

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

CAMPAIGN LEGAL CENTER and
DEMOCRACY 21,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant,

RIGHT TO RISE SUPER PAC, INC.,

Intervenor-Defendant.

Case No. 1:20-cv-00730

Hon. Christopher R. Cooper

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO
INTERVENOR-DEFENDANT'S MOTION FOR RECONSIDERATION**

Fred Wertheimer (DC Bar No. 154211)
DEMOCRACY 21
2000 Massachusetts Avenue N.W.
Washington, DC 20036
(202) 355-9600

Donald J. Simon (DC Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
1425 K Street N.W., Suite 600
Washington, DC 20005
(202) 682-0240

Tara Malloy (DC Bar No. 988280)
tmalloy@campaignlegalcenter.org
Megan P. McAllen (DC Bar No. 1020509)
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, D.C. 20005
(202) 736-2200

INTRODUCTION

Plaintiffs Campaign Legal Center and Democracy 21 assert a quintessential informational injury. The Federal Election Campaign Act (“FECA” or the “Act”) requires candidates to disclose all “contributions” they receive and “expenditures” they make, including with respect to any “pre-candidacy” testing-the-waters period—and plaintiffs allege administrative respondent John Ellis “Jeb” Bush failed to fully disclose this information.

Nor is the information otherwise available to plaintiffs, contrary to the representations of Intervenor Right to Rise super PAC (“RTR”). Indeed, there is no dispute that Bush failed to report expenses relating to his extensive campaign-related travel and events over the period predating his official announcement of candidacy in June 2015, as outlined in plaintiffs’ administrative complaints and described in contemporaneous news reports and Bush’s own communications. May Admin. Compl., ECF No. 1-1; Mar. Admin. Compl., ECF No. 1-2. Under plaintiffs’ “view of the law,” which controls the assessment of their standing, *Akins v. FEC*, 524 U.S. 11, 21 (1998), the expenses Bush incurred in connection to these events constituted reportable expenditures of his campaign—but his reported testing-the-waters disbursements fail to account for the large majority of this spending. Bush thus failed to provide all information FECA requires from the period between May 2014, when he acknowledged beginning to test the waters of candidacy, to June 2015, when he formally announced his campaign for President.

RTR’s only answer to this patent disclosure violation—and the principal argument in its motion for reconsideration—is its expedient claim that any reportable campaign expenditures that Bush failed to disclose were included in RTR’s *own* FEC reports covering the period between its formation on January 6, 2015 and Bush’s announcement in June, and/or in the reports of a *different* federal political committee that is not present in this litigation, Right to Rise PAC (FEC ID#

C00571380). *See* Hr’g Tr. 16:21-24 (Apr. 20, 2021); RTR Recons. Mot. 9, ECF No. 19. According to RTR, plaintiffs are entitled to no further information under FECA.

To say this claim is unsubstantiated and lacking credibility risks gross understatement.

1. In its earlier submissions, RTR denied that Bush failed to disclose any reportable testing-the-waters or campaign expenditures before June 2015. *See, e.g.,* RTR Reply Supp. Mot. to Dismiss 6, ECF No. 15 (“MTD Reply”) (“Governor Bush disclosed all of his spending for the purpose of testing-the-waters on his campaign’s first FEC report.”); RTR Recons. Mot. 9. Now it purports to have information about unreported Bush testing-the-waters expenses that date back to 2014, *see* Hr’g Tr. 8:8-17, 16:21-17:24.

2. RTR has never explained the basis for its claimed comprehensive knowledge of each and every reportable pre-candidacy expenditure associated with Bush’s campaign activities and travel over this period—but now suggests that it can demonstrate to the Court that all such activity was actually paid for and disclosed by RTR—and/or by others, such as Right to Rise PAC, another absent party that RTR has previously described as “[a]n entity separate from and unrelated to” RTR that was “organized to support numerous candidates.” RTR Mot. to Dismiss 2, ECF No. 11.

3. Until the hearing of April 20, 2021, RTR had never claimed that it paid for Bush’s expenses associated with his pre-candidacy activities that were unrelated to RTR. *See* MTD Reply 5. Only in the hearing did it first assert that it also “likely” paid for and disclosed any expenses that Bush incurred from several events *not* sponsored by RTR that plaintiffs identified. Hr’g Tr. 17:4-6.

4. RTR’s unsubstantiated claim that it paid for all of Bush’s unreported pre-candidacy activities is all the more untenable because this “cure” is itself a potential admission of large-scale violations of FECA’s soft-money provisions. All federal campaign activities, *including* testing-the-waters activities, must be funded with “hard money,” not the “soft money” that super PACs

like RTR are permitted to raise. *See* 11 C.F.R. § 100.72(a) (“Only funds permissible under the Act may be used” for “the purpose of determining whether an individual should become a candidate”).

Even if RTR overcomes this laundry list of inconsistent statements and credibility concerns, and does marshal creditable evidence demonstrating that some of RTR’s reported disbursements paid for Bush’s unreported pre-candidacy spending, it would have no basis to represent that information as complete or accurate. The only party who has full knowledge of the complete scope of Bush’s reportable pre-candidacy activity—and therefore the only party who can attest to whether it was fully paid for and reported by the Right to Rise committees—is Bush himself.

