

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

CAMPAIGN LEGAL CENTER
1101 14th Street NW, Ste. 400
Washington, DC 20005

DEMOCRACY 21
2000 Massachusetts Avenue, NW
Washington, DC 20036

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Federal Election Campaign Act (“FECA” or “Act”), 52 U.S.C. § 30109(a)(8)(A), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1), for illegal agency delay.

2. Plaintiffs seek injunctive and declaratory relief to compel defendant Federal Election Commission (“FEC” or “Commission”) to take action on plaintiffs’ administrative complaint alleging violations of 52 U.S.C. § 30125(e), a FECA provision that prohibits any entity “established, financed, maintained or controlled by or acting on behalf of” a federal candidate from raising and spending funds that do not comply with the “limitations, prohibitions, and reporting requirements” of the Act, 52 U.S.C. § 30125(e)(1), *i.e.*, “soft money.”

3. Section 30125(e) strictly circumscribes a federal candidate’s involvement with soft-money groups—such as federal independent expenditure-only political committees known as

“super PACs” that can raise funds outside FECA’s contribution limitations—and prevents candidates from establishing or operating such groups as slush funds to support their campaigns.

4. Plaintiffs filed an administrative complaint with the FEC on May 27, 2015—supplementing an earlier administrative complaint they filed March 31, 2015¹—alleging that former Florida Governor John Elias “Jeb” Bush had violated 52 U.S.C. § 30125(e) by “establish[ing],” “financ[ing],” “maintain[ing],” and “controll[ing],” both directly and indirectly through his agents, the Right to Rise Super PAC, Inc.,² which “act[ed] on his behalf” by raising and spending soft money to promote Bush’s presidential campaign. Ex. A, Admin. Compl. ¶ 1.

5. The May 27 administrative complaint asked the Commission to find reason to believe that Bush violated section 30125(e) by raising and spending soft money for and through Right to Rise Super PAC, and that Right to Rise Super PAC violated section 30125(e) by raising and spending soft money on behalf of Bush, and to conduct an investigation to determine whether a violation had occurred or was continuing to occur. Ex. A, Admin. Compl. ¶¶ 1-2.

6. FECA provides administrative complainants with a right of action against the FEC if the Commission fails to act on a complaint within 120 days. 52 U.S.C. § 30109(a)(8)(A).

7. Four and a half years after plaintiffs filed their administrative complaints, there is no indication that the FEC has taken any action on them.

8. This prolonged inaction has fostered a Wild West atmosphere in the financing of campaigns for federal office, allowing wealthy donors, including corporations and unions, to sidestep FECA’s contribution limits and disclosure requirements by making unlimited

¹ The May 27, 2015 and March 31, 2015 administrative complaints are attached hereto as Exhibits A and B, respectively.

² Shortly thereafter, Right to Rise Super PAC filed an amended Statement of Organization changing its name to Right to Rise USA. *See* Right to Rise USA Statement of Organization, FEC (Jun. 12, 2015), <https://docquery.fec.gov/pdf/367/15951468367/15951468367.pdf>.

contributions to super PACs established, financed, maintained, or controlled by their favored federal candidates. Without enforcement of FECA provisions, such as section 30125(e), designed to prevent such circumvention of the contribution limits, “the integrity of our system of representative democracy is undermined.” *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (per curiam).

9. Plaintiffs have also suffered, because they, as well as the public, have been deprived of full disclosure about the activities undertaken by Bush and his agents to establish Right to Rise Super PAC, as well as the nature of the ongoing relationship between the super PAC and the Bush campaign. Plaintiffs lack information, for instance, about whether Right to Rise’s expenditures should be deemed “coordinated” with the Bush campaign, or whether its contributors “earmarked” their money specifically for support of the Bush campaign. This is information to which plaintiffs are legally entitled under FECA.

10. There is also reason to believe that Bush did not fully disclose his campaign activities as required by law, *see* 52 U.S.C. §§ 30102(e), 30103, 30104, and 11 C.F.R. § 101.3, both during the “testing the waters” phase of his campaign and after there was reason to believe Bush had moved beyond “testing the waters” to become a “candidate” under FECA. Ex. B, March Admin. Compl. ¶¶ 34-36, 49.

11. By failing to act on plaintiffs’ complaints, and exceeding by over four years the 120-day period prescribed by FECA for such action, the Commission has encouraged the use of candidate-controlled super PACs like Right to Rise as vehicles for the wholesale evasion of the contribution limits enacted to prevent *quid pro quo* corruption and its appearance.

Jurisdiction and Venue

12. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 52 U.S.C. § 30109(a)(8)(A) and 5 U.S.C. § 702. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

13. Venue lies in this district under 52 U.S.C. § 30109(a)(8)(A) and 5 U.S.C. § 703.

The Parties

14. Plaintiff Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization that works to strengthen American democracy through, among other activities, local, state, and federal efforts to ensure that the public has access to information regarding the financing of U.S. election campaigns.

15. As part of this effort, CLC conducts research, authors reports and articles, and regularly provides expert analysis to the media. CLC also litigates throughout the country regarding campaign finance matters; files FEC complaints requesting that enforcement actions be taken against individuals or organizations that violate the law; participates in rulemaking and advisory opinion proceedings before the FEC to ensure that the agency is properly interpreting and enforcing federal election laws; and engages in legislative advocacy for reform measures at the federal, state, and local level.

16. CLC relies on the accurate and complete reporting of campaign finance information to carry out activities central to its mission, including the production of reports and other materials to educate the public about campaign spending and the true sources and scope of candidates’ financial support.

17. CLC expends significant resources assisting reporters and other members of the media in their investigative research into candidates’ financial support and relationships with

donors, to ensure that the public is equipped with the information necessary to evaluate different candidates and messages and to cast informed votes.

18. CLC also uses its analyses of federal campaign finance disclosure information to support its administrative practice at the FEC and before state and local campaign finance agencies, and to defend campaign finance laws in its active docket of cases in federal and state courts.

19. When inadequate disclosure of federal campaign finance activity makes it difficult to ascertain the origin or nature of a candidate's financial support, as occurs when a candidate's fundraising and other operations are illegally outsourced to an "independent" super PAC without full disclosure, reporters often contact CLC for guidance as to whether or where they can find the campaign finance information that is not being properly reported. This work requires CLC to divert resources and funds from other organizational needs.

20. Plaintiff Democracy 21 is a nonprofit, nonpartisan organization dedicated to making democracy work for all Americans through support of campaign finance and other political reforms. To accomplish these goals, it conducts public education efforts, participates in litigation involving the constitutionality and interpretation of campaign finance laws, and engages in efforts to help ensure that campaign finance laws are properly enforced and implemented. It also participates in rulemaking and advisory opinion proceedings, and other administrative matters, at the FEC.

21. Like CLC, Democracy 21 relies on the accurate and complete reporting of campaign finance information to carry out activities central to its mission, including its public education efforts, reports, and statements about campaign spending and the sources and scope of candidates' financial support. Democracy 21 also expends significant resources to assist members of the media with research into issues of campaign financing and the relationships between

candidates and donors to ensure the public is broadly and accurately informed on these matters. Democracy 21 also uses its analyses of federal campaign finance disclosure information to support its administrative efforts at the FEC, including its participation in advisory opinion and rulemaking proceedings, as well as the filing of administrative complaints, and also uses such disclosure information in litigation to defend the constitutionality of the campaign finance laws in court.

22. When such disclosure information is unavailable, inadequate, or inaccurate, such as when candidates are allowed to use supposedly “independent” outside spending groups as de facto coordinated arms of their campaigns, it impedes the ability of Democracy 21 to fulfill its mission and causes Democracy 21 to divert resources and funds from other organizational needs in order to provide the public with accurate information about the facts and implications of how the financing of federal campaigns is occurring.

23. Defendant FEC is an independent federal agency charged with the administration and civil enforcement of FECA. 52 U.S.C. § 30106(b).

Background

24. On May 27, 2015, CLC and Democracy 21 filed a complaint with the FEC against respondents Jeb Bush and Right to Rise Super PAC, urging that the Commission find reason to believe a violation of 52 U.S.C. § 30125(e) had occurred and commence an investigation. The May 27 complaint supplemented an earlier complaint plaintiffs filed with the FEC on March 31, 2015, alleging that Bush had not complied with applicable contribution restrictions and disclosure requirements while “testing the waters” prior to officially announcing his candidacy. *See infra* ¶ 32.

25. Plaintiffs’ May 27 administrative complaint alleged that Bush, while holding himself out as a candidate for the Republican nomination for U.S. President, and Bush’s agents,

established Right to Rise Super PAC in January 2015,³ and thereafter both directly and indirectly financed, maintained, and controlled Right to Rise Super PAC in violation of 52 U.S.C. § 30125(e).

