

May 27, 2015

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

Dear Attorney General Lynch:

Democracy 21 and the Campaign Legal Center request that the Department of Justice exercise its authority to investigate whether Republican presidential candidate and former Governor 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.

We further request that you exercise your statutory authority to appoint an independent Special Counsel to conduct the investigation on behalf of the Department.

Jeb Bush is a candidate for President. The Right to Rise Super PAC is an entity that has been established, and is being financed, maintained and controlled, by Bush and his agents. The Super PAC is also acting on behalf of Bush. As such, it is prohibited from raising or spending money that does not comply with Federal contribution limits and source prohibitions (*i.e.*, “soft money”). 52 U.S.C. § 30125(e)(1). Bush is likewise prohibited from raising and spending soft money through such an entity. *Id.*

As we explain below, there are powerful grounds to believe that both Bush and the Right to Rise Super PAC are violating these prohibitions and, in so doing, that they are engaged in a scheme to allow unlimited contributions to be spent directly on behalf of the Bush campaign and thereby violate the candidate contribution limits enacted to prevent corruption and the appearance of corruption.

I. The Department of Justice has authority to enforce the campaign finance laws and should do so here.

Although the Federal Election Commission (FEC) has exclusive jurisdiction over civil enforcement of the campaign finance laws, 52 U.S.C. § 30109(a), the Department of Justice has its own separate responsibility to enforce the campaign finance laws against “knowing and willful” violations. 52 U.S.C. § 30109(d); *see generally* FEDERAL PROSECUTION OF ELECTION OFFENSES (7th ed. May 2007) (DOJ HANDBOOK).

The DOJ HANDBOOK takes particular note of the fact that Congress increased criminal penalties for campaign finance violations as part of the Bipartisan Campaign Reform Act of 2002 (BCRA). As the Handbook states, at pp. 198-99:

BCRA significantly enhanced the criminal penalties for knowing and willful violations of the Federal Election Campaign Act. BCRA did so in response to identified anti-social consequences, namely, corruption and the appearance of corruption arising from FECA violations, and their adverse effect on the proper functioning of American democracy....

In view of the enhanced criminal penalties for FECA crimes and the legislative history supporting their enactment, it is the Justice Department's position that all knowing and willful FECA violations that exceed the applicable jurisdictional floor specified in the Act's criminal provision should be considered for federal prosecution....

In the exercise of this authority, the Department recently undertook a 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."¹

In announcing this prosecution, Justice Department officials stated that the Department "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." *Id.*

Three considerations support an investigation by the Department into the activities at issue here:

First, these activities concern potential violations of the limits and source prohibitions on contributions to Federal candidates, provisions that the Department considers to be at the "heartland" of the campaign finance laws. DOJ HANDBOOK at 151-152. At issue in this matter is whether Bush and his agents established the Right to Rise Super PAC, and are financing and maintaining it, as a vehicle operating on behalf of Bush to raise funds that do not comply with the Federal contribution limits and source prohibitions, in violation of the law. The Handbook says that "[i]n general, to warrant criminal prosecution, a FECA violation should involve one of FECA's substantive, or 'heartland,' provisions." *Id.* at 151. And it lists the contribution limits at issue here as the very first of the "heartland" provisions of the law. The Handbook recognizes that "[l]arge political contributions lead to perceived and actual corruption of public officials." *Id.* at 152.

Second, the scale of the potential violation here is massive and certainly warrants the attention of the Department. According to published reports, and as explained in greater detail

¹ Office of Public Affairs, Dept. of Justice, "Campaign Manager Pleads Guilty to Coordinated Campaign Contributions and False Statements," (Feb. 12, 2015).

below, Bush and the Right to Rise Super PAC are raising contributions from individuals in amounts of as much as a million dollars each, or more. Reportedly, the Super PAC will have raised an aggregate of \$100 million in unlimited contributions by the end of May. Thus, a vast amount of contributions well in excess of the Federal contribution limits are being raised and spent by Bush and his agents through the Super PAC. The scale and scope of this scheme effectively eviscerate the limits on contributions to candidates—limits that are at the “heartland” of the law.

