

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CAMPAIGN LEGAL CENTER and )  
DEMOCRACY 21, )  
 ) Case No. 1:20-cv-00730  
Plaintiffs, )  
 ) Hon. Christopher R. Cooper  
v. )  
 )  
FEDERAL ELECTION )  
COMMISSION, )  
 )  
Defendant, )  
 )  
RIGHT TO RISE SUPER PAC, INC. )  
 )  
Proposed Intervenor-Defendant. )  
 )

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**DEFENDANT INTERVENOR RIGHT TO RISE SUPER PAC, INC.'S  
SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR  
RECONSIDERATION AND/OR CERTIFICATION FOR  
INTERLOCUTORY APPEAL**

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Pursuant to the Court's April 27, 2021 Minute Order, Intervenor-Defendant Right to Rise Super PAC submits this Brief in support of its Motion for Reconsideration and/or Certification for Interlocutory Appeal (ECF No. 19).

## **I. BACKGROUND**

More than six years ago, in March 2015, Plaintiffs filed an administrative complaint with the FEC alleging that Governor John Ellis "Jeb" Bush and "Right to Rise PAC" violated FECA by failing to comply with FECA's "testing-the-waters" disclosure requirements. Compl. Ex. B. Mar. Admin. Compl., ECF No. 1-2. Plaintiffs filed a second administrative complaint two months later, raising similar allegations. Those FEC complaints were collectively designated by the FEC as Matter Under Review ("MUR") 6927.

The FEC has six commissioners. To investigate a complaint, FECA requires four to vote that there is "reason to believe" a violation of FECA has or is about to occur. 52 U.S.C. §§ 30106(c), 30109(a)(2). Absent such a vote within five years of the date of the alleged violation, the Commission may not proceed with investigation of, or enforcement against, that respondent. 52 U.S.C. § 30145. As a result, such an impasse serves as the functional equivalent of dismissal of an administrative complaint five years from the date of the alleged violation. 52 U.S.C. § 30145. Here, the commission has failed to garner the four votes required to take public action on Plaintiffs' complaint, and the five-year statute of limitations has run.

Last year, Plaintiffs filed this action to compel the FEC to take up their complaints. Compl. ¶ 2. Plaintiffs allege that the FEC’s inaction deprived them of information regarding alleged coordination between Right to Rise and the Bush campaign, *id.* ¶ 9, and the extent of Governor Bush’s campaign spending, *id.* ¶ 10.

While the FEC has not appeared in this action, Right to Rise sought and obtained the Court’s permission to intervene as a Defendant in June 2020. ECF No. 9. Right to Rise then promptly moved to dismiss Plaintiffs’ complaint for lack of standing under Rule 12(b)(1) and, with respect to Plaintiffs’ Administrative Procedure Act (“APA”) claim, for failure to state a claim upon which relief can be granted under Rule 12(b)(6). ECF No. 11.

On February 19, 2021, this Court issued a Memorandum Opinion and Order granting most of Right to Rise’s Motion to dismiss. ECF No. 17 (“February 19th Order”). Specifically, this Court held that Plaintiffs failed to state a claim under the Administrative Procedure Act, and that Plaintiffs lacked standing to pursue their FECA claim as it relates to any alleged coordinated spending. *Id.* 12-15; 18-19.

But the Court also concluded that Plaintiffs sufficiently alleged an informational injury relating to the five-month period from January 2015 to June 2015, when Governor Bush was testing-the-waters whether to campaign the presidency. *Id.* at 10-12. As a result, the Court said that Plaintiffs had Article III standing to pursue a limited portion of their FECA claim. *Id.*

Right to Rise filed a motion for reconsideration and/or certification for interlocutory appeal regarding the portion of the February 19th Order holding that Plaintiffs have standing to pursue a limited aspect of their FECA claim. ECF No. 19. Right to Rise seeks reconsideration of the portion of the Court's February 19th Order's holding that Plaintiffs have sufficiently alleged an informational injury.

Reconsideration is appropriate under Rule 60(b)(1) because the February 19<sup>th</sup> Order relied on the wrong legal standard in holding that Plaintiffs sufficiently alleged informational injury. To show standing, Plaintiffs must demonstrate by a preponderance of the evidence that they sustained an informational injury. But instead of applying that standard and burden of proof, the February 19th Order applied the more liberal legal standard for motions to dismiss under Rule 12(b)(6). Simply put, Plaintiffs cannot demonstrate by a preponderance of the evidence that they sustained an informational injury because, as explained below, the allegations in their Complaint are inconsistent with the public record, which shows that Governor Bush's testing-the-waters expenses were disclosed as FECA requires.