26. Citing news reports, the administrative complaint detailed the involvement of Bush and his close advisors in “establishing” the super PAC. *See* Ex. A, Admin. Compl. ¶¶ 11-19. For example, Bush and his agents reportedly took a direct role in recruiting high-level staff for Right to Rise Super PAC, such as by installing Mike Murphy, one of Bush’s top advisers, at its helm.⁴

27. The administrative complaint also alleged that Jeb Bush directly or indirectly “controlled” and “maintained” the super PAC while a candidate for office, citing reports that, among other things, Bush’s advisers were “overseeing the operations of” Right to Rise Super PAC,⁵ that Bush attempted to delay a formal announcement of his candidacy to maximize his soft-

³ *See, e.g.,* Ex. A, Admin. Compl. ¶¶ 1, 9, 11 (citing Richard Costa, *Jeb Bush and His Allies Form Leadership PAC and Super PAC, both dubbed Right to Rise*, Wash. Post (Jan. 6, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/01/06/jeb-bush-forms-new-pac-right-to-rise>; Peter Overby, *5 Years After ‘Citizens United,’ Super PACs Continue to Grow*, NPR (Jan. 13, 2015), <https://www.npr.org/2015/01/13/377024687/five-years-after-citizens-united-superpacs-continue-to-grow>; Alex Isenstadt, *Jeb Bush’s \$100M May*, Politico (May 8, 2015), <https://www.politico.com/story/2015/05/jeb-bush-right-to-rise-super-pac-campaign-117753>; Philip Rucker & Matea Gold, *Top Republican Strategists in Talks to Join Jeb Bush’s Super PAC*, Wash. Post (Mar. 17, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/03/17/top-republican-strategists-in-talks-to-join-jeb-bushs-super-pac>).

⁴ *See* Ex. A, Admin. Compl. ¶ 12 (citing Michael C. Bender, *Jeb Bush Promises 2016 Decision in ‘Few Months,’* Bloomberg Politics (Mar. 18, 2015), <https://www.bloomberg.com/news/articles/2015-03-18/jeb-bush-promises-2016-decision-in-next-few-months->; Rucker & Gold, *supra*; Maggie Haberman, *Bush Advisor May Skip Campaign to Work for ‘Super PAC,’* N.Y. Times (Feb. 18, 2015), <https://www.nytimes.com/politics/first-draft/2015/02/18/bush-adviser-may-skip-campaign-to-work-for-super-pac>; Jim Rutenberg, *The Next Era of Campaign-Finance Crazyiness Is Already Underway*, N.Y. Times (Apr. 21, 2015), <https://www.nytimes.com/2015/04/21/magazine/the-next-era-of-campaign-finance-crazyiness-is-already-underway.html>; Thomas Beaumont, *Bush Preparing to Delegate Many Campaign Tasks to Super PAC*, Miami Herald (Apr. 21, 2015), <https://www.miamiherald.com/news/nation-world/national/article19123962.html>).

⁵ Ex. A, Admin. Compl. ¶ 11 (citing Rucker & Gold, *supra*). *See also id.* ¶¶ 12-15.

money fundraising for the super PAC,⁶ and that Bush and Right to Rise Super PAC developed a division of labor between his official authorized committee and the super PAC to operate as a unified campaign effort.⁷

28. The administrative complaint also alleged Bush and his agents “financed” Right to Rise Super PAC, and that Bush himself,⁸ his advisors,⁹ and members of his family¹⁰ personally conducted fundraising for the super PAC.

29. For example, Bush was reportedly the “Special Guest” at the “Right to Rise National Team Meeting” held in Miami at the end of April 2015. The invitation for that event established four tiers of supporters, with the highest tier reserved for those who contributed or

⁶ See, e.g., Ex. A, Admin. Compl. ¶¶ 12, 16-18 (citing Beaumont, Bender, and Isenstadt, *supra*).

⁷ See Ex. A, Admin. Compl. ¶¶ 16-18 (citing Beaumont and Isenstadt, *supra*).

⁸ See, e.g., Ex. A, Admin. Compl. ¶ 20 (citing Nicholas Confessore, *Lines are Blurred in Donor Event for Jeb Bush ‘Super PAC,’* N.Y. Times (Mar. 12, 2015), <https://www.nytimes.com/politics/first-draft/2015/03/12/lines-are-blurred-in-a-jeb-bush-super-pac-donor-event>; Maggie Haberman, *Hillary Clinton to Jump Start Fund-Raising Efforts*, N.Y. Times (Apr. 29, 2015), <https://www.nytimes.com/politics/first-draft/2015/04/29/hillary-clinton-to-jump-start-fund-raising-efforts>; Matea Gold & Ed O’Keefe, *Never Before Have So Many People with So Much Money Run for President*, Wash. Post (Apr. 27, 2015), https://www.washingtonpost.com/politics/why-the-2016-gop-race-may-be-more-like-2012-than-the-party-hoped/2015/04/26/fff662c8-e9f9-11e4-9767-6276fc9b0ada_story.html). See also *id.* ¶ 23.

⁹ See, e.g., Ex. A, Admin. Compl. ¶ 24 (citing Ben White, *Jeb Bush’s \$100 Million Problem*, Politico (Mar. 16, 2015), <https://www.politico.com/story/2015/03/jeb-bush-fundraising-right-to-rise-116108>).

¹⁰ See, e.g., Ex. A, Admin. Compl. ¶ 26 (citing Patrick Svitek, *George P. Bush to Help Raise Cash for Dad’s Super PAC*, Tex. Trib. (Mar. 9, 2015), <https://www.texastribune.org/2015/03/09/george-p-bush-attend-fundraiser-dads-super-pac>; Matea Gold & Ed O’Keefe, *George W. and Laura Bush to Appear at Fundraiser for Jeb Bush*, Wash. Post (Mar. 23, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/03/23/george-w-and-laura-bush-to-appear-at-fundraiser-for-jeb-bush>; Ed O’Keefe, *In Fundraising E-Mail, Barbara Bush Says Jeb Bush ‘Is Our Best Chance of Taking Back the White House in 2016,’* Wash. Post (Mar. 18, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/03/18/in-fundraising-e-mail-barbara-bush-says-jeb-bush-is-our-best-chance-of-taking-back-the-white-house-in-2016>).

raised \$500,000 by April 17, 2015. Bush reportedly told donors at the event that he had already “raised tens of millions of dollars for his allied super PAC.”¹¹

30. Over the course of the 2015-2016 election cycle, the Right to Rise Super PAC spent over \$86 million on behalf of Jeb Bush’s presidential run.¹²

31. With the exception of a single \$108 expenditure, all of that spending occurred after the filing of the May 27, 2015 administrative complaint.¹³

Administrative Proceedings

32. CLC and Democracy 21 first filed an FEC complaint against Bush on March 31, 2015, alleging that Bush failed to comply with the requirement that activities to “test the waters” for an eventual campaign for federal office be paid for with funds that comply with applicable FECA contribution limits and source restrictions, as per 11 C.F.R. §§ 100.72 and 100.131. The March 31 complaint further alleged that there was reason to believe Bush had moved beyond “testing the waters” to become a “candidate” under FECA, but failed to comply with the candidate registration and disclosure requirements established by 52 U.S.C. §§ 30102(e), 30103, and 30104, and 11 C.F.R. § 101.3. Ex. B, March Admin. Compl. ¶ 49.

33. The FEC responded to the March 31, 2015 complaint with a letter of acknowledgement dated April 3, 2015 informing plaintiffs that the proceeding would be designated Matter Under Review (“MUR”) 6927.

¹¹ Ex. A, Admin. Compl. ¶ 20 (citing Confessore; Gold & O’Keefe, *Never Before*; and Haberman, *Clinton to Jump Start Fund-Raising*, *supra*).

¹² See *Right to Rise USA: Targeted Candidates, 2016 Cycle*, Ctr. for Responsive Politics, <https://www.opensecrets.org/outsidespending/recips.php?cmte=C00571372&cycle=2016> (last visited Mar. 11, 2020).

¹³ See *Independent Expenditures: Right to Rise USA (2015-2016)*, FEC, https://www.fec.gov/data/independent-expenditures/?committee_id=C00571372&two_year_transaction_period=2016&cycle=2016&data_type=processed&is_notice=true (last visited Mar. 11, 2020).

34. CLC and Democracy 21 then filed the May 27 administrative complaint described in paragraphs 24-29 *supra*, alleging violations of 52 U.S.C. § 30125(e) by Bush and Right to Rise Super PAC. The FEC sent plaintiffs another acknowledgement letter, dated June 4, 2015, indicating that the May 27 complaint would be treated as a supplement to the March 31 complaint.

35. Upon information and belief, the Commission has failed to act on plaintiffs' May 27, 2015 administrative complaint, or the March 31 complaint it supplemented, since it was filed more than four and a half years ago. The Commission's inaction has thus persisted well beyond the statutorily allotted 120-day response period, as indeed, it has failed to take action over a period more than ten times that length.

CAUSES OF ACTION

Count I: FECA, 52 U.S.C. § 30109(a)(8)(A)

36. Plaintiffs repeat and reallege paragraphs 1-35.

37. Defendant's failure to act on plaintiffs' administrative complaints within 120 days of their filing was contrary to law under 52 U.S.C. § 30109(a)(8)(A), which provides plaintiffs a cause of action for "a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed."

Count II: APA, 5 U.S.C. § 706(1)

38. Plaintiffs repeat and reallege paragraphs 1-37.

39. By failing to act on plaintiffs' administrative complaints within 120 days of their filing, the FEC unlawfully withheld and unreasonably delayed agency action under 5 U.S.C. § 706(1).

REQUESTED RELIEF

WHEREFORE, plaintiffs request that this Court:

- (1) Declare that the FEC's failure to act on plaintiffs' administrative complaints was contrary to law under 52 U.S.C. § 30109(a)(8)(A);
- (2) Declare that the FEC has unlawfully withheld and unreasonably delayed agency action on plaintiffs' administrative complaints under 5 U.S.C. § 706(1);
- (3) Order the FEC to conform with this declaration within 30 days pursuant to 52 U.S.C. § 30109(a)(8)(C);
- (4) Award plaintiffs their costs and reasonable attorneys' fees incurred in this action;
and
- (5) Grant such other relief the Court may deem just and proper.