Third, the FEC is widely recognized today as a dysfunctional enforcement agency that is repeatedly left paralyzed by a 3 to 3 split among its members, which results in deadlock and agency inaction on enforcement matters. According to a report recently published in *The New York Times*, even the chair of the agency agrees with this assessment:

The leader of the Federal Election Commission, the agency charged with regulating the way political money is raised and spent, says she has largely given up hope of reining in abuses in the 2016 presidential campaign, which could generate a record \$10 billion in spending.

“The likelihood of the laws being enforced is slim,” Ann M. Ravel, the chairwoman, said in an interview. “I never want to give up, but I’m not under any illusions. People think the F.E.C. is dysfunctional. It’s worse than dysfunctional.”²

According to another published report, chairwoman Ravel said that the Commission’s “recent history” on issues relating to coordination “portends slim hope that we will be able to reach four votes to penalize any major transgressions.”³

In light of the effective collapse of the civil enforcement system as a result of the paralysis of the FEC, it is essential for the Department to exercise its concurrent jurisdiction to enforce the criminal provisions of the campaign finance laws. *E.g.*, HANDBOOK at 177 (“Criminal prosecution under FECA can be pursued before civil and administrative remedies are exhausted.”)

II. The Department should appoint an independent Special Counsel to conduct this investigation.

This matter involves potentially serious violations of the campaign finance laws by a Republican Party presidential candidate and that candidate’s associated individual-candidate Super PAC. Under these circumstances, we believe that the Department would have a conflict of interest and the appearance of such in conducting this investigation.

² E. Lichtblau, “F.E.C. Can’t Curb 2016 Election Abuse, Commission Chief Says,” *The New York Times* (May 2, 2015).

³ F. Schouten, “Bush money machine in high gear even without official campaign,” *USA Today* (May 13, 2015).

Accordingly, both the public interest and Justice Department regulations require you to invoke the procedures set forth in 28 C.F.R. § 600.1 *et seq.* to appoint a Special Counsel from outside the Department to assume responsibility on behalf of the Department for handling this matter.

Department regulations provide that the Attorney General “will appoint a Special Counsel” when you determine that criminal investigation of a matter is “warranted” and:

(a) That investigation or prosecution of that person or matter by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances, and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

Id. § 600.1 (emphasis added).

Both conditions are satisfied here. The investigation of a Republican candidate for president by a Justice Department headed by an Attorney General appointed by a Democratic president poses a conflict of interest and an appearance problem. Further, it would be in the public interest to appoint a Special Counsel for this politically sensitive matter in order for the investigation and its conclusions to have credibility with the public.

By taking this position, we do not impugn the integrity of any official in the Department. Nor do we believe as a general matter that an Attorney General appointed by the President of one political party is incapable of investigating candidates or political committees of the opposing party. But this matter presents extraordinary circumstances because it involves a leading Republican presidential candidate, because the timing of this activity is at the beginning of the 2016 presidential campaign, and because very large amounts of illegal contributions are involved.

The regulations require that any Special Counsel appointed by you “shall be a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies.” *Id.* § 600.3. These standards properly articulate the type of person who should conduct this investigation in order for the investigation to have the necessary credibility with the public to command widespread respect, and in order for the investigation to reach a fair and just conclusion.

III. There are strong grounds to believe that Jeb Bush and the Right to Rise Super PAC have violated, and continue to violate, the campaign finance laws.

There are strong grounds to believe that 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 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 purpose of promoting Bush’s presidential campaign. Accordingly, there is reason to believe that Bush is violating section 30125(e) by raising 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.

A. Statement of Facts

1. Bush is a “candidate”

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).

The fact of his 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.⁴

Bush’s proclamations that he is not a candidate are contradicted by the facts and by the applicable law. In all pertinent respects, 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:

⁴ P. Blumenthal, “Jeb Bush Messes Up Charade Of Not Running For President,” *The Huffington Post* (May 13, 2015).

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.⁵

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).

By these standards, Bush is a "candidate." The fact that he has refrained from formally announcing his candidacy is not determinative. 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.

