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Jeff S. Jordan
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Federal Election Commission
999 E Street, NW
Washington, DC 20463
**VIA FACSIMILE: (202) 219-3923**

**Re: MUR 6971: Response to Complaint from Right to Rise USA, et al.**

Dear Mr. Jordan:

We are writing this letter on behalf of Right to Rise USA ("RTR"), Charles R. Spies, in his official capacity as Treasurer of RTR, Florida Finance Strategies ("FFS"), and its principals, Trey McCarley and Kris Money, in response to the Complaint filed in the above-referenced matter by the American Democracy Legal Fund. The Complaint is just the latest edition in a long line of frivolous, politically-charged complaints filed by ADLF, a Hillary Clinton front-group run by her lackeys, David Brock and Brad Woodhouse. The Complaint offers nothing more than the same unsupported and hyperbolic allegations and innuendo that have riddled all of ADLF's complaints this election cycle—all against conservative and Republican organizations. It is frivolous and should be promptly 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.*

ADLF erroneously argues that because Trey McCarley and Kris Money (the "FFS Consultants") briefly had among their fundraising consulting client mix both Jeb 2016, Inc., the principal presidential campaign committee for Governor Jeb Bush (the "Campaign"), and RTR, that they consequently, and merely by virtue of these multiple clients, "solicited soft money" for the Bush Campaign in violation of the soft money ban. Such a speculative assertion is not only

factually inaccurate, but ADLF's line of reasoning is not supported by any reasonable reading of the Act, the Commission's regulations, or any relevant case law or Commission precedent.

***Factual Background***

ADLF's suggestion that the FFS Consultants solicited soft money for RTR while acting in their capacity as agents for the Campaign is patently false and not supported by their actual relationships with both entities. In reality, FFS provided fundraising consulting services to RTR in early 2015, prior to Governor Bush becoming a candidate (and/or establishing the Campaign). During that period, the FFS Consultants' duties for RTR included soliciting potential donors to financially support RTR. Shortly after Governor Bush became a candidate, FFS was engaged by LKJ, LLC ("LKJ"), a fundraising consulting firm, to provide fundraising consulting services to its clients, which included the Campaign. The contract between FFS and LKJ contained a provision requiring that:

> While acting on behalf of an LKJ client that is subject to FECA's soft money restrictions at 52 U.S.C. §30125(e)(1), Consultant shall not solicit, receive, direct, transfer, spend, or disburse funds, or any other thing of value, that do not comply with the amount limitations, source prohibitions, and reporting requirements of FECA.

Moreover, the agreement demanded that:

> In providing services to Consultant's other clients, Consultant shall have no authority, actual or apparent, to act on behalf of LKJ or its clients and shall not be an agent of LKJ or its clients. In providing services to Consultant's other clients, Consultant shall not hold itself out or otherwise represent itself as an agent of LKJ or its clients.

In July of 2015, FFS was also engaged by CGLW, LLC, another fundraising consulting firm, to provide consulting services to its clients, which included RTR. FFS's contract with CGLW contained a similar provision, requiring that:

> In providing services to Consultant's other clients, Consultant shall have no authority, actual or apparent, to act on behalf of CGLW or its clients and shall not be an agent of CGLW or its clients. In providing services to Consultant's other clients, Consultant shall not hold itself out or otherwise represent itself as an agent of CGLW or its clients.

Importantly, FFS's duties under its consulting agreement with CGLW did not include the making of direct fundraising solicitations for CGLW's clients, including RTR. In fact, after the

formation of the Bush Campaign in June of 2015, the FFS Consultants did not make any direct fundraising solicitations for RTR. Instead, their duties only included occasional participation in internal discussions and conference calls with the RTR finance committee. And, at no time did the FFS Consultants utilize LKJ's or the Campaign's resources to perform such duties for CGLW and RTR.

It should also be noted that during this period, FFS had many other clients for which they performed fundraising consulting services, including Florida Commissioner of Agriculture Adam Putnam, Florida Speaker Steve Crisafulli, Florida State Representative Dana Young, Florida State Representative Jim Boyd, and Florida State Senator Wilton Simpson.