Dated: March 13, 2020

Respectfully submitted,

/s/ Tara Malloy

Paul M. Smith (DC Bar No. 358870)
Tara Malloy (DC Bar No. 988280)
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

EXHIBIT A

BEFORE THE FEDERAL ELECTION COMMISSION

DEMOCRACY 21
2000 Massachusetts Avenue NW
Washington, DC 20036
(202) 355-9600

CAMPAIGN LEGAL CENTER
Suite 1400
1411 K Street NW
Washington, DC 20002
(202) 736-2200

RECEIVED
FEC MAIL CENTER
2015 MAY 27 PM 2:56

v.

MUR No. _____

JOHN ELLIS "JEB" BUSH
c/o Right to Rise PAC
P.O. Box 14349
Tallahassee, FL 32317

RIGHT TO RISE SUPER PAC
Charles Spies, Treasurer
Suite 1000
601 Pennsylvania Avenue NW
Washington, DC 20004

COMPLAINT

1. The Commission should find reason to believe that former Governor Jeb Bush and the individual-candidate Super PAC supporting his campaign, the Right to Rise Super PAC, have violated 52 U.S.C. § 30125(e), which prohibits a candidate, and any "entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of" a candidate, from raising and spending funds that do not comply with federal contribution limits and source prohibitions, *i.e.*, soft money. The Right to Rise Super PAC is an entity that Bush, both directly and indirectly through his agents, has "established" and that is "acting on his behalf" for the

purpose of raising and spending soft money to promote his presidential campaign. Similarly, Bush, both directly and indirectly through his agents, has “financed,” “maintained” and “controlled” the Right to Rise Super PAC, which is “acting on his behalf” for the sole purpose of promoting Bush’s presidential campaign. Accordingly, there is reason to believe that Bush is violating section 30125(e) by raising and spending soft money for and through such an entity, and that the Right to Rise Super PAC is violating section 30125(e) by raising and spending soft money on behalf of Bush.

2. After finding “reason to believe” that Bush and the Right to Rise Super PAC have each violated these provisions of the law, the Commission should conduct an investigation to determine whether a violation has occurred and is continuing to occur, and should take appropriate enforcement action. 52 U.S.C. § 30109(a).

I. Statement of Facts

A. Bush is a “candidate”

3. Although to date he has publicly claimed otherwise, Jeb Bush is a candidate for the Republican nomination for President in the 2016 election. He has received contributions or made expenditures aggregating \$5,000 or more for purposes of seeking that nomination. 52 U.S.C. §30101(2).

4. The fact of Bush’s candidacy is so apparent, and so overt, that Bush himself has found it hard to maintain what is really the ongoing charade of his purported non-candidacy. According to one published report:

Jeb Bush finally said what everybody knows – that he’s running for the 2016 Republican presidential nomination. Then he tried to take it back.

“I’m running for president in 2016, and the focus is going to be about how we, if I run, how do you create high sustained economic growth,” Bush said in a video posted by NBC News.

The apparent declaration comes as Bush has been dodging the question of whether he's a real candidate or is pursuing a strategy of running without saying so, to allow him to coordinate with his Right to Rise Super PAC and the dark money Right to Rise Policy Solutions.¹

5. Bush's proclamations that he is not a candidate is contradicted by the facts and the applicable law. In all pertinent ways, Bush has been engaging in activities as an active candidate at least since January 2015. He has been traveling extensively to early primary states since January 2015, and has been speaking and organizing in those states. For instance, according to one published report:

For months, Bush has been privately wooing top New Hampshire Republicans in a flurry of phone calls, emails, private meetings, and even hand-scribbled thank-you notes. He has met with top state legislators, local mayors, and, in particular, dialed up a long list of Mitt Romney's old hands here."

Bush already has three strategists laying the groundwork in the state: Killion; Rob Varsalone, a former top adviser to Republican Sen. Kelly Ayotte; and Nate Lamb, a field director for Sen. Scott Brown's failed 2014 campaign. In addition, Ryan Williams, a former Romney operative who has worked for the New Hampshire Republican Party, is helping the Bush team through his firm, FP1 Strategies.²

6. Bush has also been heavily involved in fundraising for the Right to Rise Super PAC, which is raising funds solely for the purpose of making expenditures to further Bush's presidential campaign. An individual becomes a "candidate" if the individual raises "funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate. . . ." 11 C.F.R. 100.72(b).

¹ P. Blumenthal, "Jeb Bush Messes Up Charade Of Not Running For President, *The Huffington Post* (May 13, 2015).

² S. Goldmacher, "Jeb Bush looks weak in Iowa. He can't count on Florida. So he must win here," *National Journal* (May 5, 2015).

7. By these standards, Bush is a “candidate.” The fact that he has refrained from formally announcing his candidacy is not dispositive. If Bush is raising and spending money as a candidate, he is a candidate under the law, whether or not he declares himself to be one.

8. Further grounds for concluding that Bush is a “candidate” pursuant to 52 U.S.C. § 30101(2) are set forth in a complaint filed with the Commission by the Campaign Legal Center and Democracy 21 on March 31, 2015. That complaint is incorporated herein by reference.

9. Bush has not yet registered an authorized campaign committee. But in January 2015, he established a PAC that “will serve as a holding area for staff and a policy shop” and that “will also serve as the focal point of Bush’s political efforts, from commissioning polls and producing ads to making hires for his digital team.”³ This PAC is named the Right to Rise PAC.⁴

10. A almost identically named Super PAC—the Right to Rise Super PAC—has been registered with the Commission.⁵ That Super PAC is an individual-candidate Super PAC that has been established and is operating solely to promote Bush’s presidential campaign.

B. Bush “established” and through his agents is
directly or indirectly “controlling” the Right to Rise Super PAC

11. According to one published report, “Jeb Bush is putting in motion an ambitious plan to develop a super PAC that would be unprecedented in size and scope. . . .”⁶ Another report states, “The organization around Bush, a former Florida governor, has created a super

³ R. Costa, “Jeb Bush and his allies form leadership PAC and super PAC, both dubbed Right to Rise,” *The Washington Post*, (Jan. 6, 2015).

⁴ FEC No. C00571380.

⁵ FEC No. C00571372.

⁶ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

PAC. . . .”⁷ According to another report, Bush’s advisers “are currently overseeing the operations of both Bush political committees.”⁸

12. Other published reports indicate that Bush and his aides are actively involved in recruiting high-level staff for the Right to Rise Super PAC. One report notes that “Bush’s team is considering putting Mike Murphy, one of his top advisers, in charge of the super-PAC, according to a Republican source familiar with the planning.”⁹ Another report describes Murphy as “Bush’s longtime strategist who has been helping the former Florida governor staff up his political operation and shape his economic opportunity message.”¹⁰ Another report states that Murphy “has played a critical role in getting out Jeb Bush’s message and rolling out his all-but-certain presidential run,” and that Murphy and Bush have “a close relationship.”¹¹ Another report states that Murphy has “guided Bush through the rocky shallows of early-stage presidential politics and helped manage Bush’s successful push to lock down most of the Republican Party’s top donors for the 2016 race. . . .”¹² Another report states that Murphy “has been deeply involved in Bush’s steps, courting donors, selecting staff and developing strategy.”¹³

⁷ P. Overby, “5 Years After ‘Citizens United,’ Super PACs Continue to Grow,” *National Public Radio* (Jan. 13, 2015).

⁸ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

⁹ M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (March 18, 2015).

¹⁰ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

¹¹ M. Haberman, “Bush Adviser May Skip Campaign to Work for ‘Super PAC,’” *The New York Times* (Feb. 18, 2015).

¹² J. Rutenberg, “The Next Era of Campaign-Finance Crazyism Is Already Underway,” *The New York Times* (April 21, 2015).

¹³ T. Beaumont, “Bush preparing to delegate many campaign tasks to super PAC,” *Associated Press* (April 21, 2015).

According to another report, “While putting Murphy, a veteran of Republican presidential campaigns, atop the committee would signal a crucial role for the super-PAC, delaying a decision until summer also would give Bush more time to directly strategize with Murphy over fundraising, messaging, and other planning.”¹⁴

13. One report states that pollster Neil Newhouse is also under consideration to work for the Super PAC. According to this article, “Newhouse has a long association with Bush, serving as his pollster during his Florida gubernatorial campaigns.”¹⁵

14. The Treasurer of the Right to Rise Super PAC is Charles Spies. Spies is also the lawyer for the Right to Rise Super PAC.¹⁶ He is also a lawyer for the Right to Rise leadership PAC and is described by one published report as a “top Bush strategist.”¹⁷ One published report states that Spies “represents Bush and his Right to Rise Super PAC.”¹⁸ As one published report said, “Bush’s leadership committee and super PAC share the same name, Right to Rise, and were set up by the same GOP election law attorney, Charlie Spies.”¹⁹ According to one report, Spies in February 2015 sent a cease-and-desist letter on behalf of Bush to a Bush supporter who had

¹⁴ M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (March 18, 2015).

¹⁵ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

¹⁶ P. Blumenthal, “Jeb Bush’s Decision to ‘Actively Explore’ 2016 Run Allows Him to Avoid Super PAC Rules,” *Huffington Post* (Jan. 16, 2015).

¹⁷ E. O’Keefe and M. Gold, “Secret, unlimited donations could boost a Jeb Bush run,” *The Washington Post* (March 31, 2015).

¹⁸ E. Flitter, “Jeb Bush lawyer tries to stop radio ads touting Bust campaign,” *Reuters* (March 18, 2015).