Reconsideration is likewise appropriate under Rule 60(b)(6) because the February 19th Order's holding that Plaintiffs alleged a limited informational injury is based on the inaccurate premise that Plaintiffs would obtain disclosure of *additional* information if they prevail on their FECA claim. But the testing-the-waters activities at issue were publicly disclosed on the first campaign finance report

filed by Governor Bush’s presidential campaign, and the other activities that Governor Bush undertook for Right to Rise and Right to Rise PAC, respectively, were likewise publicly disclosed by the entity benefiting from the activity, all as FECA requires. Plaintiffs will not obtain more information even if they succeed on their FECA claim; accordingly, they have not suffered an informational injury necessary for standing.

On April 20, 2021, the Court held a hearing on Right to Rise’s reconsideration motion and ordered the parties to submit supplemental briefing to assist the Court in determining whether Plaintiffs have satisfied their burden of proving by a preponderance of the evidence that they have suffered an informational injury. (Tr. 24:1 – 26:2). *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (it is the plaintiff who “bears the burden of proving by a preponderance of the evidence that the Court has subject-matter jurisdiction over her claims”). Because Plaintiffs cannot satisfy that burden, Right to Rise’s motion should be granted, and this case should be dismissed.

## **II. FECA REPORTING REQUIREMENTS**

The issue before the court—whether Plaintiffs have sufficiently alleged an informational injury—is a question of whether Governor Bush, Right to Rise, and Right to Rise PAC, Inc.’s (“Right to Rise Leadership PAC”) campaign finance activities were disclosed in accordance with FECA. If the information that Plaintiffs

claim they seek has been disclosed as FECA requires or is not required to be disclosed at all, then it is impossible for Plaintiffs to rely on such an informational deprivation to show standing. So the starting point is FECA's disclosure and verification requirements.

**A. FECA Reporting Requirements**

Federal candidates and political committees must register with the FEC when they trigger candidacy and/or reach fundraising and spending thresholds. Once registered, they must file regular reports with the Federal Election Commission on which they publicly disclose their financial activity. Here, Plaintiffs claim they should be able to correlate Governor Bush's pre-candidate activities with specific disbursements on FEC reports. Tr. at 15:1-14. But their contention is inconsistent with federal law, which does not require a level of specificity for disclosures that would allow for such a correlation in all instances. 52 U.S.C. § 30104(b), 11 C.F.R. §§ 104.3(b)(3)(i), 104.3(b)(4)(i), 104.3(b)(4)(vi), 104.9(a), 104.9(b), 104.3(b)(3)(i)(A).

FECA requires that committees report on Schedule B the *purpose* of each disbursement along with the date, amount disbursed and the full name and address of the recipient. *Id.* “[*P*]urpose means a brief statement or description of why the disbursement was made.” 11 C.F.R. § 104.3(b)(3)(i)(A), 52 U.S.C. § 30104(b). The FEC has provided guidance on what this statement should contain. *Purposes of*

*disbursement*, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/>, Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 5, 887 (Jan. 9, 2007), Notice 2006-23, [https://www.fec.gov/resources/cms-content/documents/fedreg\\_notice\\_2006-23\\_EO13892.pdf](https://www.fec.gov/resources/cms-content/documents/fedreg_notice_2006-23_EO13892.pdf). Specifically, the Commission has directed that the “purpose of disbursement” entry, when considered along with the disbursement recipient’s identity, must be specific enough to make the disbursement’s purpose clear. *Id.* Examples of acceptable descriptions include “airfare,” “catering,” “dinner expenses,” “lodging,” “salary,” and “travel;” unacceptable examples include “admin,” “advance,” “consulting,” “GOTV,” “miscellaneous,” “technology,” and “voter registration.”<sup>1</sup> *Id.* In other words, FECA does *not* require the “purpose” be so descriptive that the public can correlate specific disbursements with the date of travel or a specific traveler or attendee at events. 11 C.F.R. § 104.3(b)(3)(i)(A), 52 U.S.C. § 30104(b).