Regardless, the existing record simply does not permit the retrospective reattribution that RTR claims can be accomplished by reviewing the reports of RTR or Right to Rise PAC. RTR acknowledges that no committee report designated any disbursements for Bush’s travel or other expenses. Hr’g Tr. 18:6-12. Even assuming *arguendo* that RTR introduced sworn testimony that could—in conjunction with searching analysis of its existing FEC reports—partially account for some of the missing information, this delayed, haphazard disclosure cannot satisfy plaintiffs’ statutory “right to know who is spending money to influence elections, how much they are spending, and when they are spending it.” *CREW v. Am. Action Network*, 410 F. Supp. 3d 1, 12 (D.D.C. 2019) (citing *Akins*, 524 U.S. at 24-25).

ARGUMENT

I. That Bush disclosed *some* reportable disbursements from his “pre-candidacy” period does not vindicate plaintiffs’ rights to receive FECA-required information that these disclosures do not cover.

Intervenor argues that the Court’s partial denial of the motion to dismiss was based on a material factual error—namely, that Bush did not disclose any payments that predated June 2015,

whereas in actuality, as RTR describes it, Bush did disclose some \$386,000 “for the period January 2015 through June 2015.” Recons. Mot. 8.

But this information is not new—and has been repeatedly noted by both parties throughout this litigation. Nor does it refute plaintiffs’ uncontested showing that Bush incurred expenses for a large volume of pre-candidacy campaign activity—in particular, for travel and self-promotional events in early primary states—that his campaign did *not* disclose and that plaintiffs have not received. That Bush disclosed *some* testing-the-waters payments is irrelevant: partial or selective disclosure is simply not sufficient to achieve the informational interests protected by FECA.

A. Bush engaged in extensive testing-the-waters and campaign activity between May 2014 and June 2015, much of which was not “sponsored” by RTR.

Plaintiffs’ administrative complaints documented in detail how Bush, long before he acknowledged his candidacy, engaged in a massive, sophisticated campaign blitz that had him crisscrossing the country to appear at various campaign-styled events and meet with key party leaders and donors in early primary states. Virtually none of the expenses for any travel, lodging, or staffing relating to these events were ever disclosed by the Bush campaign. *See infra* at 6-8.

In their administrative complaints, plaintiffs cited news reports that flagged a series of *specific* campaign events Bush attended that were not sponsored by RTR and as to which neither Bush nor his campaign disclosed any associated payments:

- A January 20, 2015 meeting in Washington between Bush and “Republican lobbyists” at an event “organized by Dirk Van Dongen, president of the National Association of Wholesaler-Distributors” and attended by “about 40 mostly veteran Republican operatives, many with ties to the Bush family political network.”¹

¹ Mar. Admin. Compl. ¶ 8 (citing David M. Drucker, *Jeb Bush lays out plans for 60 fundraisers for 2016 bid*, Wash. Examiner (Jan. 20, 2015), <https://www.washingtonexaminer.com/jeb-bush-lays-out-plans-for-60-fundraisers-for-2016-bid>).

- Bush's February 27, 2015 speech at CPAC.²
- The March 7, 2015 Iowa agricultural summit, which Bush attended alongside eight other "White House aspirants."³
- A March 27, 2015 "Chamber of Commerce breakfast meeting" in Greenville, South Carolina, where Bush "us[ed] his first campaign-style stop in this early primary state to deliver one of his sharpest critiques yet of the current White House occupant."⁴
- The May 16, 2015 annual Lincoln Dinner hosted by the Iowa Republican Party, described as "an opportunity for our distinguished guests to set themselves apart and announce to Iowa and the country why they should be the next President."⁵

While this partial list of Bush's unaccounted-for travel, events, and promotional activities is not insignificant, the public record suggests that his travel and engagements were far more extensive. For instance, plaintiffs' March administrative complaint cites a Washington Post article more generally describing Bush's ambitious travel schedule, noting in March 2015 that "Bush is entering his third month of an intensive, cross-country fundraising tour that has included stops at lavish Manhattan apartments, premier Washington lobbying shops and luxury hotels in Florida."⁶

Indeed, it is hard to overstate how intensively Bush was campaigning in this pre-candidacy period, as illustrated by his schedule over two days in March in South Carolina and Georgia:

² *Id.* ¶ 17 (quoting Bush Remarks at CPAC (C-SPAN television broadcast Feb. 27, 2015), <https://www.c-span.org/video/?324558-16/governor-jeb-bush-r-fl-remarks-cpac2015>).

³ *Id.* ¶ 18 (citing Philip Rucker & Dan Balz, *Iowa agriculture summit splits GOP 2016 field on subsidies, immigration*, Wash. Post (Mar. 7, 2015), https://www.washingtonpost.com/politics/iowa-agriculture-summit-splits-gop-2016-field-on-subsidies-immigration/2015/03/07/a5f12300-c4f4-11e4-ad5c-3b8ce89f1b89_story.html).

