

Kim Collins

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April 24, 2015

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA FACSIMILE: (202) 219-3923

Re: MUR 6927; Complaint against Right to Rise PAC, Inc., et al.

Dear Mr. Jordan:

We are writing this letter on behalf of Right to Rise PAC, Inc. (the "PAC"), James Robinson in his official capacity as Treasurer of the PAC, Right to Rise Super PAC, Inc. (the "Super PAC"), and Charles R. Spies, in his official capacity as Treasurer of the Super PAC (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by two self-styled campaign reform groups funded by liberal activist George Soros, the Campaign Legal Center and Democracy 21 ("Complainants"). The Complaint was clearly filed for publicity and Complainants' own fundraising purposes, and is based exclusively on flawed legal theories, speculation and innuendo. The asserted facts on their face do not support a reason to believe finding in this matter, and the Complaint should be dismissed.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). *See* 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

The PAC and Super PAC are not named as Respondents in the Complaint, but apparently an over-eager intake clerk in the Commission's Office of General Counsel took it upon him or herself to attempt to include them as respondents. Nevertheless, despite Complainants' vast resources and motivation to create some sort of scenario in the Complaint that, if proven, would constitute a violation of the Act by Respondents, Complainants are unable to provide any

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evidence that Respondents have violated the Act other than their own self-serving and politically charged conclusions about Respondents' activities. It should be noted that Complainants frequently make public their disagreements with First Amendment protections for political speech¹ and the organizations and their staffs are committed advocates for restrictions on political speech. As such, Complainants raise funds for their pro-regulatory lobbying efforts through periodically filing FEC complaints hyperbolically asserting violations of the Act by (usually) conservative-leaning organizations. We note this ideological agenda and practice not to pass judgment upon Complainants' business model, but instead to reinforce Complainants' motivation in manufacturing the vast majority of their complaints with the Commission.

The current Complaint is no different, as Complainants once again rely on unsupported allegations and innuendo, this time from several news articles, and their own politically motivated and legally flawed conclusions about Respondents' activities. The Complainants' accusations are without legal or factual support. Each spurious allegation is addressed in turn below.

Motion for Commissioner Ravel's Recusal

As an initial matter, we respectfully request that Chairwoman Ann Ravel recuse herself from MUR 6927. In Chairwoman Ravel's March 31 Washington Post op-ed, she prejudices the merits of this matter, misconstrues the law, and makes false presumptions before a proceeding has even begun. Her Washington Post op-ed can be seen as nothing other than direct support for Complainants' hollow allegations, masked as a benign editorial piece. Chairwoman Ravel's apparent predisposition about Respondents' activities renders her incapable of providing a fair and impartial consideration in this matter. For that reason, we are filing the attached Motion for Recusal.

We also have substantial concerns that Chairwoman Ravel may have run afoul of federal law by disclosing the allegations contained in the current complaint to the public in her March 31 Washington Post op-ed. The Act strictly prohibits Commissioners, or any employee of the Commission, from making public the contents of any complaint the Commission receives. *See* 52 U.S.C. 30109(a)(12)(A). The Commission's regulations echo the Act's confidentiality requirement, stating that "no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification

¹ *See* Paul Blumenthal, *Super PAC Corporate Donations: Not All Contributions Are Equal*, HUFFINGTON POST, Aug. 11, 2011, available at http://www.huffingtonpost.com/2011/08/11/super-pac-corporate-donations_n_924865.html. ("We are just seeing the beginning of what could turn out to be an onslaught of corporate money being injected into our congressional and presidential campaigns," Democracy 21 President Fred Wertheimer told The Huffington Post. "The *Citizens United* decision has opened up Pandora's Box here.") and *Id.* ("The Campaign Legal Center's FEC Program Director, Paul S. Ryan, previously told The Huffington Post, 'There's a big difference between humans and corporations that the Supreme Court ignored in their *Citizens United* decision.'")

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sent, the investigation conducted, or the finding made.” 11 CFR 111.21(a). Should such confidential information be disclosed to the public by an employee or member of the Commission, the Act makes clear “[a]ny member or employee of the Commission, or any other person, who violates the provisions of subparagraph (A) shall be fined not more than \$2,000” and that “[a]ny such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than \$5,000.” 52 U.S.C. 30109(a)(12)(B).

