2 .	TEDERAL EL	ECTION COMMISSION
3	FIRST GENERAL COUNSEL'S REPORT	
4 5 6 7 8 9		MUR: 6984 DATE COMPLAINT FILED: Nov. 10, 2015 DATE OF NOTIFICATION: Nov. 17, 2015 DATE OF LAST RESPONSE: Jan. 14, 2016 DATE ACTIVATED: Feb. 24, 2016
10 11 12 13 14	·	ELECTION CYCLE: 2016 EARLIEST SOL: Aug. 18, 2020 LATEST SOL: Aug. 20, 2020
15	COMPLAINANT:	American Democracy Legal Fund
16 17 - 18	RESPONDENTS:	John Ellis "Jeb" Bush
19 20 21		Jeb 2016, Inc. and William Simon in his official capacity as treasurer
22 23 24		Right to Rise USA and Charlie R. Spies in his official capacity as treasurer
25 26 27 28	RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30116(a), (f) 52 U.S.C. § 30125(e)(1)(A) 11 C.F.R. § 109.21
29	INTERNAL REPORTS CHECKED:	Disclosure Reports
30 31 32	FEDERAL AGENCIES CHECKED:	None
33	I. INTRODUCTION	
34	The Complaint in this matter allege	es that Right to Rise USA and Charlie Spies in his
35	official capacity as treasurer ("RTR"), the self-described "leading independent super PAC	
36	supporting Jeb Bush's campaign for President," made prohibited in-kind contributions to Bus	
37	by coordinating two direct mailings through a common vendor. The Complaint further allege	
38	that Bush and his principal campaign comr	nittee, Jeb 2016, Inc. and William Simon in his

Internet Archive, WAYBACK MACHINE, https://archive.org/web/web.php (searching for "https://righttorisesuperpac.org").

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- official capacity as treasurer ("Jeb 2016"), impermissibly accepted RTR's contributions.
- 2 Respondents deny the allegations.
- 3 As discussed below, the limited information provided in the Complaint does not appear to
- 4 establish that Respondents engaged in conduct that would render the communications
- 5 coordinated as a result of the common vendor.

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we recommend that the Commission

take no action at this time with regard to the allegations in this Complaint

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## II. FACTS

- In August 2015, RTR produced and distributed two mail pieces (collectively, the
- "Mailers") supporting presidential candidate Jeb Bush.<sup>3</sup> The first mailer ("Iowa Mailer")
- 13 featured a picture of Bush flanked by the Cedar Rapids skyline and the words "Why Jeb?" The
- 14 reverse side featured a second picture of Bush, two quotes lauding Bush's work as the governor
- of Florida, and the words "Jeb" and "Real Conservative Results." It also included a disclaimer

<sup>&</sup>lt;sup>3</sup> See Compl. at 2 (Nov. 10, 2015). On August 20, 2015, RTR announced via Twitter that it had distributed the Mailers in Iowa and New Hampshire. *Id.* at 3-4.

See id., Ex. A.

<sup>.</sup> *Id*.

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- stating that it had been paid for by RTR and was not authorized by any candidate or candidate's
- 2 committee.<sup>6</sup> According to RTR, the first piece was sent to more than 86,000 recipients in Iowa.<sup>7</sup>
- The second mailer ("New Hampshire Mailer") featured a picture of Bush, waving to a
- 4 crowd on a tree-lined street, with the caption "Why Jeb?" The back of the mailer featured a
- 5 picture of Bush, statistics on his work as governor of Florida and the words "Jeb," "Real
- 6 Conservative Results," "Jeb will bring fiscal common sense to America," and "It starts in New
- 7 Hampshire." It also included a disclaimer stating that it had been paid for by RTR and was not
- 8 authorized by any candidate or candidate's committee. 10 RTR stated that the second piece was
- 9 sent to more than 150,000 households in New Hampshire. 11
- On August 20, 2015, RTR announced via Twitter that it had distributed the Mailers in
- 11 Iowa and New Hampshire. 12 RTR acknowledges that its media vendor Redwave
- 12 Communications, LLC ("Redwave"), produced the communications, <sup>13</sup> and, at the time the

Id.

<sup>&</sup>lt;sup>7</sup> Id. at 3, Ex. A; see also Right to Rise USA, TWITTER (Aug. 20, 2015, 11:28 AM EST), https://twitter.com/r2rusa/status/634401700346884096 ("IOWA: Check your mailboxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter").

<sup>8</sup> Compl. Ex. B.

<sup>&</sup>lt;sup>9</sup> *Id*.

<sup>10</sup> *Id*.

Id. at 3-4, Ex. B; see also Right to Rise USA, TWITTER (Aug. 20, 2015, 11:30 AM EST), https://twitter.com/r2rusa/status/634402130728620032 ("NEW HAMPSHIRE: Check your mailboxes today. Mail piece hitting more than 150k households. #conservativeresultsmatter").