***Legal Analysis***

ADLF's "soft money" solicitation allegations against the FFS Consultants are entirely refuted by the fact that FFS, pursuant to its contract with CGLW, did not engage in any direct solicitations of funds for RTR. However, even assuming arguendo that FFS solicited contributions for RTR after Governor Bush became a candidate and/or the Bush Campaign was created, which it did not, it would have been permissible and consistent with Commission precedent. In fact, the Commission expressly permitted this type of "dual hat" arrangement for fundraising consultants in its recent Advisory Opinion 2015-09 (Senate Majority PAC and House Majority PAC), approved this past November.

In AO 2015-09, the Commission reasoned that "[w]hile the Act 'restricts the ability of Federal officeholders, candidates, and national party committees to raise non-Federal funds,' it 'does not prohibit individuals who are agents of the foregoing from also raising non-Federal funds for other political parties or outside groups.'"[1] The Commission further concluded that:

> an individual is subject to the Act's "soft money prohibitions" only when acting on behalf of a candidate, officeholder, or party committee. In prior advisory opinions, the Commission has concluded that individuals who are agents of federal candidates may solicit funds on behalf of other organizations if the individuals act in their own capacities "exclusively on behalf of" the other organizations when fundraising for them, "not on the authority of" the candidates, and raise funds on behalf of the candidates and the other organizations "at different times."[2]

[1] Definition of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4979 (Jan. 31, 2006). Moreover, a federal candidate "can only be held liable for the actions of an agent when the agent is acting on behalf of the [candidate], and not when the agent is acting on behalf of other organizations or individuals." Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,083 (Jul. 29, 2002).

[2] Citing Advisory Opinion 2003-10 (Nevada State Democratic Party et al.) at 5; Advisory Opinion 2007-05 (Iverson) at 5.

As stated above, the FFS Consultants did not solicit contributions to RTR after Governor Bush became a candidate for federal office. However, even if their duties for CGLW did include soliciting funds for RTR, it would have been expressly permitted under AO 2015-09. Moreover, the tasks that the FFS Consultants performed for CGLW and its client, RTR, did not utilize any resources of LKJ, or its client, the Bush Campaign.

Because the FFS Consultants did make any direct solicitations of funds for CGLW, and its client RTR, after Governor Bush established his Campaign, the allegations in the complaint should be dismissed on this fact alone. However, even if the FFS Consultants had solicited contributions to RTR after the Campaign was established, it is important to emphasize the utter irrationality of ADLF's legal theories.



ADLF argues that as "fundraising consultants for the campaign," the FFS Consultants "had authority to solicit contributions" for the Campaign, "and thus, were agents" of the Campaign. Compl. at 5. ADLF further argues that "as agents for the campaign," the FFS Consultants" were prohibited from raising money in their capacities as agents for Mr. Bush" and that "while serving as Mr. Bush's agent," they "solicited soft money" for RTR "to support Mr. Bush's federal campaign." Compl. at 5.

ADLF's entire argument relies on the false premise that political fundraising consultants are always acting as "agents" for all of their clients all of the time. In making this argument, ADLF suggests that prominent professional fundraising consultants with multiple clients can never take off their candidate "hats" if one of their clients happens to be a federal candidate. If this was actually the law, both Mr. McCarley and Mr. Money would have been soliciting contributions for LKJ, and its client, the Bush Campaign, every time they ran fundraisers for Agriculture Commissioner Adam Putnam, Florida Speaker Steve Crisafulli, or any of their other clients. This line of reasoning is absurd on its face and based solely on legal theories fabricated by ADLF out of whole cloth.

***Conclusion***

ADLF has failed to present any evidence at all that the FFS Consultants violated the soft money ban by virtue of their dual role as fundraising consultants for the Bush Campaign, through LKJ, LLC, and Right to Rise USA, through CGLW, LLC. Likewise, ADLF has not presented any evidence that RTR violated the Act or the Commission's regulations. In typical fashion, ADLF offers only politically motivated conjecture and frivolous legal theories. In presenting such hollow arguments, ADLF identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). ADLF's partisan tactics have no place before the Commission, and the Complaint should be summarily dismissed.

Thank you for your prompt consideration of these matters, 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
*Counsel to Right to Rise USA, Florida Finance Strategies, Trey McCarley, and Kris Money*