⁴ *Id.* ¶ 12 (citing Ed O'Keefe, *Jeb Bush sharpens his attacks on President Obama in South Carolina*, Wash. Post (Mar. 17, 2015), https://www.washingtonpost.com/politics/jeb-bush-sharpens-his-attacks-on-president-obama-in-south-carolina/2015/03/17/56b4d628-ccca-11e4-8c54-ffb5ba6f2f69_story.html).

⁵ *Id.* ¶ 19 (quoting Press Release, Republican Party of Iowa, Iowa GOP to Host Star-Studded Lincoln Dinner on May 16 (Mar. 26, 2015)).

⁶ *Id.* ¶ 15 (citing Matea Gold, *Awash in cash, Bush asks donors not to give more than \$1 million—for now*, Wash. Post (Mar. 4, 2015), https://www.washingtonpost.com/politics/awash-in-cash-bush-asks-donors-to-limit-gifts-to-1-million--for-now/2015/03/04/0b8d3fc6-c1c8-11e4-9271-610273846239_story.html).

[Bush is] scheduled to hold private meetings with potential donors, supporters and staffers as he visits Myrtle Beach and Charleston on Wednesday. He's scheduled to hold a fundraiser in Atlanta on Thursday After the breakfast meeting, Bush toured a nearby Christian school He later visited a domestic violence shelter with South Carolina Gov. Nikki Haley (R) and attended a fundraiser for South Carolina GOP state lawmakers in Columbia.

See Mar. Admin. Compl. ¶ 6 (citing O'Keefe, *supra* note 4). *See also infra* Part II.B (describing Bush's May 20-21 New Hampshire campaign swing and March 7 Iowa trip).

RTR has previously admitted that many of the above activities fell into "a category of expenses that must be treated by a potential candidate for federal office as testing-the-waters expenses (e.g., fundraising, polling, travel)," MTD Reply 5, and further alleged that "Right to Rise did not pay for any of this type of expense for Governor Bush. *Id.* The activities noted above—from Bush's specific known engagements in early primary states to the more general descriptions of Bush's campaign schedule—were demonstrably not limited to events sponsored by RTR or Right to Rise PAC. While Bush and his associates were undoubtedly engaged in widespread fundraising for RTR following its creation in January 2015, there is also no support for the suggestion that the above events had either an explicit or implicit tie to RTR fundraising.

B. Bush's reported testing-the-waters payments cannot account for all of his activity.

On its first FEC report of receipts and disbursements filed in July 2015, Bush's campaign reported 47 testing-the-waters expenditures coded with disbursement dates of June 5, 2015,⁷ but with memo text indicating payments dating back as far as May 2014. A full reproduction of these expenditures is attached as Exhibit 1, and the summary tables below reveal two larger trends: first, the reported expenditures were distributed throughout both before and after formation of the RTR committees (as well as before and after Bush's December 16, 2014 Facebook post), undercutting

⁷ Jeb 2016 designated 50 total disbursements as "ttw": the 47 transactions reported as in-kind transactions paid for by Bush and three additional payments, all dated June 26, 2015, for services rendered after Bush acknowledged triggering candidacy on June 5. *See Hr'g Tr. 8:25-9:16.*

the proposition that either committee simply “took on” all such expenses; and second, the spending went almost exclusively to legal and political consulting, entirely omitting typical testing-the-waters expenses such as travel, lodging, and event costs.

TABLE 1: Jeb 2016 Reported Testing-the-Waters Disbursements, By Time Period

| Amount (Aggregate) | Trans-actions | Time period (using memo text dates) |
|--------------------|---------------|--|
| \$171,981.78 | 27 | May 2014 – Dec. 16, 2014 |
| \$57,135.11 | 3 | Dec. 16, 2014 – Jan. 6, 2015 |
| \$156,903.26 | 17 | Jan. 6, 2015 – June 5, 2015 <i>including lone travel disbursement (Jan. 12, 2015)</i> |

TABLE 2: Jeb 2016 Reported Testing-the-Waters Disbursements, By Purpose

| Amount (Aggregate) | Trans-actions | Purpose |
|--------------------|---------------|---|
| \$241,852.59 | 25 | Legal consulting (primarily to payee King & Spalding LLP) |
| \$85,978.48 | 6 | Research consulting (payee Jackson-Alvarez Group) |
| \$25,050.00 | 1 | Survey research consulting (payee Revolution Agency) |
| \$18,750.00 | 7 | Communications consulting (payee Kristy Campbell) |
| \$13,300.00 | 7 | Political strategy consulting (payee Sally Bradshaw) |
| \$1,089.08 | 1 | Travel/airfare/lodging |

As plaintiffs have explained, this reporting is demonstrably incomplete. *See, e.g.*, Opp’n to Mot. to Dismiss 20, ECF No. 13 (“MTD Opp’n”). In particular, Bush ultimately reported only a single \$1,089.08 disbursement for travel and lodging over the entirety of this 13-month period, dated January 12, 2015, despite his dozens of known trips and events during that time. *See supra* at 4-6.