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 FEC on March 31, 2015 by the Campaign Legal Center and Democracy 21. [That complaint is attached and incorporated herein by reference.](#)

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."⁶ This PAC is named the Right to Rise PAC.⁷

An almost identically-named Super PAC—the Right to Rise Super PAC—has also been registered with the Commission.⁸ That Super PAC is an individual-candidate Super PAC that has been established and is operating solely to promote Bush's presidential campaign.

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

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

⁷ FEC No. C00571380.

⁸ FEC No. C00571372.

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

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....”⁹ Another report states, “The organization around Bush, a former Florida governor, has created a super PAC....”¹⁰ According to another report, Bush’s advisers “are currently overseeing the operations of both Bush political committees.”¹¹

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.”¹² 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.”¹³ 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.”¹⁴ 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....”¹⁵ Another report states that Murphy “has been deeply involved in Bush’s steps, courting donors, selecting staff and developing strategy.”¹⁶ 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

⁹ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

¹⁰ P. Overby, “5 Years After ‘Citizens United,’ Super PACs Continue to Grow,” *National Public Radio* (Jan. 13, 2015).

¹¹ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

¹² M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (March 18, 2015).

¹³ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

¹⁴ M. Haberman, “Bush Adviser May Skip Campaign to Work for ‘Super PAC,’” *The New York Times* (Feb. 18, 2015).

¹⁵ J. Rutenberg, “The Next Era of Campaign-Finance Crazyism Is Already Underway,” *The New York Times* (April 21, 2015).

¹⁶ T. Beaumont, “Bush preparing to delegate many campaign tasks to super PAC,” *Associated Press* (April 21, 2015).

decision until summer also would give Bush more time to directly strategize with Murphy over fundraising, messaging, and other planning.”¹⁷

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.”¹⁸

The Treasurer of the Right to Rise Super PAC is Charles Spies. Spies is also the lawyer for the Right to Rise Super PAC.¹⁹ He is also a lawyer for the Right to Rise leadership PAC and is described by one published report as a “top Bush strategist.”²⁰ One published report states that Spies “represents Bush and his Right to Rise Super PAC.”²¹ 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.”²² According to one report, Spies in February 2015 sent a cease-and-desist letter on behalf of Bush to a Bush supporter who had begun airing a television ad in support of the Bush campaign. Another published report describes Spies as “legal counsel in Bush’s political operation.”²³

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...”²⁴ 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.*

¹⁷ M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (March 18, 2015).

¹⁸ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

¹⁹ P. Blumenthal, “Jeb Bush’s Decision to ‘Actively Explore’ 2016 Run Allows Him to Avoid Super PAC Rules,” *Huffington Post* (Jan. 16, 2015).

²⁰ E. O’Keefe and M. Gold, “Secret, unlimited donations could boost a Jeb Bush run,” *The Washington Post* (March 31, 2015).

²¹ E. Flitter, “Jeb Bush lawyer tries to stop radio ads touting Bust campaign,” *Reuters* (March 18, 2015).

²² M. Gold, “Why super PACs have moved from sideshow to center stage for presidential hopefuls,” *The Washington Post* (March 12, 2015).

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

²⁴ P. Rucker, “Bush lands Romney finance director to lead super PAC fundraising,” *The Washington Post* (March 18, 2015).

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.”²⁵

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.²⁶ 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 an individual-candidate 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.²⁷

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.”²⁸

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.”²⁹

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).

²⁷ *Id.*

²⁸ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

²⁹ T. Beaumont, “Bush preparing to delegate many campaign tasks to super PAC,” *Associated Press* (April 21, 2015).

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

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 2015.³⁰ 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....”³¹ 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.”³²

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 given them a chance to meet with Bush and the people who will be running his super PAC.”³³

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 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.’”³⁴

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.”³⁵ Another report states that Bush “is headlining \$100,000-a-head fundraisers for a super PAC already ballooning with tens of millions of dollars

³⁰ N. Confessore, “Lines are Blurred in Donor Event for Jeb Bush ‘Super PAC,’” *The New York Times*.

