

McDonald Hopkins

A business advisory and advocacy law firm®

Direct: 1.305.704.3994

E-mail: rodriguez@mcdonaldhopkins.com

McDonald Hopkins LLC
200 South Biscayne Boulevard
Suite 2600
Miami, FL 33131

P 1.305.704.3990

F 1.305.704.3999

April 24, 2015

Via Facsimile and E-Mail

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

Re: MUR 6927

Dear Mr. Jordan:

This letter responds on behalf of Governor Jeb Bush to the Complaint filed by the Campaign Legal Center and Democracy 21 ("Complainants") and assigned MUR Number 6927. The allegations contained in Complainants' self-proclaimed April Fool's Day press stunt are groundless and based on factually inaccurate news reports citing anonymous sources, speculation and innuendo. Governor Bush has not moved beyond actively exploring the possibility of running for President of the United States as his repeated statements and those of his agents make clear. Should Governor Bush decide to seek federal office, any testing the waters expenses will be paid for and reported to the Commission in accordance with the law, regulations and with the advice of experienced counsel.

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. Neither organization has or will subsidize any testing the waters activities.

As this response will demonstrate in further detail below, Governor Bush has conducted all of his activities in full compliance with the law and regulations. Therefore, the Commission must dismiss this baseless Complaint, close the file and take no further action on this matter.

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

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

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whether or not he will become a candidate.² His actions are consistent with this posture: Governor 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. Furthermore, Governor Bush has not raised *any* funds for the purpose of testing the waters --- let alone more funds than would be reasonably necessary. Should Governor Bush decide to seek federal office in the future, he will disclose any 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, as the law and even Complainants clearly acknowledge.

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, since its formation, Right to Rise PAC has announced that it has contributed more than \$240,000 to federal candidates and Republican party committees across the country. In February, the PAC announced it had contributed \$122,800 to candidates and state

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-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>. M. Bender, "What We've Learned About Jeb Bush So Far," Mar. 24, 2015, *Bloomberg News*, (stating that Governor Bush describes himself at a "seriously-considering-the-possibility-of-running stage."), available at: <http://www.bloomberg.com/politics/articles/2015-03-24/what-we-ve-learned-about-jeb-bush-so-far>; B. Jordan, "Jeb Bush on Chris Christie: 'Who'", April 17, 2015, *Asbury Park Press*, (reporting that Bush responded to a question about a potential 2016 candidate by saying, "I'm excited about the possibility of running ... and there will be a long time to talk about the differences should this become an actual campaign."), available here: <http://www.app.com/story/news/politics/new-jersey/chris-christie/2015/04/17/jeb-bush-chris-christie-shots/25925617/>.

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party committees.³ In April, the PAC announced an additional \$117,800 in contributions to candidates and state parties.⁴ 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 expenditure-only 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.⁵ 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.

LEGAL ARGUMENT

This April Fool's publicity stunt⁶ relies upon factually inaccurate news reports citing anonymous sources, speculation and innuendo, but does not assert any facts that describe a violation of the Federal Election Campaign Act of 1971, as amended ("the Act").

Governor Bush is actively exploring the possibility of seeking federal office. Despite Complainants' erroneous assertions to the contrary, Governor Bush has not begun a campaign for federal office nor have he or his agents undertaken activities that would trigger candidacy.

Governor Bush Has Repeatedly Indicated He Is Not a Candidate

In particular, Governor Bush has not made or authorized written or oral statements that refer to himself as a candidate for federal office. To the contrary, as demonstrated in the representative sample of news articles cited above, Governor Bush has repeatedly made clear that he is not a presidential candidate and has not decided whether to become a candidate.

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 T. Beaumont, "Bush Details Second Round of Political Contributions," April 7, 2015, *Associated Press*, available at: <http://www.wral.com/bush-pac-details-second-round-of-political-contributions/14565883/>.

⁵ 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/>.

⁶ "Reform Groups File FEC Complaints Against Presidential Hopefuls," Democracy 21 Press Release issued March 31, 2015 (noting that the groups were filing FEC complaints "on April Fools' Eve." Press Release Available here: <http://www.democracy21.org/uncategorized/reform-groups-file-fec-complaints-against-presidential-hopefuls/>).

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Nevertheless, as "evidence" that Governor Bush has gone beyond testing the waters and become a candidate within the definition included in the Act, Complainants cite to newspaper stories that include references by reporters to "a budding campaign" or "an expected presidential bid", a quote from an anonymous source purporting to recount remarks by Governor Bush at a fundraiser, and the Iowa Republican Party Chairman's broad-brush description of the party's annual Lincoln Day fundraising dinner. The weakness of these examples is readily apparent. Complainants ought to know that such speculative, conditional, generalized or even patently false statements by individuals who are neither agents of Governor Bush or Right to Rise PAC are irrelevant to the Commission's analysis of this issue. As 11 CFR 100.72(b)(3) makes clear, statements of candidacy must be made by an individual or his or her agent in order to be relevant to an analysis of whether an individual has gone beyond the bounds of the testing the waters regulations. Indeed, the only direct quote by Governor Bush regarding this matter included in Complainants' flimsy "facts" section includes a clear and unambiguous statement by Governor Bush that he has not gone "beyond the consideration of the possibility of running."⁷

Governor Bush Has Not Raised Funds for Purposes of Testing the Waters

Complainants also allege that Governor Bush has triggered candidacy by raising funds "in excess of what could reasonably be expected to be used for exploratory activities." As a point of fact, Governor Bush has not raised funds for any testing the waters activities. Indeed, Complainants' own recitation of the regulations acknowledges that testing the waters activities may be conducted with a prospective candidate's personal funds so long as they are properly recorded and reported should the individual later declare candidacy.⁸

Complainants' conveniently ignore this possibility and spuriously assert with no basis that the funds raised by Right to Rise PAC or Right to Rise Super PAC have been or will be used to finance testing the waters activities by Governor Bush. To the contrary, Governor Bush's testing the waters activities are being conducted independently of any Right to Rise PAC or Right to Rise Super PAC activities, in accordance with federal campaign finance law and regulations. 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.⁹ 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, Inc. Has Not Raised Funds for Testing the Waters Purposes or Conducted Testing the Waters Activities on Behalf of Governor Bush

Right to Rise PAC has not used and will not use any resources to fund Governor Bush's "testing the waters" activities. Not surprisingly, some news reports do not accurately summarize the purpose

⁷ See Complaint at ¶17.