And a full schedule of events and meetings generates not only travel and lodging expenses, but the need for staff to handle the logistical and substantive work entailed in such campaigning. RTR made much of the fact that then-Democratic Presidential candidate Hillary Clinton spent somewhat less money overall in her much shorter testing-the-waters period than Bush

(approximately \$291,000). Hr’g Tr. 8:8-17. But it neglected to mention that Clinton spent significantly more on travel (approximately \$22,000) and staffing in the months immediately preceding her declaration of candidacy (including around \$74,000 to three individuals for “payroll & benefits”). *See Exhibit 2* (Hillary for America disbursements predating her April 12, 2015 declaration of candidacy). Even more stark a comparison, then-Presidential candidate Donald Trump reported 202 “TTW” disbursements between April 9, 2015 and his campaign committee’s June 29, 2015 formation, including about \$520,000 for “travel.” *See Exhibit 3* (Donald J. Trump for President, Inc., “TTW” disbursements).

C. It is not plaintiffs’ burden to identify each and every unreported Bush testing-the-waters expenditure to establish an informational injury.

Plaintiffs’ administrative complaints cited copious public reports—as well as Bush’s own communications—documenting his many campaign-related events, meetings, and appearances, most of which were not sponsored by or otherwise connected to either RTR committee. *See supra* at 4-6.

But it cannot be plaintiffs’ burden to identify in granular detail each and every campaign expenditure they allege a respondent has *not reported* under FECA in order to establish informational standing in an action under Section 30109(a)(8). This is tantamount to requiring plaintiffs to prove a negative. That plaintiffs are able to do this even partially here is more a result of the massive scale of Bush’s pre-candidacy effort and the publicity that surrounded him as a one-time frontrunner for the Republican nomination; it would be impossible to replicate in less prominent races and cannot be the legal bar for standing.

Indeed, this Circuit has never required such a showing to sustain informational standing under Section 30109(a)(8)—particularly, as is the case here, where a FECA disclosure violation was explicitly alleged in the underlying administrative complaint. For instance, in the many cases

alleging that a section 501(c)(4) group failed to register as a political committee, plaintiffs have not been required to identify each receipt or disbursement they believed the 501(c)(4) group failed to disclose, even when the group had provided *some* disclosure under FECA’s event-driven reporting requirements for non-committees. *See* 52 U.S.C. § 30104(c), (f). *See also, e.g., Am. Action Network*, 410 F. Supp. at 13 (plaintiffs’ informational injury arose generally from “a putative political committee’s failure to disclose its donors”). It is enough that plaintiffs have “‘espouse[d] a view of the law’ under which entities regulated by the Commission are ‘obligated to disclose certain information’ that plaintiffs have not received but have a right to obtain.” *CLC v. FEC*, 245 F. Supp. 3d 119, 127 (D.D.C. 2017) (citation omitted). Whether the entities have in fact committed the alleged disclosure violation is a question reserved for the merits of the underlying complaints.

II. The missing information cannot be found in or even theoretically reconstructed from the filed reports of Right to Rise super PAC, Right to Rise PAC, or the public record.

RTR next asserts that even if the *Bush campaign* did not disclose all of his reportable expenditures over the pre-candidacy period—as is demonstrably the case for the reasons explained above, given the extent of his known campaign travel and activity—plaintiffs have nevertheless received all of the information they are due under FECA because the same information can be pieced together by examining the filed reports of RTR or Right to Rise PAC.

The argument suffers from two fundamental defects. First, as noted above, Bush was engaging in extensive travel and activities throughout the “pre-candidacy” phase of his campaign, including for events in early primary states and elsewhere that were not sponsored by either Right to Rise committee. RTR now claims that it “likely” paid for and reported Bush’s expenses for those events. Hr’g Tr. 17:4-6. But it has never alleged with specificity which committee reports cover which Bush expenses, nor even explained the basis of its assertion that it knows of all of

Bush's reportable spending over that period.

Second, even assuming *arguendo* that RTR or Right to Rise PAC did underwrite some of Bush's campaign travel such that it would be reflected somewhere in either committee's disclosure reports, neither committee reported a single disbursement that was discernibly designated for this purpose. Although plaintiffs maintain that it is not their burden to find hypothetical corroboration for the unsupported representations of opposing counsel, they have nevertheless attempted to assess whether RTR's claim has any apparent foundation in the existing record. It does not. At best, any insight gleaned from this exercise is woefully incomplete, conjectural, and no substitute for the comprehensive disclosure that FECA prescribes.

A. RTR has yet to explain the basis of its assertion that it is aware of—and paid for—all of Bush's reportable campaign activities during the pre-candidacy period.

Beyond unsupported and equivocal statements, RTR has offered little to elucidate its expedient claim that everything Bush failed to disclose was in fact reported by RTR or another filer. As recently as its Reply supporting its Motion for Reconsideration, for example, RTR couched the claim in conditional language: “[*I*]f Bush travelled to Right to Rise PAC or [RTR] events as the ‘special guest’ at fundraisers for those entities, then [s]uch spending *would* be reported as an expenditure by the benefitted entity.” Recons. Reply 6 (emphasis added).