¹⁹ M. Gold, “Why super PACs have moved from sideshow to center stage for presidential hopefuls,” *The Washington Post* (March 12, 2015).

begun airing a television ad in support of the Bush campaign. Another published report describes Spies as “legal counsel in Bush’s political operation.”²⁰

15. According to a published report, Mason J. Fink, who formerly served as a fundraiser for Mitt Romney, “has signed on with Jeb Bush’s team and is expected to oversee national fundraising for Bush’s super PAC. . . .”²¹ According to the article, Fink is working with the Right to Rise leadership PAC but “is expected to transition to the Right to Rise super PAC. . . .” *Id.* But, the report makes clear that Bush’s agents are involved in the process of staffing the Super PAC. According to the report, “A Bush spokeswoman said no final staffing decisions have been made at the super PAC.” *Id.*

16. According to published reports, Bush is designing the strategy for the Super PAC and is delaying his formal announcement as a candidate in order to maximize his fundraising activities for the Super PAC. One report states, “Bush is even setting the timing of his official campaign announcement . . . around a cross-country fundraising tour [for the Super PAC]. In the final weeks leading up to the launch strategists have been devising a plan to allow both arms of the campaign—the official one and the super PAC—to work seamlessly, even as they will be legally barred from coordinating once he officially becomes a candidate.”²²

²⁰ T. Beaumont, “Bush preparing to delegate many campaign tasks to super PAC,” *Associated Press* (April 21, 2015).

²¹ P. Rucker, “Bush lands Romney finance director to lead super PAC fundraising,” *The Washington Post* (March 18, 2015).

²² A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

17. According to published reports, Bush is planning to “delegat[e] many of the nuts-and-bolts tasks of seeking the White House” to the Right to Rise Super PAC.²³ According to this report:

The concept, in development for months as the former Florida governor has raised tens of millions of dollars for his Right to Rise super PAC, would endow that organization not just with advertising on Bush’s behalf, but with many of the duties typically conducted by a campaign. . . .

[A]t its center is the idea of placing Right to Rise in charge of the brunt of the biggest expense of electing Bush: television advertising and direct mail.

Right to Rise could also break into new areas for a candidate-specific super PAC, such as data gathering, highly individualized online advertising and running phone banks. Also on the table is tasking the super PAC with crucial endgame strategies: the operation to get out the vote and efforts to maximize absentee and early voting on Bush’s behalf.²⁴

18. According to one report, “One adviser to the super PAC said a division of labor [with the Bush campaign] had been established. While the official campaign arm would take the lead on dictating messaging, the super PAC would take on the role of a follower and be an echo chamber. ‘There’s an understanding that Miami is in charge,’ the adviser said.”²⁵

19. As another report states, “One reason Bush aides are comfortable with the strategy is because Mike Murphy, Bush’s longtime political confidant, would probably run the super PAC once Bush enters the race.”²⁶

²³ T. Beaumont, “Bush preparing to delegate many campaign tasks to super PAC,” *Associated Press* (April 21, 2015).

²⁴ *Id.*

²⁵ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

²⁶ T. Beaumont, “Bush preparing to delegate many campaign tasks to super PAC,” *Associated Press* (April 21, 2015).

C. Bush is “financing” the Right to Rise Super PAC

20. Bush has personally participated in events held by the Right to Rise Super PAC. According to one published report, Bush was the “Special Guest” at the “Right to Rise National Team Meeting” held in Miami at the end of April 2015.²⁷ The invitation established four tiers of supporters for the Super PAC, with the highest level, the national executive committee, reserved for those who contributed or raised \$500,000 by April 17. An invitation to the event stated, “We hope you can join us for policy, political and finance briefings with the Governor and our team.” *Id.* According to a published report about the event, “Mr. Bush described his fund-raising prowess over the weekend to hundreds of donors who attended a retreat in Miami, saying he had raised more money than any Republican presidential operation in modern history. Mr. Bush is raising unlimited super PAC dollars. . . .”²⁸ Another report stated, “Former Florida governor Jeb Bush has raised tens of millions of dollars for his allied super PAC, collecting a historic amount, he told donors Sunday night.”²⁹

21. According to one report about the April fundraising event, “The weekend confab was described by organizers as an opportunity to thank his biggest backers—and give them a chance to meet with Bush and the people who will be running his super PAC.”³⁰

22. The April Right to Rise Super PAC “donor confab” was “led by Bush’s top three aides: David Kochel and Sally Bradshaw, who are expected to lead his campaign, and Mike

²⁷ “Lines are Blurred in Donor Event for Jeb Bush ‘Super PAC,’” *The New York Times*.

²⁸ M. Haberman, “Hillary Clinton to Jump Start Fund-raising Efforts,” *The New York Times* (April 29, 2015).

²⁹ M. Gold and E. O’Keefe, “Never before have so many people with so much money run for president,” *The Washington Post* (April 27, 2015).

³⁰ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

Murphy, who is poised to lead the Super PAC. The briefings included discussions of economic and foreign policy and details on how the super PAC, Right to Rise, plans to reach out to ‘non-traditional GOP communities.’³¹

23. Bush has been involved in directing contributions to the Right to Rise Super PAC. According to one published report, “Bush has consistently appeared at events for his super-PAC, which can raise unlimited amounts of money.”³² Another report states that Bush “is headlining \$100,000-a-head fundraisers for a super PAC already ballooning with tens of millions of dollars in donations.”³³ Another report states that “Bush has been aggressively recruiting donors for the group, which legally can raise unlimited funds and is poised to have hundreds of millions of dollars to spend on television advertisements and other activities.”³⁴ Another report stated, “The former Florida governor has held multiple high-donor fundraisers on Wall Street and across the country, sometimes with minimum contributions of \$100,000 or even more.”³⁵ In February Bush drew headlines for an “eye-popping \$100,000 per-ticket Park Avenue event hosted by private equity mogul Henry Kravis and his wife. The price of admission to the event, which [raised] funds for Bush’s ‘Right to Rise’ super PAC, surprised even Wall Street veterans used to high-dollar fundraisers.”³⁶ According to other reports, Bush has engaged in “a nonstop fundraising

³¹ M. Gold and E. O’Keefe, “Never before have so many people with so much money run for president,” *The Washington Post* (April 27, 2015).

³² M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (March 18, 2015).

³³ M. Gold, “Why super PACs have moved from sideshow to center stage for presidential hopefuls,” *The Washington Post* (March 12, 2015).

³⁴ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

³⁵ B. White, “Jeb Bush’s \$100 million problem,” *Politico* March 16, 2015).

³⁶ B. White, “Jeb Bush’s eye-popping event: \$100K per ticket,” *Politico*, (Feb. 10, 2015).

tour raking in millions” for the Right to Rise Super PAC.³⁷ Bush headlined a \$25,000-per-couple fundraising event on March 30 in Newport Beach, CA and a March 31 fundraising event in Bel Air, CA, with a requested minimum donation of \$25,000 per couple, and with those attendees who wished to attend the reception and dinner being asked to contribute \$100,000 per couple to Right to Rise Super PAC.³⁸

24. According to published reports, advisers working for Bush are involved in the fundraising plans and activities of the Super PAC. In response to a report that the Super PAC “could raise as much as \$100 million in the first quarter of the year—and maybe \$500 million by June, if not more,” the report said that “Bush advisers are scrambling to drive these lofty expectations way down.”³⁹ The report quoted “Bush spokesman Tim Miller” as stating that “The PAC’s goals are far more modest.” *Id.*

25. By March 2015, as Bush was “headlining a series of high-dollar events” for Right to Rise Super PAC, his team sent out an “unusual request ... to wealthy donors writing large checks to support former Florida governor Jeb Bush: Please don’t give more than \$1 million right away.” Bush advisers were reportedly concerned that “accepting massive sums from a handful of uber-rich supporters could fuel a perception that the former governor is in their debt.”⁴⁰ But according to another report published in early May 2015, “Bush has been rushing to fill the Right to Rise bank account.... Over the coming days, ... Bush will try to accelerate the

³⁷ M. Gold, “Jeb Bush super PAC juggernaut heads to California next week,” *The Washington Post* (March 23, 2015).

³⁸ *Id.*

³⁹ B. White, “Jeb Bush’s \$100 million problem,” *Politico* March 16, 2015).

⁴⁰ M. Gold, “Awash in cash, Bush asks donors not to give more than \$1 million – for now,” *The Washington Post* (March 4, 2015).

cash flow.... Hoping to avoid the public perception that he'd been indebted to a few extremely wealthy benefactors, the former governor initially imposed a \$1 million cap on donations to the super PAC. But now, the source said, that restriction is being lifted. The move is partly out of concern that, without other Republican candidates raising large sums, more cash could be needed."⁴¹

26. Bush's family members are also raising money for the Right to Rise Super PAC. According to published reports, Bush's son, Texas Land Commissioner George P. Bush, was scheduled to appear at a Super PAC fundraising event in Austin, Texas.⁴² According to another report, "Former president George W. Bush and Laura Bush will headline a fundraiser for the Right to Rise PAC, the super PAC launched by Jeb Bush in anticipation of his own presidential bid."⁴³ And Bush's mother, Barbara Bush, has also raised money for the Super PAC.⁴⁴

II. Applicable Law

27. A cornerstone of the federal campaign finance laws is the limit on contributions to federal candidates that was enacted to prevent corruption. Since *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976), the Supreme Court has recognized that without contribution limits, "the integrity of our representative democracy is undermined." The Court also stated in *Buckley* that "Congress was surely entitled to conclude" that "contribution ceilings were a necessary

⁴¹ A. Isenstadt, "Jeb Bush's \$100M May," *Politico* (May 8, 2015).