⁸ See Complaint at ¶¶36, 38.

⁹ See, e.g., Advisory Op. 1981-32 (Askew); Advisory Op. 1979-26 (Grassley).

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and activities of Right to Rise PAC. One flatly inaccurate report cited by Complainants erroneously states that "[f]ormer Florida Gov. Jeb Bush formally announced Tuesday that he will launch a political action committee tasked with 'exploring a presidential bid.'"¹⁰ Though not excerpted by Complainants, a line later in the same story lays bare the reporters' ignorance as to the PAC's purpose. The reporter writes, "it is unclear if the new PAC will function in the same capacity as a presidential exploratory committee" yet he offers no indication that the reporter attempted to contact the PAC or a spokesperson for the Governor to clarify his question.

The Commission should not rely on a hasty and inaccurate blog post when it can instead review the plain language of Governor Bush's Facebook post available here: <https://www.facebook.com/notes/jeb-bush/a-note-from-jeb-bush/619074134888300>. It very clearly includes two separate announcements: The first announced the Governor's decision to "actively explore the possibility of running for President of the United States." In a separate paragraph, the Governor announced that he would "also plan to establish a Leadership PAC that will help me facilitate conversations with citizens across America to discuss the most critical challenges facing our exceptional nation." He succinctly and correctly stated that, "[t]he PAC's purpose will be to support leaders, ideas and policies that will expand opportunity and prosperity for all Americans."

The Commission may also wish to look to a contemporaneous article by the Associated Press regarding Governor Bush's December 16, 2015 announcements. Summarizing the Facebook post the Associated Press reported that "[f]ormer Florida Gov. Jeb Bush on Tuesday took his most definitive step yet toward running for president, announcing plans to 'actively explore' a campaign and form a new political operation allowing him to raise money for like-minded Republicans." (emphasis added). The story goes on to state that the Governor "will start his own leadership political action committee in January which will allow him to raise money and use it to support candidates in other races."¹¹

It is representative of the quality of the Complainants' allegations that they choose to present the Commission with a cherry-picked and flatly inaccurate account of the facts as the chief basis for their spurious claims.

Right to Rise PAC Events Are Not 'Testing the Waters' Activities

Complainants also point to Right to Rise PAC fundraisers as evidence of testing the waters activity. 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.

¹⁰ Complaint at ¶4.

¹¹ G. Fineout, "Jeb Bush to 'Actively Explore' Run for President, *Associated Press*, Dec. 16, 2014, available here: <http://www.tallahassee.com/story/news/local/2014/12/16/jeb-bush-to-actively-explore-run-for-president/20476247/>

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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 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.¹²

Right to Rise Super PAC Has Not Raised Funds for Testing the Waters Purposes or Conducted Testing the Waters Activities on Behalf of Governor Bush

Complainants also erroneously contend that funds raised by an independent expenditure-only committee, Right to Rise Super PAC, should be considered in an analysis of whether Governor Bush has raised more funds than necessary for exploratory activities. As a factual matter, Governor Bush does not participate in the governance of Right to Rise SuperPAC, direct any expenditures it may choose to make, or solicit funds on its behalf (though the law would clearly permit a private citizen such as Governor Bush to do so). Furthermore, under no circumstance has Governor Bush accepted nor will he accept an in-kind contribution from an independent-expenditure only committee for the purpose of testing the waters activities. Complainants' inclusion of several speculative news articles regarding the independent committee's fundraising activities and its potential expenditures provide no evidence that Governor Bush has accepted any such contribution.

Yet, under Complainants' novel and incorrect formulation of the law, they argue the Commission should impute an independent group's fundraising to its special guest for purposes of determining whether that individual has amassed more funds than is reasonably necessary to determine whether to seek federal office. 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. The practical result of this absurd legal theory would preclude any individual considering the possibility of seeking federal office however far in the future from associating with ---- even as a special guest --- an independent-expenditure only committee at any point prior to becoming a federal candidate.

Therefore, Complainants' baseless allegations with respect to Right to Rise Super PAC are predicated on a faulty legal theory and must be dismissed.

¹² 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>.

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CONCLUSION

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Raquel A. Rodriguez', with a stylized flourish at the end.

Raquel A. Rodriguez



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

FAX 202-219-3923

MUR# 6927

Name of Counsel: Raquel A. Rodriguez

Firm: McDonald Hopkins LLC

Address: 200 South Biscayne Boulevard, Suite 2600, Miami, FL 33131

Telephone: (305) 704-3994 **Fax:** (305) 704-3999

E-mail: rrodriguez@mcdonaldhopkins.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4-18-15

Date

Signature (Respondent/Agent)

Title

RESPONDENT: John Ellis Bush
(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: The Biltmore Hotel & Conference Center, 1200 Anastasia Avenue, Suite 500
(Please Print) Coral Gables, Florida 33134

Telephone (H) _____ **(W):** _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(1)(2)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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