The precise contours of the argument thus remain elusive, even after multiple rounds of briefing and last month's hearing on the topic. In its previous submissions, RTR has primarily just repeated the unsustainable claim that because Bush reported *some* testing-the-waters payments, he necessarily accounted for all of his reportable spending over the putative pre-candidacy phase of his campaign. *See, e.g.*, RTR Recons. Mot. 2 (“Governor John Ellis ‘Jeb’ Bush disclosed all his testing-the-waters activities through his presidential campaign’s first campaign finance report.”).

Most relevant here, however, is RTR’s suggestion that plaintiffs “would not obtain a

scintilla of additional information” even if they do prevail on their administrative complaints, *id.*, because RTR *itself* (and/or Right to Rise PAC or unidentified others) paid for and disclosed all of Bush’s unreported pre-June 2015 campaign activity. Supposedly, this means that all campaign-related expenses Bush incurred over this period and failed to disclose can be found somewhere in RTR’s filed committee reports—or if not in *RTR*’s reports, then in those filed by Right to Rise PAC, a multicandidate committee that is not present in this litigation and, as RTR has previously emphasized, is “separate from and unrelated to Right to Rise” and was “organized to support numerous candidates.” *See* RTR Mot. to Intervene 2; Mot. to Dismiss 2.

Indeed, it is noteworthy how much of RTR’s argument hinges on representations about how to construe the disclosure reports of entities that are not before the Court. RTR has variously suggested that Bush’s unreported spending was paid for and disclosed by RTR alone, “likely” bankrolled by either RTR *or* Right to Rise PAC, or possibly covered by both, never attempting to delineate which committee covered which activity. *See, e.g.*, RTR Opp’n to Default J. 6, ECF No. 24 (“[T]he activities described in Plaintiffs’ ‘public reports’ were on behalf of Right to Rise and were paid for and reported by Right to Rise.”); Hr’g Tr. 17:4-6 (“Governor Bush appearing at a public dinner” “was most likely travel on behalf of Right to Rise Super PAC or Right to Rise Leadership PAC.”). RTR has no authority to speak for absent third parties—especially given that it is now attempting to challenge plaintiffs’ standing by effectively conceding significant violations of FECA’s soft-money ban. Because RTR has yet to account for the basis of its claims, or even clearly articulate them, its *post hoc* efforts to recharacterize the record should be viewed with appropriate skepticism.

B. RTR did not report a single disbursement that was discernibly designated as a payment to fund Bush’s travel or underwrite his expenses associated with appearances at RTR fundraisers, nor did Right to Rise PAC.

As recounted above, RTR has speculated that its own reports or those of RTR PAC may have included all reportable expenditures that Bush incurred over the pre-candidacy period, but it has offered no proof of this to date, despite numerous opportunities to do so. Instead, it has simply pointed to its own disclosure reports, describing them as accurate and filed under penalty of perjury. Hr’g Tr. 20:11-16.

The question, however, is not whether the information contained in RTR’s reports is accurate, but: *what information is actually contained in RTR’s reports?* It is certainly the case that neither RTR nor Bush reported any payments from RTR to Bush in the manner FECA requires, as indeed, these would constitute illegal in-kind contributions from RTR to the Bush campaign. But that is not the source of plaintiffs’ informational injury. The relevant factual deficit is that regardless of any assertions RTR has made in this litigation about what its reports might implicitly contain, it did not disclose a single disbursement that was discernibly designated as a payment to Bush or to cover his expenses. Nor did Right to Rise PAC, a qualified federal political committee supporting multiple federal candidates over the same period and to which RTR has also attributed some unidentified amount of Bush’s spending. Hr’g Tr. 17:4-6.

Indeed, RTR’s counsel acknowledged that its reports would not enable someone to “know exactly which expenditure matches up with a specific trip” as to which RTR assertedly covered Bush’s expenses, but has attempted to excuse this with the claim that “the FEC doesn’t require that.” Hr’g Tr. 18:10-12. But if Bush’s relevant pre-June 2015 activities were indeed undertaken to promote his candidacy, as plaintiffs alleged in their administrative complaints and the record amply supports, all costs incurred in connection with those activities were expenditures of his

campaign subject to FECA's comprehensive candidate disclosure regime. And, for standing purposes, "the [C]ourt must assume that the [plaintiff] will prevail on the merits." *Comm. on Judiciary of U.S. House of Reps. v. McGahn*, 968 F.3d 755, 762 (D.C. Cir. 2020). Even with respect to the pre-candidacy period, therefore, plaintiffs are entitled to receive a specific itemized account of all his outstanding expenditures by date, purpose, and amount. *See* 52 U.S.C. §§ 30104(b); 11 C.F.R. § 101.3. As RTR all but admits, its filed reports do not contain this specific information.

RTR and Right to Rise PAC disbursements for travel, Jan.-June 2015. Plaintiffs estimate that RTR reported spending between approximately \$150,000 and \$300,000 on travel in the period spanning its formation on January 6, 2015 through June 2015, accounting for uncertainty in the allocation of its reported disbursements with hybrid purpose descriptions that combined travel and unrelated services (*e.g.*, "finance consulting/travel"; "travel/photography svc/catering/printing").