<sup>&</sup>lt;sup>12</sup> Compl. at 3-4.

<sup>13</sup> RTR Resp. at 1 ("[Complainant] cites two RTR mail pieces that were produced by Redwave Communications, LLC") (Jan. 12, 2016).

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- 1 Mailers were disseminated, it filed an Independent Expenditure Report with the Commission
- 2 disclosing \$80,959 in payments to Redwave.<sup>14</sup>
- The Complaint alleges that RTR coordinated with Bush and Jeb 2016 on the Mailers.
- 4 According to the Complaint, the coordination occurred through the use of a common vendor. 15
- 5 Specifically, the Complaint alleges that coordination may have occurred through two political
- 6 strategy consultants who worked for Jeb 2106 and had ties to Redwave.
- 7 First, the Complaint alleges that coordination may have occurred through David Kochel,
- 8 described as a "senior strategist" or "chief strategist" for Jeb 2016. The Complaint establishes
- 9 Kochel's connection to Jeb 2016 by identifying two payments of \$25,000 each from Jeb 2016 to
- 10 Kochel for "political strategy consulting" in July 2015.<sup>17</sup> Kochel is also the sole owner of
- 11 Redwave. 18 The Complaint establishes Kochel's connection to RTR by identifying RTR's
- payments totaling \$80,959 to Redwave in August 2015 for the Mailers. 19

On August 21, 2015, RTR filed a 48-Hour Independent Expenditure Report, disclosing three payments to Redwave for communications supporting Bush disseminated in Iowa and New Hampshire on August 20, 2015. 48-Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015), http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0. RTR reported that it paid Redwave \$23,625.14 on August 18, 2015 for postage and a total of \$57,334.15 on August 19, 2015 for printing. 48-Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015),

http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0. See also Compl. at 3. RTR disclosed additional disbursements to Redwave totaling \$104,007 in 2015, for purposes including "direct mail production" and "political strategy consulting." See Disbursements by Right to Rise USA to Redwave Communications, LLC between Jan. 1, 2015 and Dec. 31, 2015, fec.gov,

https://www.fec.gov/data/disbursements/?committee\_id=C00571372&two\_year\_transaction\_period=2016&data\_type=processed&min\_date=01%2F01%2F2015&max\_date=12%2F31%2F2015&recipient\_name=redwave.

Compl. at 1.

<sup>16</sup> Id. at 2.

<sup>17</sup> Id.

<sup>18</sup> Id. at 2-3.

<sup>&</sup>lt;sup>19</sup> *Id*.

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1 The Complaint further alleges that coordination may have occurred through a second

2 individual, Tim Albrecht, whose public relations firm, Albrecht Public Relations, LLC

3 ("Albrecht Firm") served as a political strategy consultant for Jeb 2016 while Albrecht was

employed by Redwave.<sup>20</sup> The Complaint identifies payments of \$5,000 from Jeb 2016 to the

Albrecht Firm in July 2015, for "political strategy consulting."<sup>21</sup>

Given Jeb 2016's employment of Kochel and the Albrecht Firm, and their respective connections to Redwave, the Complaint argues that Respondents have employed a common vendor.<sup>22</sup> Moreover, the Complaint alleges that the work that Kochel and the Albrecht Firm's did for Jeb 2016 would have made Kochel and Albrecht privy to information about Bush's campaign plans that they may have conveyed to RTR through their relationships with Redwave.<sup>23</sup> The result, according to the Complaint, is that Kochel and Albrecht may have coordinated on the Iowa and New Hampshire Mailers, and thus RTR may have made an impermissible contribution to Bush and Jeb 2016, which Bush and Jeb 2016 accepted.<sup>24</sup>

RTR, Bush, and Jeb 2016 deny the allegations.<sup>25</sup> Respondents assert that Kochel took a formal leave of absence from Redwave prior to Bush's registration as a candidate in June 2015 and that Kochel has not provided consulting services to Redwave or its clients since taking his leave of absence.<sup>26</sup> Similarly, with respect to Albrecht, Respondents acknowledge that he

<sup>20</sup> Id. at 2.

<sup>&</sup>lt;sup>21</sup> *Id.* 

<sup>&</sup>lt;sup>22</sup> *Id*. at 1.

<sup>23</sup> Id. at 9-10.

<sup>&</sup>lt;sup>24</sup> *Id*.

<sup>25</sup> RTR Resp. at 1; Jeb 2016 Resp. at 1 (Jan. 14, 2016) (joint response of Jeb 2016 and Bush).

<sup>26</sup> RTR Resp. at 3; Jeb 2016 Resp. at 4. Respondents do not state when Kochel began his leave of absence.

