Honorable Leslie R. Caldwell
Assistant Attorney General for the Criminal Division
Washington, DC, USA
Department of Justice
Washington DC 20530

Re: Campaign finance issues in the 2016 national election cycle

Dear Assistant Attorney General Caldwell:

Democracy 21 and the Campaign Legal Center are writing to applaud the Justice Department's recent action to enforce the coordination standard in the campaign finance laws, and to emphasize how important it is for the Department to play an active role in enforcing the campaign finance laws in the 2016 election cycle.

The Justice Department's active supervision and enforcement of the campaign finance laws is necessary in order to ensure that those laws are not blatantly violated by participants in the 2016 elections. The FEC, the agency with exclusive civil jurisdiction to enforce the campaign finance laws, has proven to be wholly incapable of carrying out its enforcement responsibilities.

We commend the Department for its recent prosecution of illegal coordination that occurred in the 2012 election between a congressional campaign and a Super PAC. As the Department announced on February 12, 2015, this was "the first criminal prosecution in the United States based upon the coordination of campaign contributions between political committees."

In addition, we applaud the commitment made in announcing this criminal conviction when you stated, "The Department of Justice is fully committed to addressing the threat posed to the integrity of federal primary and general elections by coordinated campaign contributions, and will aggressively pursue coordination offenses at every appropriate opportunity."

According to a recent article in *The Washington Post*, "The Justice Department is stepping up scrutiny of the increasingly cozy ties between candidates and their outside allies, a move that could jolt the freewheeling campaign finance atmosphere ahead of the 2016 elections." M. Gold, "Justice Department Ramps Up Scrutiny of Candidates and Outside Groups," *The Washington Post* (Feb. 27, 2015).

According to the *Post* article:

> The newly aggressive stance by the Justice Department is certain to have wide reverberations at a time when candidates are taking more leeway than ever in their relationships with independent allies. Many potential 2016 candidates are already working hand-in-glove with super PACs set up to support them.

Since the Supreme Court's 2010 decision in *Citizens United v. FEC,* 558 U.S. 310 (2010), and the consequent development and growth of Super PACs—and in particular, individual-candidate Super PACs—the problem of illegal coordination between candidates and outside spending groups has become a very serious issue.

Super PACs raise and spend contributions that are not subject to any contribution limits, while contributions raised by candidates are subject to a limit of $2,700 per donor per election. Spending by Super PACs, including by individual-candidate Super PACs, must be done independently of the candidates they support.

When spending by individual-candidate Super PACs is coordinated with the candidate they support, the result is a de facto evisceration of the contribution limits applicable to these candidates—limits that have been upheld by the Supreme Court as a principal bulwark against quid pro quo corruption.

In the 2012 election, presidential campaigns routinely worked closely with Super PACs that were set up solely for the purpose of promoting their campaigns. These Super PACs were typically set up and run by close associates of the presidential candidates, often with the express approval of or at the suggestion of the candidate. Presidential candidates solicited funds for their dedicated Super PAC and met with its large donors.

As a functional matter, these individual-candidate Super PACs operated as the dedicated soft money arm of the presidential candidate's campaign—raising and spending unlimited contributions from wealthy individuals, corporations and others on behalf of, and solely to benefit, the candidate. Donors funneled six- and seven-figure contributions through individual-candidate Super PACs to support specific presidential candidates.

In 2012, Democracy 21 sent a series of letters to the Justice Department that requested investigations of the relationship between a number of the 2012 presidential candidates and their dedicated Super PACs.

The rise of individual-candidate Super PACs continued unabated through the 2014 election cycle and there is every reason to believe that the use of such Super PACs will pose an

even more serious threat to the integrity of candidate contribution limits in the 2016 presidential campaign than it did in 2012. The use of Super PACs is already being seen in the early financing of potential 2016 presidential candidates, even before they have announced their formal candidacies.

