadvertent “slip-ups” have no bearing on whether the individual has, in fact, decided to become a candidate. “[Q]uickly corrected ‘slip ups’ do not establish [an individual] as a candidate.” Statement of Reasons of Chairman Robert D. Lenhard, Vice



ADLF alleges that Governor Bush “recently admitt[ed] that he privately decided in January 2015 to become a candidate for president,” yet did not register and report with the Commission until June 2015. Supplemental Complaint at 1. To support this allegation, the Supplemental Complaint exclusively relies on an interview Governor Bush gave on MSNBC’s *Morning Joe* on January 5, 2016, during which he said:

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 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.

*Id.* at 2-3.

However, this quote was taken out of context. Immediately following the interview, Jeb 2016’s communications director, Tim Miller, clarified “that the phrase ‘all in’ is common Bush parlance to convey seriousness”—and, with respect to Governor Bush’s conversation with Governor Romney, the seriousness with which Governor Bush took the testing-the-waters process. “He was referring to being ‘all in’ on the process—as in taking it seriously, giving his all,” Miller said.” Kyle Cheney, *Watchdog Accuses Bush of Illegally Conveying His Intention to Run*, Politico (Jan. 5, 2016), <http://www.politico.com/story/2016/01/jeb-bush-running-president-romney-217374>. Governor Bush’s conversation with Governor Romney was “[n]o different than what he was saying publicly at the time. . . . it is correct that he had the same posture on running privately as publicly.” *Id.*

As much as ADLF would like, Governor Bush’s shorthand statement regarding the rigor with which he was evaluating a potential candidacy was not an unequivocal indication that he had privately decided to run for president and did not transform Governor Bush into a presidential candidate in January 2015. As Jeb 2016’s communications director explained at the time, Governor Bush simply meant that he was “‘all in’ on the process”—that is, seriously testing the waters and considering whether to run for President. Governor Bush did not mean that he had privately decided to run for President prior to his meeting with Governor Romney. Indeed, contemporaneous news reports make clear that the Governor had not yet made a decision. *See, e.g.*, Jennifer Jacobs, *Jeb Bush Reaches Out to Iowa GOP Chairman*, Des Moines Register (Jan. 21, 2015), <http://www.desmoinesregister.com/story/news/2015/01/21/jeb-bush-calls-iowa-gop-chair/22116115> (“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.”).

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Chairman David M. Mason and Commissioners Michael E. Toner, Hans A. von Spakovsky, and Ellen L. Weintraub in MURs 5672/5733 (Davis), at 2 (Mar. 13, 2007). “Any other conclusion could run the risk of creating the impression that the Commission is waiting for prospective candidates to ‘slip up,’ at which point, it will exclaim, ‘Gotcha!’ and proclaim their ‘testing the waters’ periods over.” *Id.* To make or authorize written or oral statements that refer to an individual as a candidate for a particular office “requires some objective deliberateness, not a mere ‘slip up.’” *Id.*



**II. Governor Bush did not establish, finance, maintain, or control Right to Rise USA nor has he solicited funds for Right to Rise USA.**

Given that Governor Bush did not legally become a candidate until early June 2015, he was not subject to FECA's soft money restrictions until that time and could not possibly have violated FECA's soft money restrictions as alleged in the Supplemental Complaint. However, out of an abundance of caution, Governor Bush has not solicited any contributions on behalf of Right to Rise USA. *See* Response of Governor Bush in MURs 6915/6927 at 8 (Aug. 6, 2015). The response submitted on behalf of Governor Bush on August 6, 2015 fully addresses these allegations.

**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,

A handwritten signature in black ink that reads "Megan L. Sowards".

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