⁴² P. Svitek, "George P. Bush to help raise cash for dad's super PAC," *The Texas Tribune* (March 9, 2015).

⁴³ M. Gold and E. O'Keefe, "George W. and Laura Bush to appear at fundraiser for Jeb Bush," *The Washington Post* (March 23, 2015).

⁴⁴ E. O'Keefe, "In fundraising E-mail, Barbara Bush says Jeb Bush 'Is Our Best Chance of Taking Back the White House in 2016,'" *The Washington Post* (March 18, 2015).

legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions.” *Id.* at 28 (emphasis added).

28. Individual-candidate Super PACs, such as the Right to Rise Super PAC, provide a means for donors to evade and circumvent the candidate contributions limits. The Federal Election Campaign Act limits to \$2,700 the size of a contribution that a presidential candidate or his authorized campaign committee can accept from an individual donor. 52 U.S.C. § 30116(a)(1). FECA also prohibits a corporation or labor union from making a contribution to a presidential candidate. 52 U.S.C. § 30118(a). Individual candidate Super PACs serve as a ready vehicle for eviscerating the candidate contribution limits that were enacted to prevent corruption.

29. The campaign finance laws contain provisions to prevent the circumvention of the basic \$2,700 candidate contribution limits, and of the prohibition on corporate and union contributions to federal candidates. By providing a vehicle for wealthy donors to make contributions on behalf of candidates that directly benefit the candidates and that do not comply with the Federal contribution limits, individual candidate Super PACs such as the Right to Rise Super PAC operate in violation of the contribution limits and the anti-circumvention protections of the law.

30. Section 30125(e)(1) states:

A candidate, individual holding Federal office, agent of a candidate or individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not —

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act;...

52 U.S.C. § 30125(e)(1) (emphasis added).

31. This prohibition is broadly drafted. It applies to any candidate for Federal office or Federal officeholder or to any “agent” of a candidate or of an officeholder, as well as to any “entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of” a candidate or officeholder. *Id.* Such candidates, officeholders, agents and entities cannot “solicit, receive, direct, transfer or spend funds in connection with an election for Federal office” unless those funds comply with the contribution limits and prohibitions, and reporting requirements, of Federal law. *Id.*

32. Thus, section 30125(e) makes clear that candidates cannot do indirectly what they cannot do directly. Candidates and their campaign committee are prohibited from directly raising or spending soft money. And candidates and their campaign committees are also prohibited from indirectly raising and spending such soft money funds—by doing so through a related entity “acting on behalf of” the candidate or through an entity that they have “established” or “financed” or “maintain” or “control.” And any such related entity is covered by the same soft money prohibition as the candidate, whether such entity was “directly” established by a candidate or campaign committee, or “indirectly” established by them for their benefit.

33. The Commission has promulgated regulations to implement this provision. 11 C.F.R. §§ 300.60, 300.61. The regulations apply to “Federal candidates” and to “Entities that are directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.” *Id.* § 300.60(a), (d). Such candidates and entities shall not “solicit, receive, direct, transfer, spend or disburse funds in connection with an election for Federal office” unless such funds “consist of Federal funds that are subject to the limitations, prohibitions and reporting requirements of the Act.” *Id.* § 300.61.

34. The statute and regulations make clear that the prohibition that applies to a Federal candidate raising or spending soft money fully applies also to any entity “directly or indirectly established, financed, maintained or controlled” by a Federal candidate as well as to any person or entity “acting on behalf of” a Federal candidate.

35. The Commission has promulgated a regulation to define the phrase “Directly or indirectly establish, finance, maintain, or control.” 11 C.F.R. § 300.2(c). That phrase applies, *inter alia*, to entities established, financed, maintained or controlled, whether directly or indirectly, by Federal candidates or their agents (referred to in the regulation as “sponsors”). *Id.* § 300.2(c)(1). The regulation lists a series of ten factors to determine the application of the standard, but it makes clear that these factors are not exclusive, *i.e.*, that the relevant determination is based on factors that “include, but are not limited to” the ten factors listed in the regulation. *Id.* § 300.2(c)(2). Further, the regulation makes clear that the factors “must be examined in the context of the overall relationship between sponsor and the entity” to determine if the sponsor “directly or indirectly established, finances, maintains, or controls the entity.” *Id.* Thus, in determining whether an entity is directly or indirectly established, financed, maintained or controlled by a sponsor, the Commission applies a functional facts-and-circumstances test that reviews the “overall relationship” between the sponsor and the entity.

36. The factors listed in the regulation include whether the “sponsor” (*i.e.*, the Federal candidate) and the entity have shared employees or officers, whether the “sponsor” directly or through an agent “provides” funds in a significant amount to the entity, or “causes or arranges for funds” in a significant amount to be provided to the entity, and whether the sponsor “directly or through its agent” had an “active or significant” role in “the formation of the entity.” *Id.* § 300.2(c)(2)(vi)-(ix).

III. Violation of Law
(Section 30125(e)(1))

37. Section 30125(e) prohibits any entity that is “directly or indirectly established, financed, maintained or controlled by or acting on behalf of” a Federal candidate from soliciting, receiving, directing or spending contributions that do not comply with the Federal contribution limits and source prohibitions.

38. Jeb Bush is a “candidate” within the meaning of FECA notwithstanding the fact that he has not yet made a formal announcement of his candidacy and notwithstanding his claims that he is not a candidate.

39. The Right to Rise Super PAC has been “directly or indirectly” “established” by Jeb Bush. The Super PAC has been established by agents and associates of Jeb Bush and is organized for the sole purpose of promoting Bush’s presidential campaign.

40. The Right to Rise Super PAC has been “directly or indirectly” “financed” by Jeb Bush. Bush has attended multiple fundraisers for the Super PAC and has solicited funds for the Super PAC.

41. The Right to Rise Super PAC has been “directly or indirectly” “maintained or controlled” by Jeb Bush. Bush and his agents are directly involved in making decisions about the staffing of the Super PAC and about allocation of tasks to the Super PAC and as between the Super PAC and the official Bush campaign. Bush’s close associates, former staff and political operatives are working with or for the Super PAC, and in discussions with the Super PAC and with Bush about whether to assume formal leadership roles for the Super PAC.

42. The applicable regulation makes clear that the determination of whether an individual candidate Super PAC is “directly or indirectly” established, financed, maintained, or controlled by the candidate it is supporting must be determined “in the context of the overall

relationship between” the candidate and the Super PAC. 11 C.F.R. § 300.2(c)(2). The “overall context” of the relationship between the Right to Rise Super PAC and Jeb Bush shows that Bush and his agents established the Super PAC and have been actively involved in the planning, staffing, financing and operations of the Super PAC, and thus that the Super PAC is “directly or indirectly established, financed, maintained or controlled” by Bush.

43. The Right to Rise Super PAC is also “directly or indirectly” “acting on behalf of” Jeb Bush. The sole purpose of the Super PAC is to promote the election of Bush as president. The Super PAC is being operated as an arm of the Bush political operation and is acting in concert with Bush and his agents for the common objective of promoting Bush’s candidacy.

44. Accordingly, the Right to Rise Super PAC is an entity “directly or indirectly established, financed, maintained or controlled or acting on behalf of” Jeb Bush and his campaign within the meaning of section 30125(e). Thus, the Right to Rise Super PAC has violated section 30125(e) by soliciting, receiving, directing and spending contributions that do not comply with the Federal contribution limits and source prohibitions.

Prayer for Relief

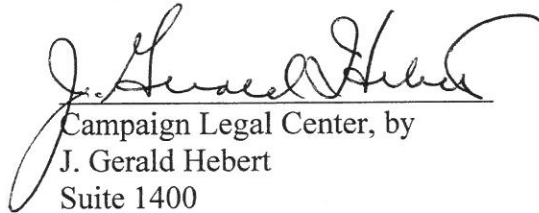
WHEREFORE, the Commission should undertake an investigation under 52 U.S.C. § 30109 of respondents Bush and the Right to Rise Super PAC to determine whether respondents have violated the law by accepting contributions or making expenditures with funds raised in excess of the applicable limits under 52 U.S.C. §§ 30116(a)(1) and 11 C.F.R. § 110.3. In the case of any violations that have occurred, furthermore, the Commission should impose appropriate sanctions for such violations, should enjoin each respondent from all such violations in the future, and should impose such additional remedies as are necessary and appropriate to

deter and prevent any other person from engaging in such violations in order to ensure compliance with FECA and BCRA.

Respectfully submitted,



Democracy 21, by
Fred Wertheimer
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600



Campaign Legal Center, by
J. Gerald Hebert
Suite 1400
1411 K Street NW
Washington, DC 20005
(202) 736-2200

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street, NW—Suite 600
Washington, DC 20005
Counsel to Democracy 21

Paul S. Ryan
The Campaign Legal Center
Suite 1400
1411 K Street NW
Washington, DC 20005
Counsel to the Campaign Legal Center

Verification

The complainant listed below hereby verifies that the statements made in the attached Complaint, upon information and belief, are true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Democracy 21



Fred Wertheimer

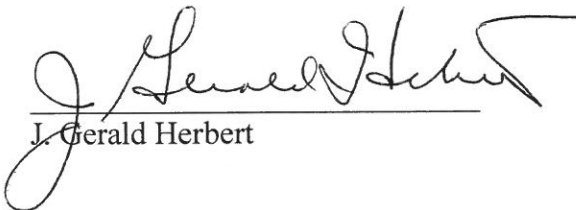
Sworn to and subscribed before me this 27 th day of May, 2015.