FECA requires reporting the date *of the expenditure*, not the date of travel or the date of the event. 11 C.F.R. § 104.3(b)(3)(i). Travel and event expenses such as flights, lodging and catering are usually booked and paid in advance, which means the disbursement date precedes the travel or event. Simply put, the information

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<sup>1</sup> A fulsome list of acceptable and unacceptable purpose of disbursement descriptions can be found at <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/>.

desired by Plaintiffss such as specific travel dates or destinations is not required by law. FECA requires only a “brief statement or description of why the disbursement was made.” 11 C.F.R. § 104.3(b)(3)(i)(A). Thus, FECA’s reporting requirements do not create the informational right Plaintiffs assert and Plaintiffs’ desire for this information is insufficient to establish informational injury because Plaintiffs have no right to that information under FECA. And while Plaintiffs say they are unable to “retroactively deduce” the ultimate amount of spending based on the disclosures (Tr. at 15:19-22), FECA does not require disclosures be specific enough for Plaintiffs to make this determination. FECA requires only “a brief statement or description of why the disbursement was made.” 11 C.F.R. § 104.3(b)(3)(i)(A), 52 U.S.C. § 30104(b).

***B. FECA Disclosures are Verified***

FECA requires committees to designate a treasurer before conducting financial transactions, as a committee may not accept contributions or make expenditures without a treasurer. 52 U.S.C. § 30102(a), 11 C.F.R. § 102.7. Committee treasurers are responsible for the committee’s record-keeping of financial transactions and are required to sign each campaign finance report submitted by the committee. 52 U.S.C. §§ 30102(c-d), 30104(a)(11)(c), 11 C.F.R. §§ 102.9, 104.18(g). Treasurers are responsible for the committee’s legal compliance and can be officially and personally liable for the accuracy of filings. 70 Fed. Reg. 1, 3 (Jan. 3, 2005) Notice

2004-20, <https://www.fec.gov/resources/cms-content/documents/notice2004-20.pdf>. To submit an FEC report, the Treasurer of a committee must sign the report. 52 U.S.C. § 30104(a)(11)(c), 11 C.F.R. § 104.18(g). The signature verification certifies that the treasurer or other signatory examined the report and, to the best of the signatory's knowledge and belief, it is true, correct, and complete, under penalty of perjury. *Id.*

A filed FEC report is a sworn document with the same probative value as a declaration. Like declarants, committee treasurers sign reports under penalty of perjury. *See* 52 U.S.C. § 30109, citing 18 U.S.C. § 1001 (which makes it a felony to, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsify, conceal, or cover up by any trick, scheme, or device a material fact; (2) make any materially false, fictitious, or fraudulent statement or representation; or (3) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry).

Here, each committee relevant to Plaintiffs' alleged informational injury—Right to Rise, Right to Rise PAC, Inc. (“Right to Rise Leadership PAC”), and Jeb 2016, Inc.—timely filed FEC reports disclosing their respective contributions and expenses. The treasurers of each committee verified that they examined the committees' reports and found them to be true, correct, and complete. At the time

Right to Rise Leadership PAC, filed its 2015 Mid-Year Report, James P. Robinson served as the committee's Treasurer. Mr. Robinson signed and submitted that report on July 31, 2015.<sup>2</sup> Likewise, Mr. Charles Spies served as Treasurer for Intervenor-Defendant, Right to Rise when it filed its 2015 Mid-Year Report. Mr. Spies signed and submitted Intervenor-Defendant's report on July 31, 2015.<sup>3</sup> Mr. William Simon served as Treasurer of Jeb 2016, Inc. when it filed its 2015 July Quarterly Report. Mr. Simon signed and submitted the committee's 2015 July Quarterly Report on July 15, 2015.<sup>4</sup>

**III. PLAINTIFFS HAVE NOT SUFFERED INFORMATIONAL INJURY  
BECAUSE ALL FECA-REQUIRED INFORMATION HAS ALREADY  
BEEN DISCLOSED**

Plaintiffs complain that there was not a single disbursement from either Right to Rise or Right to Rise Leadership PAC that was “discernably designated” for Bush’s travel. Tr. 15:1-14. But FECA does not require that disbursements be “discernably designated” that way. FECA requires only “a brief statement or description of why the disbursement was made,” 52 U.S.C. § 52 U.S.C. 30104(b),

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<sup>2</sup> Right to Rise Leadership PAC 2015 Mid-Year Report, Pg. 1, line 5, <https://docquery.fec.gov/pdf/182/201507319000507182/201507319000507182.pdf>