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- "provided consulting services to the [Bush] Campaign through his own firm."<sup>27</sup> Nevertheless, 1
- Jeb 2016 asserts that Albrecht personally worked solely on the "candidate side" of Redwave's 2
- practice and thus would have had no role in the "independent side" services provided to RTR.<sup>28</sup> 3

## **LEGAL ANALYSIS** III.

The Act prohibits any person from making, and any candidate or committee from accepting, contributions in excess of the limits stated in 52 U.S.C. § 30116.<sup>29</sup> In addition. 6 7 independent expenditure-only political committees are prohibited from making contributions to federal candidates, 30 and candidates and their authorized committees are prohibited from 8 accepting "soft money" contributions not subject to the limits and prohibitions of the Act. 31 A 9 10 "contribution" includes anything of value given for the purpose of influencing a federal election.<sup>32</sup> Further, any expenditure made by a person "in cooperation, consultation, or concert, 11 12 with, or at the request or suggestion of," a candidate, authorized political committee, or a

national or state party committee is considered an in-kind contribution.<sup>33</sup> These are deemed

"coordinated expenditures."34

RTR states only that "Mr. Kochel is an employee of the [Jeb 2016] Campaign and has been since the Campaign first registered with the Commission," which it did on June 15, 2015. RTR Resp. at 2.

Id. at 3; see also Jeb 2016 Resp. at 4 ("Although Mr. Albrecht continues to work for Redwave, he provides services to Jeb 2016 through his consulting firm, Albrecht Public Relations, LLC.").

RTR Resp. at 2.

<sup>29</sup> 52 U.S.C. § 30116(a), (f).

See 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a); Advisory Op. 2010-11 (Commonsense Ten).

See 52 U.S.C. § 30125(e)(1).

<sup>32</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>52</sup> U.S.C. § 30116(a)(7)(B)(i)-(ii); see also 11 C.F.R. §§ 109.20, 109.21(b).

<sup>34</sup> 11 C.F.R. § 109.20.

1 An expenditure for a communication is coordinated when the communication: (1) is paid for, in whole or part, by a person other than the candidate, committee, or party; (2) satisfies at 2 least one of the content standards described in 11 C.F.R. § 109.21(c);<sup>35</sup> and (3) satisfies at least 3 one of the conduct standards described in 11 C.F.R. § 109.21(d),<sup>36</sup> including the "common 4 vendor" standard allegedly satisfied here.<sup>37</sup> The "common vendor" standard is satisfied if all of 5 6 the following are true: (1) the person paying for the communication employs a commercial vendor<sup>38</sup> to "create, produce, or distribute" the communication; (2) the vendor, including any 7 owner, officer, or employee, has provided certain delineated services<sup>39</sup> to the recipient of the 8 9 contribution during the 120 days preceding the communication; and (3) the vendor conveys non-10 public information about the campaign's "plans, projects, activities, or needs," or services 11 previously provided to the campaign by the vendor, and that information is material to the

The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days or fewer before the candidate's primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5).

The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. *Id.* § 109.21(d)(1)-(6).

<sup>&</sup>lt;sup>37</sup> *Id.* § 109.21(a)(1)-(3).

<sup>&</sup>quot;Commercial vendor" means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. *Id.* § 116.1(c).

To satisfy the "common vendor" standard, a commercial vendor – including any owner, officer, or employee – must have provided any of the following services to the candidate or his authorized committee within the 120 days preceding the payor's contracting of the vendor: (A) development of media strategy, including the selection or purchasing of advertising slots; (B) selection of audiences; (C) polling; (D) fundraising; (E) developing the content of a public communication; (F) producing a public communication; (G) identifying voters or developing voter lists, mailing lists, or donor lists; (H) selecting personnel, contractors or subcontractors; or (I) consulting or otherwise providing political or media advice. *Id.* § 109.21(d)(4)(ii).

- 1 creation, production, or distribution of the communication.<sup>40</sup> The conduct prong is not satisfied
- 2 if a commercial vendor has established and implemented a written firewall policy that meets
- 3 certain requirements.<sup>41</sup>
- 4 Here, Respondents do not dispute that the Mailers satisfied the payment and content
- 5 prongs. 42 RTR's August 21, 2015 Independent Expenditure Report in conjunction with its
- 6 tweets announcing the two Mailers indicates that RTR paid for the two communications.<sup>43</sup>
- 7 Moreover, the Mailers satisfy the content prong because RTR reported the communications as
- 8 independent expenditures, i.e., they contained express advocacy.<sup>44</sup>
- 9 As to the conduct prong, the Complaint alleges that Kochel and Albrecht's work with Jeb
- 10 2016 would have "made them privy to information about Mr. Bush's campaign plans, projects,
- activities, and needs" and infers that such information "was material to the creation, production,
- 12 or distribution of the Mailers and was conveyed or used by Redwave in the Mailers."45
- 13 Respondents deny that any information was shared<sup>46</sup> and RTR asserts that "Redwave's work for

<sup>40</sup> *Id.* § 109.21(d)(4)(i)-(iii).