Notary Public



For Complainant Campaign Legal Center



J. Gerald Herbert

Sworn to and subscribed before me this 27 th day of May, 2015.



Notary Public

EXHIBIT B

BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION

RECEIVED
FEC MAIL CENTER
2015 MAR 31 PM 1:06

Campaign Legal Center
215 E Street, NE
Washington, DC 20002
(202) 736-2200

Democracy 21
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

v.

MUR No. _____

John Ellis “Jeb” Bush
c/o Right to Rise PAC
P.O. Box 14349
Tallahassee, FL 32317

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that John Ellis “Jeb” Bush has been “testing the waters” of a 2016 presidential campaign and has not complied with and will not comply with the requirement that “testing the waters” activities be paid for with funds that comply with the Federal Election Campaign Act’s (“FECA”) candidate contribution limits and restrictions, in violation of FECA provisions, 52 U.S.C. § 30101, *et seq.*, and Commission regulations.
2. Additionally, this complaint is based on information providing reason to believe that Jeb Bush moved beyond “testing the waters” to become a “candidate” under FECA and violated the candidate registration and reporting requirements, contribution limits and restrictions, and “soft money” prohibitions of FECA, 52 U.S.C. § 30101, *et seq.*, and Commission regulations.

3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission shall make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

FACTS

4. On December 16, 2014, former Florida Governor Jeb Bush announced that he had planned to “launch a political action committee tasked with ‘exploring a presidential bid.’”¹ Bush further stated via a Facebook note that he had “decided to actively explore the possibility of running for President of the United States,” and announced his plans to launch a “Leadership PAC” in January to “facilitate conversations with citizens across America to discuss the most critical challenges facing our exceptional nation.” He concluded his Facebook note stating: “In the coming months, I hope to visit with many of you and have a conversation about restoring the promise of America.”²
5. On January 6, 2015, it was reported that “Bush and his supporters launched two new political action committees . . . as he moves closer to a 2016 presidential campaign, underscoring his desire to get a head start on his potential rivals on both fundraising and organizing.”³ According to the *Washington Post*, the new PAC, Right to Rise (FEC ID# C00571380), “will serve as a holding area for staff and a policy shop until Bush formally decides on whether to run. It will also serve as the focal point of Bush’s political efforts,

¹ Jose A. DelReal, *Jeb Bush forms PAC to explore presidential run*, WASH. POST, Dec. 16, 2014, <http://www.washingtonpost.com/blogs/post-politics/wp/2014/12/16/jeb-bush-forms-pac-to-explore-presidential-run/>.

² *Id.* *See also* Facebook, “A Note From Jeb Bush,” (Dec. 16, 2014), <https://www.facebook.com/notes/jeb-bush/a-note-from-jebbush/619074134888300>.

³ Robert Costa, *Jeb Bush and his allies form leadership PAC and super PAC, both dubbed Right to Rise*, WASH. POST, Jan. 6, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/01/06/jeb-bush-forms-new-pac-right-to-rise/>.

from commissioning polls and producing ads to making hires for his digital team.”⁴ On the same day, Right to Rise Super PAC (FEC ID# C00571372) was also formed.

6. Bush’s advisers are reportedly “overseeing the operations of both Bush political committees”—Right to Rise PAC and Right to Rise Super PAC.⁵
7. Shortly after formation of Right to Rise PAC and Right to Rise Super PAC, “multiple Republican sources involved in finance meetings with Bush’s team” told reporters that Bush’s team had set a “fundraising goal of \$100 million in the first three months of this year—including a whopping \$25 million haul in Florida—in an effort to winnow the potential Republican presidential primary field with an audacious display of financial strength.”⁶
8. During a January visit to Washington DC, Bush met with Republican lobbyists “to provide an update on his expected run for president and let supporters know how they could boost his budding campaign.” Bush operatives “announced that 60 events in cities across the country have been scheduled to raise money for his federal leadership political action committee, which can accept money only in limited amounts, and his super PAC, which can accept checks in unlimited amounts.” According to one attendee, “Bush talked about how the expected campaign of Democrat Hillary Clinton, the former secretary of state under President Obama, would ‘be a campaign

⁴ *Id.*

⁵ Ed O’Keefe, *Jeb Bush sharpens his attacks on President Obama in South Carolina*, WASH. POST, Mar. 17, 2015, http://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.

⁶ Michael C. Bender and Jonathan Allen, *Bush Team Sets Bold Fundraising Goal: \$100 Million in Three Months*, BLOOMBERG POLITICS, Jan. 9, 2015, <http://www.bloomberg.com/politics/articles/2015-01-09/bush-team-sets-bold-fundraising-goal-100-million-in-three-months>.

of the past dating back to what happened in the 1990s' and that his 'will be candidacy of future' focusing on positive immigration reform, among other issues."⁷

9. Bush's mother, Barbara Bush, has been soliciting contributions via e-mail for a fund within the Right to Rise Super PAC—the Run Jeb Run Fund, stating in the email solicitation: "I know that's a lot to ask, but Jeb is our best chance of taking back the White House in 2016, and I hope that you will join me in pushing him to run."⁸
10. Bush has spent much of the past three months traveling across the country, as evidenced from a plethora of news reports, as well as from his own statements on Twitter.⁹ In the past month alone, Bush has been to Illinois, the District of Columbia, Nevada, Iowa, New Hampshire, and South Carolina—and he has publicized and promoted these stops on social media.¹⁰
11. Bush's extensive travels have been "a nonstop fundraising tour raking in millions" for the Right to Rise Super PAC "to back his expected presidential bid."¹¹ Bush headlined a \$25,000-per-couple fundraising event on March 30 in Newport Beach, CA and is scheduled to attend a March 31 fundraising event in Bel Air, CA, with a requested minimum donation of \$25,000 per couple, and with those attendees who wish to

⁷ David M. Drucker, *Jeb Bush lays out plans for 60 fundraisers for 2016 bid*, WASH. EXAMINER, Jan. 20, 2015, <http://www.washingtonexaminer.com/jeb-bush-lays-out-plans-for-60-fundraisers-for-2016-bid/article/2558956>.

⁸ Ed O'Keefe, *In fundraising E-mail, Barbara Bush says Jeb Bush 'Is Our Best Chance of Taking Back the White House in 2016,'* WASH. POST, Mar. 18, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/03/18/in-fundraising-e-mail-barbara-bush-says-jeb-bush-is-our-best-chance-of-taking-back-the-white-house-in-2016/>. See also Right to Rise Super PAC, Run Jeb Run Fund Contribution Page, <https://contribute.righttorisesuperpac.org/run-jeb-run-fund/> (last visited Mar. 27, 2015) ("Please stand with Barbara Bush and contribute to the Run Jeb Run Fund today!").

⁹ See generally Twitter Account of @Jeb Bush, TWITTER, <https://twitter.com/jebbush> (last visited Mar. 19, 2015) (tweets indicating his frequent travel to meet with high profile individuals and speak on national issues in the last month alone: Mar. 18, 2:38pm—South Carolina; Mar. 13, 2:11pm—New Hampshire; Mar. 7, 5:17pm—Iowa; Mar. 2, 3:28pm—Nevada; Feb. 27, 12:54pm—Washington, D.C.; Feb 18. 8:43am—Illinois).

¹⁰ *Id.*

¹¹ Matea Gold, *Jeb Bush super PAC juggernaut heads to California next week*, WASH. POST, Mar. 23, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/03/23/jeb-bush-super-pac-juggernaut-heads-to-california-next-week/?postshare=1431427200105361>.

attend the reception and dinner being asked to contribute \$100,000 per couple to Right to Rise Super PAC.¹²

12. In mid-March, Bush paid a visit to the early primary state of South Carolina, holding “private meetings with potential donors, supporters and staffers” in Myrtle Beach and Charleston.¹³
13. In February Bush drew headlines for an “eye-popping \$100,000 per-ticket Park Avenue event hosted by private equity mogul Henry Kravis and his wife. The price of admission to the event, which [raised] funds for Bush’s ‘Right to Rise’ super PAC, surprised even Wall Street veterans used to high-dollar fundraisers.”¹⁴ The New York City event was part of Bush’s “shock and awe approach to early 2016 fundraising that people close to the campaign say could eventually see the former governor reach a total of between \$50 million and \$100 million between the super PAC, a traditional political action committee and an eventual presidential campaign.”¹⁵
14. Bush’s campaign strategy reportedly began in November 2013. In 2015, “Bush’s team hit the phones and emails with what some have called a ‘shock and awe’ campaign that could raise between \$50 million and \$100 million by the end of the first quarter of the year.” By the end of March, “Bush’s team believes, many would-be competitors will have joined Romney on the sidelines, unwilling or unable to compete with the Bush

¹²

Id.

¹³

Ed O’Keefe, *Jeb Bush sharpens his attacks on President Obama in South Carolina*, WASH. POST, Mar. 17, 2015, http://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.

¹⁴

Ben White, *Jeb Bush’s eye-popping event: \$100K per ticket*, POLITICO, Feb. 10, 2015, <http://www.politico.com/story/2015/02/jeb-bush-fundraiser-100k-per-ticket-115086.html>.