In particular, RTR reported \$41,572 to commercial airlines for "travel"; an additional \$34,078 in corporate payments described as "air travel," most or all of which appear to have been for private jet travel; at least \$5,427 for "travel" to commercial vendors related to ground transportation; and \$38,835 to commercial hotels for "travel."⁸ Meanwhile, Right to Rise PAC reported hundreds of thousands of dollars of its own travel-related disbursements in that period—spanning over 900 entries on its mid-year report—including more than \$170,000 paid to commercial airlines.⁹

⁸ See RTR disbursements for "travel" or "lodging," Jan. 6-June 30, 2015, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00571372&max_date=06%2F30%2F2015&disbursement_description=travel&disbursement_description=lodging.

⁹ See Right to Rise PAC disbursements for "travel," "airfare," "car rental," "lodging," "mileage," "taxi fare," or "transportation," Jan. 6-June 30, 2015, https://www.fec.gov/data/disbursements/?spender_committee_type=P&data_type=processed&committee_id=C00571380&min_date=01%2F06%2F2015&max_date=06%2F30%2F2015&disbursement_description=airfare&disbursement_description=travel&disbursement_description=lodging.

Neither committee reported a single disbursement for, or on its face connected to, Bush’s campaign travel over this period. The basis for RTR’s claim that it paid for and disclosed all of Bush’s pre-announcement travel is thus simply not discernable from the existing factual record, and RTR has yet to furnish any evidence to substantiate it.

Nevertheless, to clarify for the Court what we understand RTR to be arguing and how its argument stacks up against the existing record, plaintiffs have attempted to identify whether particular disbursements disclosed in RTR’s reports *could* have covered some of Bush’s known activities. But even if plaintiffs were to scrutinize each of the thousands of itemized disbursements in RTR’s and Right to Rise PAC’s committee reports covering the relevant period, line by line, they still could not satisfactorily reconstruct a hypothetical account of Bush’s unreported expenditures by guessing at which general disbursements across the reports of two different committees—or which *portions* of which disbursements—*might* encompass payments to Bush.

Even taking the few instances where the public record *does* shed some light on what the universe of unreported expenditures associated with a particular Bush trip or campaign appearance might include, and thus on whether the missing information could theoretically correspond to disbursements reported by RTR or Right to Rise PAC, the picture is still incomplete.

New Hampshire, May 20-21, 2015. On May 21, 2015, Bush tweeted a picture praising the hospitality of the staff at the Hilton Garden Inn in Manchester, New Hampshire. Ex. 4 at 1.¹⁰ Public reporting and Bush’s Twitter account indicates that he spent at least two days in New Hampshire on that trip, appearing at a business roundtable¹¹ on May 20 and later attending “a fun house party

¹⁰ Relevant tweets from Bush’s Twitter account (@JebBush) are attached hereto as Exhibit 4.

¹¹ See Nick Corasaniti, *Jeb Bush Opens His Campaign Playbook by Opening Himself*, N.Y. Times (May 22, 2015), <https://www.nytimes.com/2015/05/22/us/politics/jeb-bush-opens-his-campaign-playbook-by-opening-himself.html>.

in Bedford” hosted by Rich and Lori Ashooh, Ex. 4 at 2—an event that has long been a staple of presidential campaigning in the early primary state¹²—and, on May 21, taping a televised interview as part of WMUR’s “Conversation with a Candidate” series,¹³ participating in “a local Chamber of Commerce event at a bar in Concord,”¹⁴ and attending several meet-and-greets before traveling to Oklahoma City. Ex. 4 at 3. As quoted in the New York Times, Bush acknowledged that “campaigning” was the purpose of his trip: “‘I really like campaigning,’ Mr. Bush said as he began his two-day swing in Portsmouth, before quickly adding, ‘I’m not a candidate.’”¹⁵ But the Bush campaign did not disclose any payments, as testing-the-waters disbursements or otherwise, that would correspond to these dates or possible payees in New Hampshire.

Plaintiffs have not been able to identify any public record of events sponsored by RTR or Right to Rise PAC in New Hampshire on or around those dates. And RTR did not disclose any payments to the Manchester Hilton Garden Inn in its reports covering the January to June 2015 period, or otherwise disclose disbursements with any obvious links to these dates or activities. Right to Rise PAC, however, reported paying the Manchester Hilton Garden Inn \$300 on April 10, 2015 for lodging; \$1,627.51 on April 22 for lodging; \$10.81 on April 28 for printing; and \$1,960.94 on June 2, 2015 for lodging.¹⁶ It is conceivable that some or all of the \$1,960.94 payment

¹² Stephanie Leydon, *Inside a New Hampshire Primary House Party for Chris Christie*, WBUR (Jan. 4, 2016), <https://www.wgbh.org/news/post/inside-new-hampshire-primary-house-party-chris-christie>.