The D.C. Circuit has emphasized the need for the Commission to keep ongoing matters confidential, even if the media has already disclosed the details of a complaint. In its *In re: Sealed Case 00-5116* decision in 2001, the D.C. Circuit made clear that:

Stories in the media have no bearing on the confidentiality requirement Congress imposed on the FEC. It does not matter that the media has published some information concerning the investigation—the FEC has a straightforward duty not to disclose information about an ongoing investigation. Only the subject’s written consent can relieve the FEC of this duty.²

In her Washington Post op-ed, Chairwoman Ravel wrote that “[s]ome advocacy organizations have already made allegations regarding testing-the-waters activity, in complaints received by the FEC after this commentary was submitted to The Post.” Coincidentally, Ms. Ravel’s op-ed was published the same day that Complainants filed their complaint and made it public through an accompanying media blitz.³ It is hard to imagine that Chairwoman Ravel was referring to any complaint other than Democracy 21 and the Campaign Legal Center’s March 31 complaint against Respondents, as there were simply no other campaign reform advocacy organizations that filed complaints during the time period surrounding Ms. Ravel’s op-ed.

It is one thing for advocacy groups with a political agenda to publicly disclose the contents of their complaints—after all, it is their business model to gin up and publicize complaints, and then go to their donors and brag about how they are dealing with a “problem” that only they have identified. It is quite another thing entirely for the Chairwoman of the Commission to defy federal law and disclose the details about complaints that have been filed with the Commission. Regardless of the fact that Complainants had already publicly disclosed the content of their complaint through various media outlets, under the D.C. Circuit’s conclusions in *In re Sealed Case 00-5116*, Chairwoman Ravel still had a binding legal obligation not to publicly disclose any details about the content of the complaint, or any complaints for that matter, without the written consent of the Respondents. She did just that in her Washington Post

² *In re Sealed Case 00-5116*, 237 F.3d 657, 670 (D.C. Cir 2001).

³ See Democracy21.org, Reform Groups File FEC Complaints Against Presidential Hopefuls, <http://www.democracy21.org/uncategorized/reform-groups-file-fec-complaints-against-presidential-hopefuls/> (last visited April 15, 2015); see also, Kyle Cheney, *Group Files FEC Complaints Against Jeb Bush, Other Potential Candidates*, Politico, March 31, 2015, available at <http://www.politico.com/story/2015/03/fec-complaint-jeb-bush-rick-santorum-scott-walker-martin-omalley-116552.html>.

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op-ed when she said “[s]ome advocacy organizations have already made allegations regarding testing-the-waters activity, in complaints received by the FEC.” If it is found that Chairwoman Ravel improperly disclosed the contents of the complaint to the media, we ask that the Commission impose on her the fines required by 52 U.S.C. 30109(a)(12)(B). At the very least, such improper disclosures by Chairwoman Ravel only further bolster the need for her to recuse herself from this matter.

Complaint Response Analysis

Right to Rise PAC’s Honorary Chairman, Governor Jeb Bush, is Not a Candidate

Before focusing on Complainants’ allegations against Respondents, it is important to address their baseless argument that the PAC’s Honorary Chairman, former Florida Governor Jeb Bush, is effectively a “candidate” for federal office. The majority of the Complaint relies on the false premise that Governor Bush is a candidate for federal office. These allegations of wrongdoing set forth by Complainants are dependent on this flawed conclusion. Complainants know that their arguments fail without this self-serving supposition, which is why Complainants spend the majority of the Complaint conjuring up creative (yet defective) legal theories and making unsupported assertions about Governor Bush’s activities as a private citizen in order to arrive at their desired conclusion. These hyperbolic assertions, based solely on Complainants’ self-serving construal of a number of news articles, have no grounding in actual law.

As has consistently been made clear, Governor Bush is **not** a candidate for federal office. As a private citizen, Governor Bush enjoys a First Amendment right to associate with any political organization of his choosing, including those that share his policy views and support for conservative candidates across the country. He may lend his name to such political organizations for fundraising purposes, attend, speak at, and solicit contributions to such groups at their events, and serve as their Honorary Chairman, as is the case with the PAC. Such activities do not somehow transform Governor Bush into a candidate for federal office, and they certainly do not subject Governor Bush to the Commission’s registration and reporting requirements. Because Governor Bush is not a candidate for federal office, the Complaint is factually and legally deficient on its face.

Right to Rise PAC is Not Being Used to Raise Money for “Testing the Waters” Purposes

Complainants erroneously maintain that the PAC is being used to raise money for the “testing the waters” efforts of its Honorary Chairman, Governor Bush. This assertion is not correct. If Complainants had performed even a cursory review of the PAC’s website, they would have learned that the PAC is organized to “support candidates who want to restore the promise of America with a positive, conservative vision of reform and renewal.” Such an objective is commonplace among leadership PACs and well within the legally permitted activities of a federal political action committee. In fact, raising money to support other candidates is precisely what the PAC has done. In February, the PAC made over \$122,000 in contributions to conservative candidates and state party committees across the country, and earlier this month