¹⁵

Id.

juggernaut, while the candidate can be freed up to address the many serious questions about why another Bush is the best solution to the nation's problems."¹⁶

15. By March 2015, as Bush was "headlining a series of high-dollar events" for Right to Rise Super PAC, his team sent out an "unusual request . . . to wealthy donors writing large checks to support former Florida governor Jeb Bush: Please don't give more than \$1 million right away." Bush advisers were reportedly concerned that "accepting massive sums from a handful of uber-rich supporters could fuel a perception that the former governor is in their debt."¹⁷
16. According to one report, Bush and other "likely candidates" have been "deeply involved in setting up their outside-spending vehicles, installing top staff and drawing down funds to pay for early voter contact, including trips to primary states."¹⁸
17. In late February 2015, Bush attended and spoke at the Conservative Political Action Conference (CPAC), where he began his remarks by effectively acknowledging that he is testing the waters of a presidential campaign, stating: "If I go beyond the consideration of the possibility of running . . . if I get beyond that and run for President, I have to show what's in my heart."¹⁹
18. In early March 2015, Bush, together with eight other "White House aspirants," attended the Iowa agriculture summit—an important stop on the road to Iowa's 2016 presidential caucuses—where Bush took the stage to "court[] Iowa's farming industry." Bush

¹⁶ Ben White and Mark Caputo, *Inside Jeb Bush's 'shock and awe' launch*, POLITICO, Feb. 18, 2015, <http://www.politico.com/story/2015/02/inside-jeb-bushs-shock-and-awe-launch-115272.html>.

¹⁷ Matea Gold, *Awash in cash, Bush asks donors not to give more than \$1 million—for now*, WASH. POST, Mar. 4, 2015, http://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.

¹⁸ Alex Altman, *How Super PACs Are Taking Over*, TIME, Mar. 25, 2015, <http://time.com/3758900/super-pacs-2016/>.

¹⁹ *Jeb Bush Remarks at CPAC*, (C-SPAN television broadcast Feb. 27, 2015), available at <http://www.c-span.org/video/?324558-16/former-governor-jeb-bush-rfj-remarks-cpac-2015>.

criticized the Environmental Protection Agency and called for reining in “this top-down driven regulatory system.” Asked how to achieve that, Bush said, “The first thing you do is you change presidents.”²⁰

19. Bush is a confirmed speaker for the Iowa Republican party’s annual Lincoln dinner on May 16, 2015. The Party’s announcement explains: “There’s always the chance for a candidate to have a defining moment at an event like this in Iowa. This dinner is an opportunity for our distinguished guests to set themselves apart and announce to Iowa and the country why they should be the next President of the United States. . . . The Lincoln Dinner is an important stepping stone for candidates on their way to the caucuses in February 2016.”²¹
20. Bush’s campaign activities have not been limited to fundraising and meetings with party leaders in early primary states. “The political apparatus surrounding former Gov. Jeb Bush, determined to avoid embarrassment in a state that has vexed his party and family in national elections, is plotting a vast operation aimed at turning Florida into a bulwark for his presidential campaign, according to dozens of interviews. The plan, code-named ‘Homeland Security,’ seeks to try to neutralize two potentially grave but homegrown threats to Mr. Bush’s long-anticipated run for president: the likely challenge from a charismatic young Republican senator from Miami, Marco Rubio . . . and a demographic drift within Florida that could doom Mr. Bush there in a fall campaign against a Democrat.”²²

²⁰ Philip Rucker and Dan Balz, *Iowa agriculture summit splits GOP 2016 field on subsidies, immigration*, WASH. POST, Mar. 7, 2015, http://www.washingtonpost.com/politics/iowa-agriculture-summit-splits-gop-2016-field-on-subsidies-immigration/2015/03/07/a5f12300-c4f4-11e4-ad5c-3b8ce89f1b89_story.html.

²¹ Press Release, Republican Party of Iowa, *Iowa GOP to Host Star-Studded Lincoln Dinner on May 16*, Mar. 26, 2015, <http://www.iowagop.org/2015/03/26/iowa-gop-to-host-star-studded-lincoln-dinner-on-may-16/>.

²² Michael Barbaro, *Jeb Bush’s Team Plots Vast Effort to Win Florida*, N.Y. TIMES, Mar. 21, 2015, http://www.nytimes.com/2015/03/22/us/politics/jeb-bushs-team-plots-vast-effort-to-win-florida.html?_r=3.

21. Throughout the early months of 2015, Bush has been building a presidential campaign staff. Bush has hired “Jon Downs and Danny Diaz, both founding partners in the Washington-based political firm FP1 Strategies, [to] help steer advertising and messaging efforts for Bush’s Right To Rise Leadership PAC” and “will hold similar roles on a potential campaign if Bush decides to officially become a candidate, a prospect that appears likelier by the day.” Bush has also hired “David Kochel, a veteran Iowa operative and longtime adviser to Mitt Romney, to serve as an adviser to the PAC and likely campaign manager.”²³

SUMMARY OF THE LAW

I. “CANDIDATE” STATUS & “TESTING THE WATERS”

22. The term “candidate” is defined in FECA to mean “an individual who seeks nomination for election, or election, to Federal office” and for purposes of the statutory definition an individual is deemed to seek nomination for election, or election, “if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000” or “given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$5,000 or has made such expenditures aggregating in excess of \$5,000.” 52 U.S.C. § 30101(2) (emphasis added); *see also* 11 C.F.R. § 100.3(a).
23. The term “contribution” is defined in FECA to mean “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of

²³ Peter Hamby and Mark Preston, *Jeb Bush adds veteran consultants to likely campaign team*, CNN, Feb. 2, 2015, <http://www.cnn.com/2015/02/02/politics/2016-election-jeb-bush-hiring/>.

influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.51–100.56.

24. The term “expenditure” is defined in FECA to mean “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.110–100.114.
25. The Commission has explained that under FECA, “an individual is deemed a ‘candidate’ . . . if he or she receives contributions or makes expenditures in excess of \$5,000 or gives consent to another person” to do so on his or her behalf. *See* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992–93 (Mar. 13, 1985) (Final Rules and Explanation and Justification).²⁴
26. The Commission has further explained: “The Act thus establishes automatic dollar thresholds for attaining candidate status which trigger its registration and reporting requirements.” However, “[t]hrough its regulations, the Commission has established limited exceptions to these automatic thresholds which permit an individual to test the feasibility of a campaign for Federal office without becoming a candidate under the Act.” *See* Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9992–93 (emphasis added).
27. These “limited exceptions” to the definitions of “contribution” and “expenditure” are commonly referred to as the “testing the waters” exceptions and are found at 11 C.F.R. §§ 100.72 and 100.131. In the absence of these regulatory exemptions, funds raised and spent for the activities described therein would be “contributions” and “expenditures”

²⁴ Available at http://www.fec.gov/law/cfr/ej_compilation/1985/50fr9992.pdf.

under federal law and would therefore trigger “candidate” status when they exceeded \$5,000.

28. Section 100.72(a), structured as a limited exception to the definition of “contribution,” provides:

Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. . . . Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

11 C.F.R. § 100.72(a) (emphasis added).

29. Section 100.72(b) makes clear that the exception is “not applicable to individuals who have decided to become candidates[,]” nor “for activities relevant to conducting a campaign.” 11 C.F.R. § 100.72(b) (emphasis added). Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

- (1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
- (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.
- (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.
- (4) The individual conducts activities in close proximity to the election or over a protracted period of time.
- (5) The individual has taken action to qualify for the ballot under State law.

11 C.F.R. § 100.72(b) (emphasis added).

30. Section 100.131 creates a near-identical exception to the definition of “expenditure,” replacing the opening phrase “funds received” with the phrase “payments made.” 11 C.F.R. § 100.131.

31. Sections 110.2(l) and 9034.10 establish certain activities as *de facto* “testing the waters” activities—payments for:

- Polling expenses for determining the favorability, name recognition, or relative support level of the candidate involved;
- Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate’s home state and in or near the District of Columbia;
- Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate’s home state and in or near the District of Columbia; or
- Expenses of individuals seeking to become delegates in the Presidential nomination process.

11 C.F.R. §§ 110.2(l)(1) and 9034.10(a).

32. These regulations, 11 C.F.R. §§ 110.2(l) and 9034.10, make clear that payments for such activities benefiting presidential candidates, paid for by federal multicandidate committees before the individual announces her candidacy, constitute in-kind “contributions” from the multicandidate committee to the candidate subject to the \$5,000 limit on contributions from multicandidate committees to candidates—unless reimbursed by the candidate. The Commission has explained:

These provisions were designed to address situations where unauthorized political committees closely associated with a particular individual planning to run for President defray costs that are properly treated as in-kind contributions unless reimbursed by the Presidential campaign. . . . The focus of the final rules, therefore, is those expenses paid by multicandidate political committees prior to actual candidacy under the law, i.e., during the “testing the waters” phase and before.

Public Financing of Presidential Candidates and Nominating Conventions, 68 Fed. Reg. 47386, 47387, 47407 (Aug. 8, 2003) (Final Rules and Explanation and Justification).

33. In Advisory Opinion 1985-40, the Commission concluded that travel expenses and hospitality suite rentals for a prospective presidential candidate’s attendance at state and

regional Republican Party meetings and conferences, described as “cattle shows” that would “be attended by party officials, party activists, elected officeholders, political consultants, and the press,” constituted “testing the waters” expenses. Similarly, the Commission concluded that expenses related to the prospective candidate’s “travel to early primary and convention states to meet privately with Republican Party leaders to seek their views on whether he should seek the 1988 Republican presidential nomination” constituted “testing the waters” activities. Finally, the Commission concluded that expenses related to setting up “steering committees in certain states, such as Iowa and New Hampshire, which will hold early caucuses and primaries in connection with the 1988 Republican presidential nomination” constituted “testing the waters” activities. FEC Advisory Opinion 1985-40 at 6–9.