³¹ M. Haberman, “Hillary Clinton to Jump Start Fund-raising Efforts,” *The New York Times* (April 29, 2015).

³² 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).

³³ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

³⁴ 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).

³⁵ M. Bender, “Jeb Bush Promises 2016 Decision in Few Months,” *Bloomberg* (March 18, 2015).

in donations.”³⁶ 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.”³⁷ 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.”³⁸ 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.”³⁹ According to other reports, Bush has engaged in “a nonstop fundraising tour raking in millions” for the Right to Rise Super PAC.⁴⁰ 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.⁴¹

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.”⁴² The report quoted “Bush spokesman Tim Miller” as stating that the “PAC’s goals are far more modest.” *Id.*

By March 2015, as Bush was “headlining a series of high-dollar events” for the 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.”⁴³ But

³⁶ M. Gold, “Why super PACs have moved from sideshow to center stage for presidential hopefuls,” *The Washington Post* (March 12, 2015).

³⁷ P. Rucker and M. Gold, “Top Republican strategists in talks to join Jeb Bush’s super PAC,” *The Washington Post* (March 17, 2015).

³⁸ B. White, “Jeb Bush’s \$100 million problem,” *Politico* March 16, 2015).

³⁹ B. White, “Jeb Bush’s eye-popping event: \$100K per ticket,” *Politico*, (Feb. 10, 2015).

⁴⁰ M. Gold, “Jeb Bush super PAC juggernaut heads to California next week,” *The Washington Post* (March 23, 2015).

⁴¹ *Id.*

⁴² B. White, “Jeb Bush’s \$100 million problem,” *Politico* March 16, 2015).

⁴³ 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 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 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, with other Republican candidates raising large sums, more cash could be needed.”⁴⁴

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.⁴⁵ 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.”⁴⁶ And Bush’s mother, Barbara Bush, has also raised money for the Super PAC.⁴⁷

B. Applicable Law

A cornerstone of the federal campaign finance laws is the limit on contributions to federal candidates that was enacted to prevent corruption and the appearance of 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 legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions.” *Id.* at 28 (emphasis added).

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, which are devoted to promoting the election of a single candidate, serve as ready vehicles for eviscerating these candidate contribution limits that were enacted to prevent corruption.

The campaign finance laws contain provisions to prevent the circumvention of the basic \$2,700 candidate contribution limits. By providing a vehicle for wealthy donors to make

⁴⁴ A. Isenstadt, “Jeb Bush’s \$100M May,” *Politico* (May 8, 2015).

⁴⁵ P. Svitek, “George P. Bush to help raise cash for dad’s super PAC,” *The Texas Tribune* (March 9, 2015).

⁴⁶ M. Gold and E. O’Keefe, “George W. and Laura Bush to appear at fundraiser for Jeb Bush,” *The Washington Post* (March 23, 2015).

⁴⁷ 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).

contributions on behalf of a specific candidate that directly benefits that candidate, but where such contributions 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.

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).

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.*

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.

The FEC 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.

The statute and regulations make clear that the prohibition on 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.

The FEC has also 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 the 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.

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).

C. Violations of Law

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.

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.

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.

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.

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 both the staffing of the Super PAC and the 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 are in discussions with the Super PAC and with Bush about assuming formal leadership roles for the Super PAC.

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.

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.

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 and spending contributions that do not comply with the Federal contribution limits and source prohibitions. Similarly, Jeb Bush has violated section 30125(e) by soliciting, receiving, directing and spending contributions through the Right to Rise Super PAC that do not comply with the Federal contribution limits and source prohibitions.

Conclusion

Under the circumstances involved in this case, we request you to exercise your authority under section 600.1 of the Department's regulations to appoint a Special Counsel to undertake an investigation of whether Bush and the Right to Rise Super PAC have violated 52 U.S.C. § 30125(e)(1) by accepting contributions or making expenditures with funds raised in excess of the applicable limits set forth in 52 U.S.C. §§ 30116(a)(1) and 11 C.F.R. §§ 110.3, and if so, to take appropriate prosecutorial and remedial measures.

Respectfully submitted,

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