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made an additional \$117,800 in contributions to conservative candidates and state party committees.⁴ By comparison, the PAC has made significantly more contributions to candidates and party committees in just over three months of its existence than the top Democrat leadership PAC made to candidates and party committees in the months leading up to the 2014 midterm elections.⁵

Complainants also seem to think Governor Bush's statement on his personal Facebook page that the PAC will "facilitate conversations with citizens across America to discuss the most critical challenges facing our exceptional nation"⁶ is somehow evidence that the PAC is being used for "testing the waters" purposes. Aside from having no legal relevance and doing nothing to bolster Complainants' argument, such statements are both common and legally permissible for individuals to make to promote the policies and objectives of political action committees, especially, as is the case here, when made by a PAC's Honorary Chairman.

Contrary to Complainants' misguided contentions, none of the funds raised by the PAC have been used for "testing the waters" activities by Governor Bush. The mission of the PAC, as stated on its website, "is to support candidates who share our optimistic, conservative, positive vision for helping every American get ahead." In the few months since its creation, the PAC has already followed through on this mission, making over \$240,000 in contributions to candidates and parties that share the PAC's conservative vision for America. There are simply no provisions of the Act or the Commission's regulations that would prohibit Governor Bush, a private citizen, from exercising his First Amendment rights to support this mission by serving as the PAC's Honorary Chairman, participating in the PAC's fundraisers, speaking to supporters at the PAC's events, and facilitating contributions to conservative candidates.

Governor Bush is Not Subject to the Soft Money Ban Because He is Not a Candidate

Complainants take their flawed logic a step further in their assertion that Governor Bush violated the Act's soft money ban by supposedly raising money for Right to Rise Super PAC, Inc.⁷ In doing so, they cite a statute that bans "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 or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office"⁸ from soliciting funds outside the federal limits. Of course, Governor Bush is not a candidate, the Super PAC was not established by Governor Bush, and Governor Bush does not direct or control the Super PAC's fundraising or other activities, so the statute cited by Complainants in paragraph 49 of their Complaint is wholly irrelevant and inapplicable in this case.

⁴ Press releases issued by the PAC announcing these contributions are attached as Exhibit A.

⁵ See FEC Reports for AmeriPAC: The Fund for a Greater America, the leadership PAC for House Minority Whip Steny Hoyer.

⁶ Complaint at ¶ 4.

⁷ Complaint at ¶ 48-49.

⁸ 52 U.S.C. § 30125(e)(1).

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In reality, the extent of Governor Bush's involvement with the Super PAC is his appearance as a special guest at Super PAC fundraising events, which would be permissible even if Governor Bush was a candidate for federal office.⁹ Similarly, even if Governor Bush did establish, direct, control or raise unlimited contributions for the Super PAC, which he has not, it would be within his First Amendment rights as a private citizen to do so.

Indeed, the Commission acknowledged as recently as February in MUR 6775, a matter involving Ready for Hillary PAC and Hillary Clinton, that its regulations concerning a candidate's interaction with independent expenditure-only committees do not extend to *potential* candidates who have made no decision to run for federal office and remain as private citizens.¹⁰

Conclusion

In presenting politically motivated and factually and legally unsubstantiated arguments, Complainants have failed to demonstrate with any evidence that Respondents have violated any provision of the Act or the Commission's regulations. Instead, Complainants have yet again invoked an administrative process as a means to continue their thinly veiled assault on the First Amendment and their political opponents' constitutional rights of political speech. The Complaint is based on frivolous legal theories and malicious speculation. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



Charles R. Spies
James E. Tyrrell III
CLARK HILL PLC

*Counsel to Right to Rise PAC, Inc. and
Right to Rise Super PAC, Inc.*

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⁹ The Commission made clear in Advisory Opinion 2011-12 (Majority PAC and House Majority PAC) that candidates "may attend, speak at, or be featured guests at fundraisers for [independent expenditure-only committees], at which unlimited individual, corporate, and labor organization contributions will be solicited, so long as the...candidates...restrict any solicitations they make to funds subject to the limitations, prohibitions, and reporting requirements of the Act."

¹⁰ See MUR 6775, Ready for Hillary PAC, Factual and Legal Analysis, Feb. 12, 2015.

Exhibit A



FOR IMMEDIATE RELEASE
February 13, 2015

CONTACT: Press Shop
press@righttorisepac.org

RIGHT TO RISE PAC RELEASES FIRST ROUND OF CANDIDATE CONTRIBUTIONS

Tallahassee, FL – Today, the Right to Rise PAC released its first round of contributions to conservative candidates running in 2016 totaling over \$100,000.