<sup>3</sup> Right to Rise USA 2015 Mid-Year Report, Pg. 1, line 5, <https://docquery.fec.gov/pdf/819/201507319000471819/201507319000471819.pdf>

<sup>4</sup> Jeb 2016, Inc. 2015 July Quarterly Report, Pg. 1, line 5, <https://docquery.fec.gov/pdf/887/201507159000159887/201507159000159887.pdf>

11 C.F.R. § 104.3(b)(3)(i)(A), and as explained above, such descriptions need be no more specific than “airfare,” etc.

During the motion hearing, Plaintiff identified five events that Bush attended where they could not “discernably designate” any payments related to the activities. Plaintiffs overstate the disclosure requirements under FECA and are otherwise mistaken. But as explained below, each of Plaintiffs’ five examples correlates directly with disbursements properly reported under FECA by either Right to Rise or Right to Rise Leadership PAC.

Before diving into each event, it is important to distinguish between the Defendant-Intervenor, Right to Rise, and Right to Rise Leadership PAC. Right to Rise is the federal super PAC which independently supported Governor Bush. In contrast, leadership PACs are established to federal office holders and other political leaders to support candidates for various federal and non-federal offices.<sup>5</sup> 52 U.S.C. § 30101(2), 11 C.F.R. § 100.3(e)(6). Leadership PACs may contribute directly to multiple candidates and are subject to contribution source and amount restrictions. 52 U.S.C. § 30125(e)(1)(A), 11 C.F.R. § 300.61.

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<sup>5</sup> Federal Election Commission, *Types of non-connected PACs*, <https://www.fec.gov/help-candidates-and-committees/registering-pac/types-nonconnected-pacs/>

Right to Rise Leadership PAC was established by Governor Bush in January 2015 to support conservative candidates consistent with his policy agenda.<sup>6</sup> Its mission statement is to “support candidates who want to restore the promise of America with a positive, conservative vision of reform and renewal. We believe the income gap is real, but that only conservative principles can solve it by removing the barriers to upward mobility. We will celebrate success and risk-taking, protect liberty, cherish free enterprise, strengthen our national defense, embrace the energy revolution, fix our broken and obsolete immigration system, and give all children a better future by transforming our education system through choice, high standards and accountability. We will strive to put our fiscal house back in order, re-limit government and ensure that America is a welcoming society.”<sup>7</sup>

When Governor Bush traveled to promote conservative candidates and/or a conservative policy agenda, or to attend a Right to Rise Leadership PAC fundraiser, Right to Rise Leadership PAC was legally required to sponsor that travel because

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<sup>6</sup> Marc Caputo, *Jeb Bush to form leadership PAC for fundraising*, The Miami Herald (Jan. 6, 2015), <https://www.miamiherald.com/news/state/florida/article5491587.html>

<sup>7</sup> *Id.*

Right to Rise Leadership PAC was the beneficiary of the activity.<sup>8</sup> All these disbursements were reported on Right to Rise Leadership PAC's FEC reports.<sup>9</sup>

Likewise, when Bush traveled to participate at a Right to Rise fundraiser as a special guest, it was both appropriate and legally required for Right to Rise to sponsor that travel. While Governor Bush was not yet a candidate for office at the time of these events described below, even if he had been, Federal candidates may participate in Super PAC events or fundraisers as a special guest if they do not solicit contributions above the limits permitted under federal law.

**A. *January 20, 2015: DC Bundler Event***

The first example Plaintiffs offered was a January 20, 2015 meeting in Washington, D.C. with Republican lobbyists. Tr. at 14:18-19. Plaintiffs initially referenced this meeting in their first FEC administrative complaint. ECF No. 1-2 at 3-4. On its 2015 Mid-Year Report, Right to Rise reported a January 20, 2015 disbursement in the amount of \$12,159.56 to MALEK, FREDERIC V.; the disbursement description reads "IN-KIND CATERING".<sup>10</sup> This disbursement is

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<sup>8</sup> Federal Election Commission, *Travel on behalf of non-connected PAC*, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/travel-nonconnected-pac/>. (For non-commercial travel on behalf of leadership PACs...the reimbursement for that travel is the responsibility of the committee on whose behalf the travel occurs.)