¹³ C-SPAN, *WMUR-TV Interview with Jeb Bush* (May 21, 2015), <https://www.c-span.org/video/?326488-1/wmur-tv-interview-jeb-bush>.

¹⁴ Benjy Sarlin, ‘Optimistic’ Jeb Bush faces hard truths in New Hampshire swing, MSNBC (May 22, 2015), <https://www.msnbc.com/msnbc/optimistic-jeb-bush-faces-hard-truths-new-hampshire-swing-msnbc601851>

¹⁵ See Corasaniti, *supra* note 11.

¹⁶ RTR and Right to Rise PAC disbursements to Manchester Hilton Garden Inn prior to June 15, 2015, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00571372&committee_id=C00571380&recipient_name=hilton&max_date=06%2F15%2F2015&recipient_state=NH.

on June 2, 2015 covered Bush's lodging for this late May New Hampshire trip, although it is impossible to confirm that by reviewing the transaction entry itself, which does not specify whether it was for Bush or any other individual.¹⁷

Beyond that particular payee, however, the trail grows dim. RTR and Right to Rise PAC reported more than 300 disbursements in the week before and after May 20,¹⁸ encompassing a number of different vendors and purposes, including payments to national commercial airlines in amounts suggesting that multiple tickets were purchased at once. *See, e.g.*, Right to Rise PAC, 2015 Mid-Year Report, *supra* note 17, at 1207 (Right to Rise PAC payment of \$10,269.50 to American Airlines dated May 15). None of these disbursement entries mention Bush or indicate the travelers, destination(s), or event(s) to which the payments corresponded.

Iowa, March 7, 2015. On March 7, 2015, according to news reports and Bush's own tweets, Bush attended the Iowa Agriculture Summit alongside eight other "White House aspirants." *See* Mar. Admin. Compl. ¶ 18. Bush's Twitter feed that weekend showed a number of stops before and after the summit: "some great meetings with Iowa leaders" in the morning; a meeting with U.S. Senator Chuck Grassley, with a picture captioned "I thought I worked hard on the campaign trail until I met 99 county @ChuckGrassley in 80. An Iowa & Twitter icon"; a stop at Jethro's BBQ; and "end[ing] a great day in the Hawkeye State in Cedar Rapids,"¹⁹ roughly 120 miles from Des Moines, where the summit was held. The trip further included "stopping at a Republican fundraiser in Urbandale, an agriculture event near Des Moines, a sports bar in Waukee

¹⁷ Right to Rise PAC, Inc., 2015 Mid-Year Report, FEC Form 3X at 1234 (amended July 31, 2015), <https://docquery.fec.gov/pdf/537/201507319000513537/201507319000513537.pdf>.

¹⁸ RTR and Right to Rise PAC, Inc., Disbursements, May 13-27, 2015, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00571372&committee_id=C00571380&min_date=05%2F13%2F2015&max_date=05%2F27%2F2015.

¹⁹ *See* Ex. 4 at 4-7.

and the Pizza Ranch in Cedar Rapids” as well as “private meetings with Republican leaders and operatives.”²⁰ But none of Bush’s reported payments account for any costs associated with the summit or this trip.

RTR’s reports show only seven disbursements dated the weekend of the summit, none of which were to Iowa payees and all of which corresponded to hotel and airline travel reimbursements for non-Bush individuals with Florida addresses; RTR PAC similarly showed no payments to Iowa payees that weekend.²¹ Broadening the search to the two weeks before and after the March 7 summit presents a parallel problem to the New Hampshire trip: of the more than 300 disbursements reported by the two committees in that period, there were only four payments to Iowa addresses, all of which went to an Iowa consulting firm, and various unmatchable payments for travel that may or may not have been related to that weekend.²²

Plaintiffs could repeat this exercise line-by-line and the existing disclosure reports filed by RTR and Right to Rise PAC would still not account for all of Bush’s known activity, permit reattribution to Bush of specific disbursements by either committee, or otherwise reveal which RTR committee paid for what on Bush’s behalf, and in what amounts. Even when considering just one narrow slice of Bush’s activity that *can* be detailed more granularly, *e.g.*, as in the two examples above, because the public record enables plaintiffs to identify concrete possible dates or payees to seek out in the reports of RTR or Right to Rise PAC, they would *still* lack FECA-required

²⁰ Ed O’Keefe, *He’s not officially a candidate, but Jeb Bush looks like one in Iowa*, Wash. Post (Mar. 8, 2015), https://www.washingtonpost.com/politics/hes-not-officially-a-candidate-but-jeb-bush-looks-like-one-in-iowa/2015/03/08/e2693800-c5a7-11e4-b2a1-bed1aaea2816_story.html.

²¹ RTR and Right to Rise PAC disbursements, Mar. 6-Mar. 8, 2015, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00571372&committee_id=C00571380&min_date=03%2F06%2F2015&max_date=03%2F08%2F2015.

²² See RTR and Right to Rise PAC disbursements, Feb. 28-Mar. 14, 2015, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00571372&committee_id=C00571380&min_date=02%2F28%2F2015&max_date=03%2F14%2F2015.

information about Bush’s unreported spending. Similar informational deficiencies plague the whole record.