"I'm proud to support great conservative candidates who are committed to renewing America's promise by expanding opportunity and igniting upward mobility in our country," said Governor Jeb Bush, Right to Rise PAC's Honorary Chairman. "In the coming months, our PAC will continue to support conservative candidates and conservative policies that will ensure all Americans have the right to rise."

Right to Rise PAC Contributions:

- Senator Kelly Ayotte (\$5,200)
- Senator Richard Burr (\$5,200)
- Senator Chuck Grassley (\$5,200)
- Senator Rob Portman (\$5,200)
- Senator Tim Scott (\$5,200)
- Representative Barbara Comstock (\$5,200)
- Representative Trey Gowdy (\$5,200)
- Representative Frank Guinta (\$5,200)
- Representative Joe Heck (\$5,200)
- Representative Mia Love (\$5,200)

- Representative Martha McSally (\$5,200)
- Representative Elise Stefanik (\$5,200)
- Representative David Young (\$5,200)
- Representative Lee Zeldin (\$5,200)
- Republican Party of Florida (\$10,000)
- Republican Party of Iowa (\$10,000)
- Nevada Republican Party (\$10,000)
- New Hampshire Republican State Committee (\$10,000)
- South Carolina Republican Party (\$10,000)

Total Amount Given: \$122,800

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PAID FOR BY RIGHT TO RISE PAC, INC.
NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE.
RIGHTTORISEPAC.ORG



FOR IMMEDIATE RELEASE

April 7, 2015

CONTACT: Press Shop

press@righttorisepac.org

RIGHT TO RISE PAC RELEASES SECOND WAVE OF CANDIDATE CONTRIBUTIONS

Tallahassee, FL — Today, the Right to Rise PAC released its second round of contributions to conservative candidates and state parties totaling over \$100,000.

"I'm proud to support conservative leaders who are dedicated to expanding economic opportunity for all and restoring America's place in world," said Governor Jeb Bush, Right to Rise PAC's Honorary Chairman.

"The Right to Rise PAC will continue to aid candidates who want to restore the promise of America with a positive, conservative vision of reform and renewal."

Right to Rise PAC Contributions:

- Senator Roy Blunt (\$5,400)
- Senator James Lankford (\$5,400)
- Senator Johnny Isakson (\$5,400)
- Senator John Thune (\$5,400)
- Senator Lisa Murkowski (\$5,400)
- Senator Pat Toomey (\$5,400)
- Senator Thom Tillis (\$2,600)
- Ed Gillespie (\$2,600)
- Representative Rick Allen (\$5,400)
- Representative Bradley Byrne (\$5,400)

- Representative Carlos Curbelo (\$5,400)
- Representative Mario Diaz-Balart (\$5,400)
- Representative Cresent Hardy (\$5,400)
- Representative Jalme Herrera-Beutler (\$5,400)
- Representative Evan Jenkins (\$5,400)
- Representative John Katko (\$5,400)
- Representative Adam Kinzinger (\$5,400)
- Representative Raul Labrador (\$5,400)
- Representative Ileana Ros-Lehtinen (\$5,400)
- Representative Mike Simpson (\$5,400)
- Representative David Valadao (\$5,400)
- Republican Party of Virginia (\$10,000)

Total Amount Given: \$117,800

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PAID FOR BY RIGHT TO RISE PAC, INC.
NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE
RIGHTTORISEPAC.ORG

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BEFORE THE FEDERAL ELECTION COMMISSION STATEMENT OF DESIGNATION OF COUNSEL

MUR # 6927

Name of Counsel: Charles R. Spies
James E. Tyrrell III
Clark Hill PLC
601 Pennsylvania Avenue NW
North Building, Suite 1000
Washington, DC 20004

Telephone: (202) 572-8663
Fax: (202) 572-8683

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.

04/21/15



Treasurer

Date

Respondent/Client Signature

Title

Respondent/Client: Right to Rise Super PAC, Inc.
Charles R. Spies, in his official capacity as Treasurer
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North Building, Suite 1000
Washington, DC 20004

Telephone - Home:

Business: (202) 572-8663

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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BEFORE THE FEDERAL ELECTION COMMISSION STATEMENT OF DESIGNATION OF COUNSEL

MUR # 6927

Name of Counsel: Charles R. Spies
James E. Tyrrell III
Clark Hill PLC
601 Pennsylvania Avenue NW
North Building, Suite 1000
Washington, DC 20004

Telephone: (202) 572-8663
Fax: (202) 572-8683

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.

04/17/2015
Date


Respondent/Client Signature

Treasurer
Title

Respondent/Client:

Right to Rise PAC, Inc.
James P. Robinson, in his official capacity as Treasurer
P.O. Box 14349
Tallahassee, FL 32317

Telephone - Home:

Business: (754) 800-4819

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