<sup>9</sup> Right to Rise Leadership PAC 2015 Mid-Year Report, Schedule B, <https://docquery.fec.gov/pdf/182/201507319000507182/201507319000507182.pdf>

<sup>10</sup> Right to Rise 2015 Mid-Year Report, Schedule B, pg. 1444, <http://docquery.fec.gov/cgi-bin/fecimg/?201605209015993057>

payment for catering at the Super PAC fundraising event which Bush attended as a special guest. The disbursement covered catering expenses for the event. *Id.* Because Governor Bush's presence at this fundraising event benefitted Right to Rise, their payment for food at the event was appropriate and was fully disclosed.

***B. February 27, 2015: CPAC Speech***

Plaintiffs say they cannot correlate an expenditure from any reports with Governor Bush's participation at the Conservative Political Action Convention ("CPAC") in 2015. Tr. at 14:20. Plaintiffs also referenced this speech in their first administrative complaint. ECF No. 1-2 at 7. This convention is held annually at the National Harbor, just across the river from Washington D.C. Governor Bush participated in 2015 CPAC as a guest of the organizers, where he was interviewed by Sean Hannity.<sup>11</sup> The CPAC event is produced by the American Conservative Union, including through sponsorships in 2015 paid for by the National Rifle Association, The Motion Picture Association and Trump International.<sup>12</sup>

Along with giving a major speech at CPAC, Governor Bush attended a College Republicans event while at National Harbor for CPAC on February 27,

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<sup>11</sup> *Jeb Bush Remarks at CPAC*, CSPAN (Feb. 27, 2015), <https://www.c-span.org/video/?324558-16/governor-jeb-bush-r-fl-remarks-cpac-2015&event=324558&playEvent>

<sup>12</sup> Julie Bycowicz, *Who Pays for America's Biggest Conservative Gathering?*, Bloomberg News (Feb. 26, 2015), <https://www.bloomberg.com/news/articles/2015-02-26/the-money-behind-cpac-america-s-biggest-conservative-gathering>.

2015. Exhibit 1. That event was produced by and properly paid for by College Republicans, who presumably also had other Republican leaders stop by their events. In sum, because Governor Bush's attendance at CPAC was not a testing-the-waters event and did not benefit either Right to Rise, or Right to Rise Leadership PAC, there were no expenditures to disclose.

*C. March 7, 2015 – Iowa Agriculture Summit*

Plaintiffs say they cannot correlate an expenditure from any reports with Governor Bush's participation at the Iowa Agriculture Summit on March 7, 2015, an event referenced in their administrative complaint. ECF No. 1-2 at 8. Despite FEC guidance which states "airfare" is an appropriate disbursement description, Right to Rise Leadership PAC went above and beyond the statutory requirements and included travel dates on their disbursement description for this trip. On its 2015 Mid-Year Report, Right to Rise Leadership reported three disbursements for airfare correlated with this travel. The first was for \$1,056.30 to MILE HIGH, LLC, the disbursement description reads: "AIRFARE 3/6/15".<sup>13</sup> The second was for \$2,273.20 to CHARTRAND, GARY, the disbursement description reads: "AIRFARE 3/6/15".<sup>14</sup> The third was for \$2,660.20 to MACLEAN, BARRY, the

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<sup>13</sup> Right to Rise PAC, 2015 Mid-Year Report, Schedule B, pg. <http://docquery.fec.gov/cgi-bin/fecimg/?201507319000514818>

<sup>14</sup> Right to Rise PAC, 2015 Mid-Year Report, Schedule B, pg. 742, <http://docquery.fec.gov/cgi-bin/fecimg/?201507319000514278>

disbursement description reads: “AIRFARE 3/7/15”.<sup>15</sup> These disbursements show payments for airfare to and from the event. Governor Bush participated in the forum focused on agriculture policy. At the forum, Governor Bush advocated for a path to legalized status for immigrants, a policy objective of Right to Rise Leadership PAC.<sup>16</sup> In addition to attending this event, Governor Bush appeared at a Young for Iowa, Inc. fundraiser on March 6, 2017. Exhibit 1. Right to Rise Leadership PAC also contributed \$5,200 to Young for Iowa, Inc., David Young’s authorized campaign committee.<sup>17</sup> David Young was a Republican elected to represent Iowa’s 3<sup>rd</sup> District in Congress.<sup>18</sup> It was appropriate for Right to Rise Leadership PAC to sponsor the Governor’s travel and to disclose that expenditure.