III. Plaintiffs have established standing.

A. Plaintiffs have shown informational injuries sufficient to support standing.

“The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimant’s reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them.” *CLC v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020) (per curiam) (citation omitted). Bush indisputably incurred expenses for pre-candidacy activities between December 2014 and June 2015 that his reported testing-the-waters payments do not cover. *See supra* Part I.B. Thus, under plaintiffs’ reading of the law, *see* 11 C.F.R. §§ 100.72, 100.131, 101.3, plaintiffs have suffered informational injury because they have been deprived of full disclosure of all reportable campaign spending from May 2014 to June 2015.

RTR has not—and indeed, cannot—account for these activities. RTR instead asks this court to accept on faith that unidentified disbursements included somewhere in its own disclosure reports, combined with unidentified disbursements contained in the reports of yet *another* multicandidate committee, Right to Rise PAC, that supported many other candidates, account for each and every unreported campaign expenditure Bush made over this period.

But RTR has not provided any evidence whatsoever to substantiate this assertion. And despite plaintiffs’ good-faith efforts, it is impossible to glean much relevant information from the committees’ existing reports, even with respect to Bush’s known pre-candidacy activities, *see supra* Part II.B, given their complexity and the lack of any information linking the reported disbursements to Bush or his campaign.

But even if RTR had substantiated this allegation with admissible evidence—which it has not—disclosure that is post hoc and incomplete does not vindicate plaintiffs’ informational rights under FECA. The Act entitles plaintiffs to complete and accurate information about candidates’ campaign spending, itemized by date, purpose, and amount, and submitted under penalty of perjury. *See* 52 U.S.C. § 30104 (a)(3), (b); *McGahn*, 968 F.3d at 766 (“[T]he denial of information to which the plaintiff claims to be entitled by law establishes a quintessential injury in fact.”).

Importantly, although plaintiffs have documented extensive travel and events that Bush’s reporting does not cover, the informational standing inquiry does not turn on the magnitude of the informational deficit, but rather on the failure to receive factual information subject to a statutory disclosure obligation. As the D.C. Circuit affirmed in *CLC v. FEC*, 952 F.3d at 356, plaintiffs had standing to sue with respect to FEC complaints where the only outstanding information was the true sources of a handful of contributions to super PACs that were allegedly funneled through straw donors. 245 F. Supp. 3d at 126-27. Plaintiffs there had standing even though there was significant public reporting suggesting who the real donors might be—the court nevertheless found that plaintiffs did not know the “entire story” of the contributions, *id.* at 127, particularly given that no verified FEC reports providing this information had been filed.

Finally, there is “no reason to doubt the plaintiff’s claim that the information would help them”—and indeed, RTR does not challenge plaintiffs’ standing on this basis. Plaintiffs have documented—including by submitting multiple declarations—that they are engaged in campaign-finance related public education, administrative proceedings, and legislative reform efforts that rely upon the comprehensive campaign finance disclosure FECA requires. *See* Pls.’ MTD Opp’n 41-51; Fischer Decl. ¶¶ 4-39; Wertheimer Decl. ¶¶ 2-10.

B. Plaintiffs also suffer distinct informational and organizational injuries based on the FEC's egregious delay.

Plaintiffs also suffer distinct informational and organizational injuries based on the FEC's delay itself, one so pronounced that RTR now characterizes it as a "functional dismissal." RTR Opp'n to Default J. 2. But if a dismissal had in fact taken place, plaintiffs would be entitled to the Commission's decisionmaking and related documents in the MUR file. 11 C.F.R. § 111.20; 52 U.S.C. § 30109(a)(4)(B)(ii). But none of this information is available while the FEC delays in resolving this MUR, which causes plaintiffs further informational and organizational harm. *See* Pls.' MTD Opp'n 29-39 (injury from delay), 39-43 (organizational injury).

Because the Court found that that plaintiffs suffered an informational injury based upon Bush's deficient pre-candidacy reporting, ECF No. 17 at 9 n.1, it did not address plaintiffs' contention that they suffered distinct organizational and informational injuries caused by the FEC delay itself. But plaintiffs maintain that these additional injuries provide a separate and alternative basis for standing.

CONCLUSION

For these reasons, intervenor's motion for reconsideration should be denied.

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Respectfully submitted,

/s/ Tara Malloy

Tara Malloy (DC Bar No. 988280)
tmalloy@campaignlegalcenter.org
Megan P. McAllen (DC Bar No. 1020509)
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, D.C. 20005
(202) 736-2200

Fred Wertheimer (DC Bar No. 154211)
DEMOCRACY 21
2000 Massachusetts Avenue N.W.
Washington, DC 20036
(202) 355-9600

Donald J. Simon (DC Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
1425 K Street N.W., Suite 600
Washington, DC 20005
(202) 682-0240

Attorneys for Plaintiffs

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.

Respectfully submitted,

/s/ Tara Malloy

Tara Malloy (DC Bar No. 988280)
tmalloy@campaignlegalcenter.org
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, D.C. 20005
(202) 736-2200