For example, former Florida Governor Jeb Bush, who is widely viewed as a presidential candidate, formally launched a multi-candidate leadership PAC on January 6, 2015 to finance his political activities. On the same day, Bush's allies launched a website for a Super PAC. The two PACs have virtually the same name: the Right to Rise PAC and the Right to Rise Super PAC. According to press reports, Bush is actively engaged in intensive fundraising activities for these groups with a goal of raising $100 million in contributions in the first quarter of this year.

Indeed, according to a news story in today's *Washington Post*, wealthy Bush donors are being asked not to give "more than $1 million right away." M. Gold, "Awash in cash, Bush asks donors not to give more than $1 million – for now," *The Washington Post* (March 4, 2015).

According to the story, "The move reflects concerns among Bush advisers that accepting massive sums from a handful of uber-rich supporters could fuel a perception that the former governor is in their debt." The article notes, however, that Bush "was slated to headline an evening reception for the Right to Rise super PAC" last night, and that "numerous" people have "already given $1 million."

The Justice Department's scrutiny of the activities of individual-candidate Super PACs, and the Department's enforcement of the coordination standard in the 2016 election, is especially important in light of the Federal Election Commission's almost complete abdication of its civil enforcement responsibilities. It is well known that the FEC has been paralyzed by an ideological deadlock in which its Republican members have repeatedly voted against pursuing enforcement matters. As a result, the Commission has been incapable of initiating or pursuing meaningful enforcement of the campaign finance laws.

As the *The Washington Post* article noted:

> Overall FEC enforcement has plummeted in the last decade. The agency found election-law violations in just 16 cases last year and issued $206,235 in civil penalties—one of the smallest amounts in 30 years, according to data obtained by The Washington Post through a public record request. Another 116 cases were closed without finding fault.

The *Post* article further noted that the FEC "has not moved ahead with any coordination investigations since the Supreme Court's *Citizens United* decision in 2010 triggered a proliferation of big-money groups."

If the Justice Department does not step into the existing enforcement vacuum and exercise the enforcement authorities that are granted to the Department by statute, participants in the 2016 elections will continue to assume that the campaign finance laws—including the coordination rules and contribution limits—are not going to be enforced. Under these

circumstances, the 2016 election will devolve into a wild-west of lawlessness. Candidates, parties, donors and outside spending groups will conclude that they have a license to do whatever they want, without any concern of being held accountable for violating the nation's anti-corruption campaign finance laws.

For that reason, the Department's recent coordination prosecution, and the statements made by Department officials in announcing the prosecution, has served a very important purpose in demonstrating that violators of the campaign finance laws are not immune from scrutiny and prosecution.

The importance of the action taken by the Justice Department was noted by *The Washington Post* article, which stated that "experts said the threat of federal criminal investigations could give pause to campaign operatives who have become accustomed to a lack of action by the sharply divided FEC." According to the article:

> The newly aggressive stance by the Justice Department is certain to have wide reverberations at a time when candidates are taking more leeway than ever in their relationships with independent allies. Many potential 2016 candidates are already working hand-in-glove with super PACs set up to support them.

Democracy 21 and the Campaign Legal Center plan to monitor campaign finance activities in the 2016 election and, where appropriate, to bring to the attention of the Justice Department cases we believe warrant investigation and potential prosecution by the Department.

We strongly urge the Justice Department to continue to make clear that it will actively and vigilantly enforce the campaign finance laws against illegal coordination and other serious violations of the campaign finance laws that occur in the 2016 election cycle.

In particular, we strongly urge the Department to give close and ongoing scrutiny to the relationship between presidential candidates and the individual-candidate Super PACs established to promote their candidacies.

Given the FEC's abdication of its enforcement responsibilities, it is the hands of the Justice Department to ensure that the nation's anti-corruption campaign finance laws are enforced in the 2016 elections.

Sincerely,

J. Gerald Hebert	Fred Wertheimer
/S/ J. Gerald Hebert	/S/ Fred Wertheimer
Campaign Legal Center	Democracy 21

cc: Mr. Richard Pilger
Director, Elections Crimes Branch, Criminal Division