***D. May 16, 2015 – Iowa GOP Lincoln Day Dinner***

Plaintiffs say they cannot correlate an expenditure from any reports with Governor Bush’s participation at the May 16, 2015 Iowa GOP Lincoln Day Dinner referenced in their administrative complaint. ECF No. 1-2 at 8. But Right to Rise

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<sup>15</sup> Right to Rise PAC, 2015 Mid-Year Report, Schedule B, pg. 935, <http://docquery.fec.gov/cgi-bin/fecimg/?201507319000514471>

<sup>16</sup> Associated Press, *Republicans show rift on immigration at Iowa agriculture forum*, The Denver Post (Mar. 7, 2015), <https://www.denverpost.com/2015/03/07/republicans-show-rift-on-immigration-at-iowa-agriculture-forum/>

<sup>17</sup> Young for Iowa, Inc., 2015 April Quarterly Report, Schedule A pgs. 56, 60, <https://docquery.fec.gov/pdf/716/201510089002821716/201510089002821716.pdf>

<sup>18</sup> Ballotpedia, David Young profile, [https://ballotpedia.org/David\\_Young\\_\(Iowa\)](https://ballotpedia.org/David_Young_(Iowa))

Leadership PAC disclosed a disbursement in the amount of \$12,776.13 to BECKER TRADING COMPANY for “AIRFARE 5/14/15 THRU 5/16/15”.<sup>19</sup> At the dinner, Governor Bush gave a 10-minute speech focused on the policy priorities of Right to Rise Leadership PAC, which appropriately paid for—and disclosed—Governor Bush’s airfare for the event. Exhibit 1.

***E. March 17, 2015 – South Carolina Chamber of Commerce Event***

Plaintiffs say they cannot correlate an expenditure from any reports with Governor Bush’s participation at the March 17, 2015 Greenville Chamber of Commerce Event.<sup>20</sup> The Chamber of Commerce event was hosted at the Embassy Suites Hotel.<sup>21</sup> Governor Bush spent the night at the Embassy Suites in Greenville on March 16, 2015. Exhibit 1. Right to Rise Leadership PAC disclosed a disbursement dated March 25, 2015 to EMBASSY SUITES--GREENVILLE in the amount of \$204.83 for “LODGING”.<sup>22</sup> In addition, Governor Bush attended a fundraiser supporting the South Carolina Republican House Caucus in Columbia,

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<sup>19</sup> Right to Rise PAC, 2015 Mid-Year Report, Schedule B, pg. 1114, <http://docquery.fec.gov/cgi-bin/fecimg/?201507319000514650>

<sup>20</sup> Plaintiff incorrectly stated at the April 20 hearing that Bush “met with local Chamber of Commerce folks in Greenville” on March 27, 2015. Tr. at 14:22-23. Bush was actually in Greenville, SC, on March 17, 2015.

<sup>21</sup> Rudolph Bell, *Former Florida governor Jeb Bush coming to Greenville*, Greenville News (Feb. 25, 2015), <https://www.greenvilleonline.com/story/news/politics/2015/02/25/jeb-bush-south-carolina-presidential-primary-mike-huckabee-marco-rubio/23994805/>

<sup>22</sup> Right to Rise Leadership PAC 2015 Mid-Year Report, Schedule B, pg. 707, <http://docquery.fec.gov/cgi-bin/fecimg/?201507319000514243>

SC. Exhibit 1. The Governor's participation in this event furthered the mission of Right to Rise Leadership PAC, which correctly disclosed the travel expense.

#### **F. Plaintiffs Are Confused about Governor Bush's Travel**

Plaintiffs wrongly refer to *all* of Governor's Bush's travel as his own "campaign" or "testing-the-waters" activity. (Tr. at 13:12-13, 13:16-17, 14:7, 14:10). This is legally conclusory and incorrect. Governor Bush attended Right to Rise fundraising events as a special guest. When Governor Bush attended either Right to Rise or Right to Rise Leadership PAC events, those committees paid for expenses related to his travel because Bush's travel and attendance *benefitted the committees* and it was thus required by law. *See* footnote 8. Plaintiffs cannot prove by a preponderance of the evidence that these were "campaign activities" or "testing-the-waters activities." And most important, all travel expenses were appropriately disclosed by the party that paid for them at the time and in the manner that FECA requires.