Id. § 109.21(h). A firewall policy satisfies this "safe habor" if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate's authorized committee, the candidate's opponent, the opponent's authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants and clients. Id. § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate's campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. Id. § 109.21(h).

See RTR Resp. at 1-2.

<sup>48-</sup>Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015), http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0.

<sup>44</sup> See id.; 11 C.F.R. § 109.21(c)(3).

<sup>45</sup> Compl. at 9-10.

<sup>46</sup> RTR Resp. at 2-3; Jeb 2016 Resp. at 3.

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- 1 RTR in producing the cited mail pieces was done totally independently from the [Bush]
- 2 Campaign."<sup>47</sup> Respondents claim that proper safeguards were in place to prevent intended or
- 3 inadvertent coordination. 48 In addition, RTR states that Kochel had taken a leave of absence
- 4 from Redwave prior to Bush's registration with the Commission in June 2015, and that Albrecht
- 5 was working on the "candidate side" of Redwave's firewall such that he would have had no role
- 6 in the "independent side" services provided to RTR.<sup>49</sup>
- 7 The information currently available in the record of this matter does not appear to
- 8 establish that the conduct prong has been satisfied. The available information does indicate that
- 9 Redwave is a commercial vendor<sup>50</sup> and was employed by RTR to create, produce, or distribute
- the Iowa and New Hampshire Mailers.<sup>51</sup> However, the Complaint provides no direct factual
- information showing that Redwave either directly or through Kochel or Albrecht provided
- 12 RTR with non-public information about Jeb 2016's "plans, projects, activities, or needs," or

<sup>47</sup> RTR Resp. at 4.

<sup>48</sup> Id. at 2-3; Jeb 2016 Resp. at 3.

RTR Resp. at 3; Jeb 2016 Resp. at 4. RTR states that "Redwave has a strict firewall in place to prevent the flow of information about its campaign and political party clients' plans, projects, activities, or needs to any of its third party clients... that could be material to the creation, production or distribution of any third party communications." RTR Resp at 2. Although RTR does not provide a copy of Redwave's firewall policy, RTR asserts that it meets the criteria for such policies as stated in 11 C.F.R. § 109.21(h)(1)-(2). Id. Jeb 2016 adds that Redwave has represented to the committee that it maintains a written firewall policy that meets the safe harbor requirements of 11 C.F.R. § 109.21(h). Jeb 2016 Resp. at 2. In addition, Jeb 2016 provided copies of its own contracts with Kochel and the Albrecht Firm prohibiting each from sharing "confidential information" with any third party and requiring compliance with the Act, including, specifically, its coordination provisions. Jeb 2016 Resp. Exs. A, B.

See 11 C.F.R. § 109.21(d)(4)(i); We Are Redwave, REDWAVE COMMUNICATIONS, http://redwavecommunications.com/ (stating that Redwave is "an award-winning, campaign-winning communications firm specializing in voter contact and direct mail" that provides direct mail, branding and identity, collateral, media consulting, and digital services).

See 11 C.F.R. § 109.21(d)(4)(i); see 48-Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015), http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0; RTR Resp. at 1.

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services previously provided to the campaign by the vendor.<sup>52</sup> Rather, the Complaint uses

2 Kochel and Albrecht's connections to Redwave to make an inference that RTR and Jeb 2016

engaged in conduct that resulted in the Mailers being coordinated. Respondents, however,

4 directly deny the Complaint's argument by asserting that Kochel took a formal leave of absence

5 from Redwave prior to this time, and provided no consulting services to Redwave or its clients

during his leave of absence.<sup>53</sup> Similarly, Jeb 2016 asserts that Albrecht personally worked solely

on the "candidate side" of Redwave's practice during this time, and thus would have had no role

in the "independent side" services provided to RTR.<sup>54</sup> In light of the specific denials provided

by Respondents, we do not believe that the limited facts provided by the Complaint support a

reason to believe finding that RTR made impermissible in-kind contributions to Jeb 2016 in

11 connection with the Mailers.

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13 , we recommend that the Commission take no action at this

14 time on the Complaint's allegations.

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<sup>52</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

<sup>53</sup> RTR Resp. at 3.

<sup>&</sup>lt;sup>54</sup> Jeb 2016 Resp. at 2.

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7	IV. RECOMMENDATION	
8 9 10 11 12 13	1. Take no action at this time with	Lisa J. Stevenson Acting General Counsel
14 15 16 17 18		Kathleen M. Guith by MA Kathleen M. Guith Associate General Counsel for Enforcement
20 21 22 23 24 25 26 27		Mark Allen Mark Allen Assistant General Counsel  Christopher L. Calwards Christopher L. Edwards Attorney