II. Registration & Reporting Requirements

34. No later than 15 days after becoming a candidate, a candidate for federal office must “designate in writing a political committee . . . to serve as the principal campaign committee of such candidate” by filing a Statement of Candidacy using the Commission’s Form 2. 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1. Such a committee must file a statement of organization no later than 10 days after designation as the candidate’s authorized principal campaign committee. 52 U.S.C. § 30103.
35. The treasurer of a political committee must file reports of receipts and disbursements pursuant to 52 U.S.C. § 30104.
36. All funds received or payments made in connection with “testing the waters” activities conducted under 11 C.F.R. §§ 100.72(a) and 100.131(a) prior to becoming a candidate are “considered contributions or expenditures under the Act and shall be reported . . . in the first report filed by such candidate’s principal campaign committee.” 11

C.F.R. § 101.3. An individual “testing the waters” must keep records of the “name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with” “testing the waters” activities. *Id.*

III. CONTRIBUTION LIMITS & RESTRICTIONS

37. A presidential candidate’s principal campaign committee, together with any other committees authorized by the candidate, may not accept contributions from an individual that, in the aggregate, exceed \$2,700 per election. 52 U.S.C. § 30116(a)(1)(A).²⁵ Candidates may not accept contributions from political party committees and other multicandidate PACs that exceed \$5,000 per election. 52 U.S.C. § 30116(a)(2).
38. Contributions made from a candidate’s personal funds to her campaign are not subject to any limits, though they must still be reported. *See* 11 C.F.R. § 110.10; *see also* FEC Advisory Opinions 1991-09, 1990-09 and 1985-33.
39. Candidate committees may not accept contributions from corporations or labor organizations. 52 U.S.C. § 30118(a).
40. A federal candidate, officeholder, or any entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of a candidate is prohibited from soliciting, receiving, directing, transferring or spending funds in connection with a federal election unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 52 U.S.C. § 30125(e)(1).

²⁵ As prescribed by statute under 52 U.S.C. § 30116(c), the \$2,000 limit has been adjusted for changes in the cost of living at the beginning of every odd-numbered year since 2002, most recently in this month. *See* Price Index Adjustments for Expenditure Limitations and Lobbying Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

CAUSES OF ACTION

COUNT I:

There is reason to believe that Jeb Bush has been “testing the waters” of a 2016 presidential campaign and has not complied and will not comply with the requirement that “testing the waters” activities be paid for with funds that comply with FECA’s candidate contribution limits and restrictions in violation of provisions of FECA.

41. FECA and Commission regulations and advisory opinions make clear that activities engaged in for the purpose of determining whether an individual should become a candidate constitute “testing the waters” and must be paid for with funds that comply with FECA’s contribution limits and restrictions, and must be reported by an individual who becomes a candidate on that candidate’s first disclosure report.
42. Whether or not someone is “testing the waters,” and thus subject to the candidate contribution limits and prohibitions of federal law, is a fact-based question and cannot be dismissed solely based on a person’s statements during public appearances that they are not “testing the waters.”
43. Based on published reports detailed above, complainants have reason to believe that Jeb Bush and/or his agents have engaged in activities for the purpose of determining whether he should become a candidate, including but not limited to:
 - Conducting a poll for the purpose of determining whether an individual should become a candidate;
 - Telephone calls for the purpose of determining whether an individual should become a candidate;
 - Travel for the purpose of determining whether an individual should become a candidate;
 - Polling expenses for determining the favorability, name recognition, or relative support level of the candidate involved;
 - Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in states other than the candidate’s home state and in or near the District of Columbia;
 - Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in states other than the candidate’s home state and in or near the District of Columbia;

- Travel expenses to attend, address and rent hospitality suites at conferences where the individual “indicates his potential interest in, and his ongoing consideration of whether to seek” his party’s nomination;
- Travel expenses for private meetings with state party leadership to gauge support of a possible candidacy; and
- Expenses to set up “steering committees” in early caucus/primary states with the understanding that the committee will become the official campaign organization in the event the individual runs for office.

44. Based on published reports detailed above, complainants have reason to believe that payments have been made for Jeb Bush’s “testing the waters” activities—*i.e.*, activities for the purpose of determining whether to run for president—using funds not in compliance with the candidate contribution limits and restrictions established by 52 U.S.C. §§ 30116(a) and 30118(a), including payments made by Bush and/or Right to Rise PAC and/or Right to Rise Super PAC and/or others, in violation of federal law candidate contribution limits and restrictions established by 52 U.S.C. §§ 30116(a) and 30118(a).

COUNT II:

There is reason to believe that Jeb Bush moved beyond “testing the waters” to become a “candidate” under FECA and violated the candidate registration and reporting requirements, contribution limits and restrictions, and “soft money” prohibitions of FECA.

45. Under FECA, an individual is deemed a “candidate” if she receives contributions or makes expenditures in excess of \$5,000. *See* 52 U.S.C. § 30101(2); *see also* 11 C.F.R. § 100.3(a).
46. The limited “testing the waters” exception to “candidate” status is “not applicable to individuals who have decided to become candidates[.]” nor “for activities relevant to conducting a campaign.” 11 C.F.R. § 100.72(b) (emphasis added); *see also id.* § 100.131(b). Examples of activities that indicate that an individual has decided to become a candidate include raising “funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass

campaign funds that would be spent after he or she becomes a candidate” and making written or oral statements that refer to him or her as a candidate for a particular office.” 11 C.F.R. § 100.72(b) (emphasis added).

47. Based on published reports detailed above, complainants have reason to believe that Jeb Bush has received contributions and made expenditures in excess of \$5,000, triggering “candidate” status under 52 U.S.C. § 30101(2).
48. Based on published reports detailed above, complainants have reason to believe that Jeb Bush has decided to become a candidate, as indicated by his activities on behalf of Right to Rise Super PAC to raise “funds in excess of what could reasonably be expected to be used for exploratory activities” and “designed to amass campaign funds that would be spent after he or she becomes a candidate,” rendering inapplicable the “testing the waters” exception to “candidate” status established by 11 C.F.R. §§ 100.72(b) and 100.131(b).
49. Based on published reports detailed above, complainants have reason to believe that as a “candidate” under FECA, Jeb Bush has failed to comply with the candidate registration and reporting requirements established by 52 U.S.C. §§ 30102(e)(1), 30103 and 30104, as well as the candidate contribution limits and restrictions established by 52 U.S.C. §§ 30116(a), 30118 and 30125(e)(1).

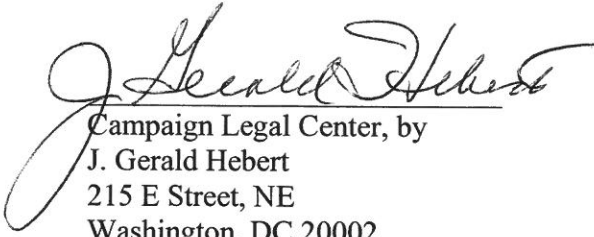
PRAYER FOR RELIEF

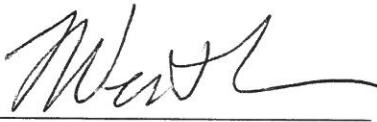
50. Wherefore, the Commission should find reason to believe that Jeb Bush has violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30116(a), 30118(a), 30102(e)(1), 30103 and 30104, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and

should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

March 31, 2015

Respectfully submitted,


Campaign Legal Center, by
J. Gerald Hebert
215 E Street, NE
Washington, DC 20002
(202) 736-2200


Democracy 21, by
Fred Wertheimer
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

Paul S. Ryan
The Campaign Legal Center
215 E Street, NE
Washington, DC 20002

Counsel to the Campaign Legal Center

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street, NW—Suite 600
Washington, DC 20005

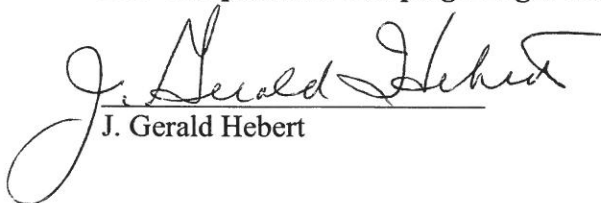
Counsel to Democracy 21

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.


For Complainant Campaign Legal Center


J. Gerald Hebert

Sworn to and subscribed before me this 31 day of March, 2015.


Notary Public

For Complainant Democracy 21


Fred Wertheimer

Sworn to and subscribed before me this 31 day of March, 2015.


Notary Public



CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS CAMPAIGN LEGAL CENTER and DEMOCRACY 21 (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>DC</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS FEDERAL ELECTION COMMISSION COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>DC</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Tara Malloy, Campaign Legal Center 1101 14th St. NW, Ste. 400 Washington D.C., 20005 (202) 736-2200	ATTORNEYS (IF KNOWN) Office of the General Counsel Federal Election Commission 1050 First Street, NE Washington, D.C. 20463

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
---	--	--	--

<input type="radio"/> E. General Civil (Other)	OR	<input type="radio"/> F. Pro Se General Civil
---	----	--

<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
---	---	--	--

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge
 ☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Action for declaratory and injunctive relief under 52 U.S.C. § 30109(a)(8) against Federal Election Commission.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
------------------------------------	--	------------------	---

VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
-------------------------------------	-------------------	---	---

DATE: March 13, 2020	SIGNATURE OF ATTORNEY OF RECORD /s/ Tara Malloy
-----------------------------	--

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

District of Columbia

Civil Action No. 1:20-cv-730

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-730

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

District of Columbia

Civil Action No. 1:20-cv-730

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-730

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

District of Columbia

Civil Action No. 1:20-cv-730

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-730

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: