

July 22, 2015

Honorable Loretta E. Lynch
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Investigation of Right to Rise Super PAC and Bush campaign

Dear Attorney General Lynch:

This letter follows our [May 27](#) and [June 11, 2015](#) letters to you, calling for the Justice Department to appoint an independent Special Counsel to undertake an investigation of whether Republican presidential candidate Jeb Bush, and an individual-candidate Super PAC operating on his behalf, the Right to Rise Super PAC, are engaged in knowing and willful violations of the federal campaign finance laws.

As we have previously stated, 52 U.S.C. § 30125(e)(1) provides:

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).

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 funds in connection with his presidential campaign that are not subject to federal contribution limits and prohibitions.

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 purpose of promoting Bush’s presidential campaign.

Although, as a matter of law, Bush has been a “candidate” for several months, he has only recently “declared” his candidacy. Now that he has done so, his longtime political adviser

and aide Mike Murphy has formally assumed control of the Right to Rise Super PAC. This move by Murphy to formally head the Super PAC has been anticipated, and reported, for months.¹ And it is a move that was planned and announced by the Bush campaign itself. According to one published report, “the [Bush] campaign confirmed longtime Bush adviser Mike Murphy will lead the Los Angeles-based super PAC, as was widely expected.”²

As we explain below, the fact that Bush and Murphy have said that they will no longer have any contact with each other is irrelevant to the question of whether Bush and the Right to Rise Super PAC are violating § 30125(e), the provision of the Bipartisan Campaign Reform of 2002 (BCRA) cited above. The BCRA provision is separate from, and different than, the restrictions on coordination in the campaign finance laws.

Murphy has been described as “Bush’s political alter ego.”³ As we have previously noted, press reports state that Murphy is “Bush’s longtime strategist who has been helping the former Florida governor staff up his political operation and shape his economic opportunity message.”⁴ 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.”⁵

Murphy’s control of the Super PAC is the clearest evidence that Bush is “directly or indirectly” “controll[ing]” and “maintain[ing]” the Super PAC, within the meaning of § 30125(e). For a candidate to have his “political alter ego” run his individual-candidate Super PAC can only be understood as exercising direct or, at a minimum, “indirect,” control over the operation of the Super PAC.

This point is highlighted by the fact that Murphy has for months been actively working with and for Bush, both on setting up the Bush campaign and on setting up the Super PAC operation, formulating strategy for it, and planning the division of labor between the campaign and the Super PAC.

Prior to assuming leadership of the Super PAC, Murphy convened “regular senior staff meetings” that included discussions “about how to divvy up money and resources between

¹ M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (Mar. 18, 2015).

² J. Bykowicz & S. Peoples, “Bush fundraising machine preparing for campaign’s launch,” *Associated Press* (June 8, 2015) (emphasis added).

³ E. O’Keefe and R. Costa, “How Jeb Bush’s campaign ran off course before it even began,” *The Washington Post* (June 10, 2015).

⁴ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (Mar. 17, 2015).

⁵ M. Haberman, “Bush Adviser May Skip Campaign to Work for ‘Super PAC,’” *The New York Times* (Feb. 18, 2015).

Bush's allied super PAC and his official campaign."⁶ According to press reports, Murphy was a key player in selecting the current campaign manager for the Bush campaign, which recently engaged in a staff shake-up.

The Washington Post reported that "[Sally] Bradshaw and Murphy moved with the candidate's blessing to push [former "de facto campaign manager" David] Kochel into a lesser role and ensure they alone had final say about the allocation of funds."⁷ According to another report, "The arrangement comes after a rough period and tense discussions among Bush loyalists, and conversations between two of his closest advisers, Sally Bradshaw and Mike Murphy, about the campaign setup, according to people familiar with Bush."⁸

As we have previously described, the Bush campaign's planning for the Super PAC has allocated campaign roles and spending priorities between the official campaign and the Super PAC. And it contemplates a major role for the Super PAC in paying for the Bush campaign. According to one report, "Right to Rise Super PAC will do TV commercials, but it also will take on tasks such as targeted online ads and get-out-the-vote efforts that traditionally have been done by candidate campaigns.

Further, many of the staff working to elect Bush would be on the payroll of the super PAC, not the campaign, the sources said."⁹ Another report notes that the Bush campaign itself may raise and spend "less than its super PAC counterpart. In April, several donors and Bush strategists described to AP his plan to have the super PAC produce the bulk of television advertising and direct mailers to voters supporting his candidacy."¹⁰

Indeed, Murphy is quoted as giving credit to Bush for setting up—*i.e.*, establishing—this scheme, and for being an "innovator" in using the Super PAC as the vehicle to "tell his story."

According to a published report about a telephone conference call Murphy recently held with donors to the Super PAC:

"One of the neat things about Right to Rise, and one of the new ideas that, you know, the governor had—he's such an innovator—is we're going to be the first

⁶ E. O'Keefe and R. Costa, "How Jeb Bush's campaign ran off course before it even began," *The Washington Post* (June 10, 2015).

⁷ Id.

⁸ Id. (*emphasis added*).

⁹ S.V. Date, "Jeb Bush's History of Outsourcing His Campaign So He Can Raise Big Money," *National Journal* (May 29, 2015).

¹⁰ J. Bykowicz & S. Peoples, "Bush fundraising machine preparing for campaign's launch," *Associated Press* (June 8, 2015) (*emphasis added*).

super PAC to really be able to do just positive advertising, to tell his story, which is the missing ingredient right now,” Murphy said.¹¹

This description by Murphy makes plain that Bush personally has been involved in formulating the Super PAC scheme, and thus (in the words of the statute) in “establishing” and “maintaining” the Super PAC.

And as we have previously noted, published reports make clear that Bush has also been personally involved in “financing” the Super PAC. Indeed, “Jeb Bush and his allies announced ... that they had amassed more than \$114 million in campaign cash over the last six months...”¹² Of this total, the authorized campaign committee reported raising \$11.4 million and the balance of about \$103 million was raised by the Super PAC—more than nine times the amount raised by the Bush campaign committee.

According to a report in *The New York Times*:

Mr. Bush, a former Florida governor, personally raised money for the super PAC—often in increments of \$1 million per donor—at dozens of events during the winter and spring, operating under the assumption that he was free to do so because he was not yet a declared candidate.¹³

The apparent premise of the Bush campaign—that Bush was “free” to solicit contributions to the Super PAC during the winter and spring because “he was not yet a declared candidate”—is wrong for two reasons. First, whether “declared” or not, Bush met the legal definition of being a “candidate,” 11 C.F.R. § 100.3, during the time he was engaged in these fundraising solicitations. It has never been the law that a “candidate” can avoid the legal obligations that attach to “candidate” status simply by choosing to delay his declaration of candidacy (or even purporting to act in a testing-the-waters capacity).

Second, the facial definition of § 30125(e)(1) applies to the Right to Rise Super PAC—it is an entity that has been “established, financed, maintained or controlled” by a person who is now a candidate, even if some activities relating to some elements of that standard occurred before Bush’s formal declaration of candidacy. In any event, Bush now is a declared “candidate,” and he is “controlling” the activities of the Super PAC, at least “indirectly,” through the appointment of his “political alter ego,”¹⁴ Mike Murphy, as the person who is running the

¹¹ A. Kaczynski & I. Ben-Meir, “We Crashed Jeb Bush’s Super PAC’s Donor Call, And Here’s What They Said,” *Buzzfeed* (June 18, 2015) (emphasis added).

¹² N. Confessore, “Jeb Bush Outstrips Rivals in Fund-raising as ‘Super PACs’ Swell Candidates’ Coffers,” *The New York Times* (July 9, 2015).

¹³ *Id.*

¹⁴ E. O’Keefe and R. Costa, “How Jeb Bush’s campaign ran off course before it even began,” *The Washington Post* (June 10, 2015).

Super PAC. And the Super PAC is certainly an entity which is now “acting on behalf of” a candidate within the meaning of § 30125(e)(1).

According to published reports, the Bush campaign is also of the view that the Super PAC scheme is legal so long as the campaign does not now engage in formal coordination with the Super PAC. According to one published report, “Bush advisers confirmed Monday that an internal firewall was instituted on June 4 blocking any formal communication between campaign staff and the Bush allies who will run the super PAC.”¹⁵

This view is also mistaken, and ignores the BCRA provisions we have cited. Whether or not such a “firewall” has been instituted and will be effective is not relevant to the issues raised by § 30125(e). The federal coordination law and implementing rules prohibit a candidate and his agents from coordinating with an outside spender about a particular communication expenditure. 2 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.21(a) (definition of a “coordinated communication”).

Section 30125(e), by contrast, prohibits a candidate or his agents from directly or indirectly establishing, financing, maintaining or controlling an entity that raises or spends non-federal funds—regardless of whether such spending is coordinated with a candidate. And § 30125(e) also prohibits any entity that has been established, financed, maintained or controlled by a candidate from raising or spending such funds—again, regardless of whether that entity’s spending is coordinated.

The coordination rules, which have been part of the law since 1976, address the question of whether an “expenditure” to support a candidate by an outside spender is to be treated as a “contribution” to the candidate because of that candidate’s involvement in the decisions regarding the expenditure.

Section 30125(e), however, is aimed at a different problem. That provision was added to the campaign finance laws in 2002 as part of the prohibition on soft money contained in BCRA. That Act prohibits a candidate from raising or spending non-federal funds and it also prohibits a candidate from doing indirectly—through an entity the candidate establishes, finances, maintains or controls—what the candidate cannot do directly.

In other words, if an entity has been “directly or indirectly” “established, financed, maintained or controlled” by a candidate or his agents, that entity cannot raise or spend non-federal funds in connection with the candidate’s election, regardless of whether it does so independently of the candidate.

Furthermore, the Bush campaign, for which Murphy has been a key adviser, has been operating so intimately with Murphy in his role as designated head of the Super PAC that it cannot credibly maintain that the Super PAC in fact is “independent” of the campaign. As a report in *The Washington Post* noted in mid-June, “For months, Murphy has been advising

¹⁵ J. Bykowicz & S. Peoples, “Bush fundraising machine preparing for campaign’s launch,” *Associated Press* (June 8, 2015) (emphasis added).

Bush....”¹⁶ Leading up to the date when Bush “declared” his candidacy, Murphy was involved in selecting the leadership of the campaign committee and setting its strategy. (And as we have shown in our prior letters, Bush was a candidate under federal law for months before he formally declared his candidacy in mid-June.)

In his role as a key adviser to Bush, Murphy obviously has had insider involvement in formulating the campaign’s strategy. According to one published report shortly following Bush’s declaration, “Murphy noted that he ‘can’t coordinate any more’ with the campaign, but said he was ‘well-informed as of a week ago.’”¹⁷ According to this same article, Murphy said “Bush’s message would focus on three things” and then recounted the campaign’s strategic messaging choices. *Id.*

Further, Murphy worked with Bush to obtain video footage of him for the Super PAC to use in its advertising. According to a report in *The New York Times*, shortly before Bush’s declaration, “Mr. Bush and his team” held a series of meetings in Miami “about how to move forward once he becomes a declared candidate.” The article states, “Mr. Murphy also filmed Mr. Bush and his wife, Columba, for future ads.”¹⁸ According to another published report, Murphy told donors to the Super PAC:

“And we have the dollars, thanks to you guys, and we actually were able to do some filming before the wall went down, so we can do excellent creative. We have some incredible stuff in the can that we shot with the governor. So we’re going to be able to—starting with digital, but expanding to advertising—start to tell that story, to amplify his [inaudible] this summer and particularly right afterward.”¹⁹

As we have urged previously, the Department should investigate whether Bush and the Right to Rise Super PAC are engaged in violations of § 30125(e). Bush is doing precisely what the 2002 law prohibits: establishing and, through his agents, directly or indirectly controlling an entity that is raising and spending non-federal funds. This scheme goes to the heart of what the BCRA soft money provisions were enacted to prohibit.

The public position taken by the Bush campaign that it is not “coordinating” with the Super PAC on its spending, even if it were correct, is irrelevant and a distraction from the real

¹⁶ M. Jordan, “Mike Murphy plots a win for Jeb Bush in the land of Hollywood liberals,” *The Washington Post* (June 12, 2015).

¹⁷ A. Kaczynski & I. Ben-Meir, “We Crashed Jeb Bush’s Super PAC’s Donor Call, And Here’s What They Said,” *Buzzfeed* (June 18, 2015).

¹⁸ M. Haberman & J. Martin, “Jeb Bush Shakes Up Campaign Staff, Week Before Campaign Becomes Official,” *The New York Times* (June 8, 2015).

¹⁹ A. Kaczynski & I. Ben-Meir, “We Crashed Jeb Bush’s Super PAC’s Donor Call, And Here’s What They Said,” *Buzzfeed* (June 18, 2015) (emphasis added).

issue here, which is the scheme to violate the BCRA soft money provisions. Because this scheme involves knowing and willful violations of the law, the Department has an obligation to investigate it and take appropriate action.

Respectfully submitted,

/s/ J. Gerald Hebert

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/s/ Fred Wertheimer

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