#### **IV. PLAINTIFFS' ADMINISTRATIVE COMPLAINTS WERE PREMATURE AND RELY ON UNSWORN NEWS REPORTS**

Plaintiffs filed their administrative complaints with the FEC *before* Bush decided to run for President and *before* the PACs filed their FEC reports. In July of 2015, Bush's presidential campaign committee and the PACs timely disclosed all requisite information. Plaintiffs' administrative complaints were prematurely filed at a time when they had *no* informational right. And while an informational right

arose under FECA when Bush became a candidate, Bush’s campaign committee, Jeb 2016, Inc., Right to Rise, and Right to Rise Leadership PAC each adhered to FECA’s disclosure requirements. Plaintiffs have not been denied a scintilla of information that FECA requires. While Plaintiffs may wish Bush, Right to Rise, and Right to Rise PAC, Inc., had disclosed information differently, there was no statutory obligation to do so, and each actually disclosed more than required.

In contrast to Defendants’ reliance on sworn and verified FEC reports, Plaintiffs’ examples are derived from news reports that preceded the committees’ disclosures. The FEC has explained that the probative value of press statements and news reports in the context of campaign finance complaints is inherently limited.<sup>23</sup> The FEC has reasoned that news articles and press reports written by unsworn authors recounting statements from unsworn witnesses—like those cited by Plaintiffs—have limited probative value and are unsubstantiated and speculative. *Id.*

This Court has also recognized the limited probative value of newspaper articles. In *Atkins v. Fisher*, 232 F.R.D. 116, 132 (D.D.C. 2005), this Court held that “newspaper articles constitute inadmissible hearsay, and cannot be admitted into evidence to support the truth of the matter asserted.” “Unsupported newspaper articles usually provide no evidence of the reporter’s perception, memory or

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<sup>23</sup> Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter in Matter Under Review 6928, Federal Election Commission (May 20, 2019), pg. 9-10, [https://eqs.fec.gov/eqsdocsMUR/6928\\_2.pdf](https://eqs.fec.gov/eqsdocsMUR/6928_2.pdf)

sincerity and, therefore, lack circumstantial guarantees of trustworthiness.” *Id.* (quoting *Hutira v. Islamic Republic of Iran*, 211 F.Supp.2d 115, 123 (D.D.C.2002)). Plaintiffs’ reliance exclusively on press reports and news articles to support their claims underscores their complaint’s weakness.

Informational injury for Article III standing purposes requires Plaintiffs to allege they are “directly deprived of information that must be disclosed under a statute.” *CREW v. FEC*, 21 F. Supp. 3d at 32 (D.D.C. 2014); *ASPCA v. Feld Entm’t, Inc.*, 659 F.3d 13, 23 (D.C. Cir. 2011) (quoting *Zivotofsky v. Sec’y of State*, 444 F.3d 614, 618 (D.C. Cir. 2006)). So, “the nature of the information allegedly withheld is critical to the [court’s] standing analysis.” *Common Cause v. FEC*, 108 F.3d 413, 417 (D.D.C. 1997). A plaintiff has suffered no injury and thus lacks standing if the relevant statute does not require the information’s disclosure, or if the allegedly withheld information is already available to plaintiff. Both these points are true here. FECA does not require disclosure of any additional information. 11 C.F.R. § 104.3(b)(3)(i)(A). And all three committees consistently disclosed an adequate purpose for all their disbursements, and all disbursements were timely disclosed.

What Plaintiffs really seek is a legal determination as to *when* Bush became a candidate and/or that certain reported activity should be categorized differently. But as this Court has aptly explained, that question is one that only the FEC can answer. ECF No. 17 at 14 (“[P]laintiffs’ attempt to construe their request as being one for

facts (rather than legal determinations) is precluded by *Wertheimer [v. FEC]*, 268 F.3d 1070 at 1075 (D.C. Cir. 2001).” “[I]t is well-established that a plaintiff has no legally cognizable interest in a legal conclusion that carries certain law enforcement consequences, nor in forcing the FEC to get the bad guys.” *Id.* (cleaned up). Plaintiffs have not been deprived of any information that must be disclosed under statute and have therefore failed to meet the stringent Article III standing requirements for informational injury under the Rule 12(b)(1) legal standard and burden of proof. Their complaint should be dismissed with prejudice.

## V. CONCLUSION

Right to Rise respectfully requests that the Court reconsider that portion of its February 19, 2021 Memorandum Opinion and Order holding that Plaintiffs have Article III standing to pursue the remainder of their FECA claim, or, in the alternative (or in addition to), certify the Order for interlocutory appeal under 28 U.S.C. § 1292(b).

Dated: May 11, 2021

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 11, 2021, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system by electronic service via the Court's ECF transmission facilities.

/s/ Charles R. Spies