

June 11, 2015

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

Dear Attorney General Lynch:

On May 27, Democracy 21 and the Campaign Legal Center called on 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 explained in the May 27 letter](#), the evidence we set forth supports the conclusion that Bush is and has been a candidate, that Bush and his agents have “directly or indirectly established, financed, maintained or controlled” the Right to Rise Super PAC, and that Bush and the Super PAC are acting in violation of the law in soliciting, receiving, directing and spending funds that do not comply with federal contribution limits. 52 U.S.C. § 30125(e)(1). The potential violations are in the tens of millions of dollars, or more.

Since our May 27 letter, the Bush campaign has announced that Bush will declare his presidential candidacy on June 15, 2015.

We are writing to make clear that Bush’s formal declaration of candidacy has absolutely no effect on the allegations made in our May 27 letter requesting an investigation of the Bush Super PAC scheme. In the letter, we showed that Bush already is, and has for some time been, a candidate for federal office under the statutory definition of “candidate” set forth in the federal campaign finance laws.

Bush cannot evade the statutory definition of “candidate” by proclaiming he is not a candidate.

Our May 27 letter stated that as a candidate, Bush is violating the provisions in the Bipartisan Campaign Reform Act of 2002 (BCRA) that prohibit a candidate from directly or indirectly establishing, controlling, maintaining or financing an entity that raises or spends contributions not subject to federal limits. Bush is violating those provisions now. And even after he formally declares his candidacy, Bush will continue to be violating the BCRA provisions we cited in our letter.

The BCRA prohibition prevents federal officeholders and candidates raising or spending soft money through an alter ego entity, such as the Right to Rise Super PAC, which is the provision that forms the basis of our allegations. This prohibition is entirely separate from, and different than, the prohibition on coordination between candidates and outside spenders.

The BCRA provisions were enacted to prevent federal officeholders and candidates from circumventing the new laws prohibiting parties, officeholders and candidates from raising and spending soft money in federal elections.

We also are writing again to emphasize the Justice Department's responsibility to address the alleged violations we set forth in our May 27 letter and to enforce the campaign finance laws. As we noted previously, federal law gives the Department express jurisdiction over "knowing and willful" violations of the campaign finance laws, which appear to have been committed here. 52 U.S.C. § 30109(a).

In determining the Department's response to this matter, we would like to bring to your attention directly relevant precedent that strongly counsels in favor of the Department undertaking an investigation of this matter — a matter that involves allegations of serious campaign finance violations by a leading presidential candidate.

In October 1996, Common Cause sent a letter to Attorney General Reno, calling for the Attorney General to appoint an independent counsel to undertake a criminal investigation of whether both major party presidential candidates in the 1996 election, President Bill Clinton and Senator Robert Dole, were engaged in knowing and willful violations of federal campaign finance laws by raising and spending tens of millions of dollars of "soft money" during the 1996 campaign. Fred Wertheimer, one of the signatories to this letter, was counsel to Common Cause on that 1996 request to the Justice Department for an investigation, along with Don Simon, who is currently counsel to Democracy 21.

In response to the Common Cause letter, Attorney General Reno initiated an investigation of the allegations set forth therein, as well as of other alleged campaign finance violations in the 1996 election cycle. A report prepared by the General Accounting Office for the House Judiciary Committee noted that Attorney General Reno set up a special task force to conduct that investigation. The report stated, "Created by Attorney General Reno in December 1996 within the Criminal Division's Public Integrity Section, the [Campaign Finance Task Force] was established to investigate allegations of illegal fundraising during the 1996 presidential election."¹

The report notes that by November 1997, the Task Force had a staff of 126 persons assigned to it, including 24 attorneys, 67 FBI agents and 35 support staff. *Id.* at 48. By March 2000, the Task Force had initiated 24 prosecutions and obtained 16 convictions. *Id.* at 43.

¹ GAO, "Campaign Finance Task Force: Problems and Disagreements Initially Hampered Justice's Investigation," GAO/GGD-00-101-BR (May 2000) at 1.

Ultimately, Attorney General Reno decided not to appoint an independent counsel to pursue the allegations made by Common Cause (for reasons unrelated to the facts presented to the Department). But it is important to recognize that this decision was only made after the Justice Department itself had conducted a thorough review of the allegations made by Common Cause.

It is clear from the investigative documents subsequently released in that matter that the Justice Department fully examined the allegations, and did not simply assume that any illegal campaign activity would be adequately addressed through civil enforcement by the Federal Election Commission (FEC).

[Attached is a memorandum to Attorney General Reno about the Common Cause allegations.](#) dated November 25, 1997, from Charles G. La Bella, who was the supervising attorney for the Campaign Finance Task Force.² La Bella notes that the Attorney General told him “not to leave any stone unturned in the pursuit of the Task Force investigations.” Memo at 1. La Bella stressed:

The allegations presented by Common Cause are arguably the most serious among the plethora of charges concerning campaign financing, because they suggest that our political leaders at the highest level, and in both parties, intentionally and knowingly made a mockery of the political system.

Id. at 2. La Bella’s memorandum demonstrates the seriousness of the Department’s approach in 1996 and 1997 to investigating alleged campaign finance violations. Most pertinently, La Bella focuses on the need for the Justice Department itself to conduct an investigation. In the memorandum, he discussed at length a debate within the Department about whether the Common Cause allegations should be referred to the FEC for investigation. La Bella strongly rejected the suggestion of sending the matter to the FEC:

Although the proposal sounds reasonable on its face, what troubles me is that everyone in attendance at the meetings has told me, in no uncertain terms, that the FEC is an impotent organization which cannot agree on a course of action with respect to the simplest of matters within its jurisdiction. Indeed, they have told me that the FEC is — and in all likelihood was intentionally designed to be — weak and ineffective. And yet, these same people urge that, in the face of extraordinarily serious allegations, the FEC is the “expert” in the field to whom we must, in the first instance, defer for “a preliminary scrub” of the issues.

I think that such a course of action is ill advised for a variety of reasons. On the most practical level, the FEC is not an investigative agency. ... [I]f the matter is sent to the FEC, it is unlikely that the matter will see the light of day in our lifetimes plus 99 years.

Id. at 2-3.

² Memorandum re Common Cause Allegations from Charles G. La Bella, Supervising Attorney, Campaign Finance Task Force to The Attorney General (November 25, 1997).

The Justice Department did not refer the matter to the FEC for investigation. Although the Attorney General ultimately decided not to appoint an independent counsel to investigate the Common Cause allegations, the record demonstrates the very serious attention given by the Department in conducting its own thorough investigation of the allegations to determine whether an independent counsel should be appointed.

We believe this precedent is directly relevant here and we call on you to give the same serious attention to whether an independent outside counsel should be appointed to investigate the legality of the Bush Super PAC scheme.

What Mr. La Bella said about the FEC in 1997 — that it is “an impotent organization which cannot agree on a course of action with respect to the simplest of matters within its jurisdiction” — is truer today than it was then. In the intervening years, the FEC has progressively succumbed to an ideological polarization that has left the agency, in the words of even its own chairwoman, “worse than dysfunctional.”³ The FEC is not a publicly credible enforcement agency.

The American people are facing a national election in 2016 in which massive campaign finance violations are likely to occur. They are entitled to effective enforcement of the campaign finance laws enacted to protect them against corruption of their government and of federal officeholders. Given the complete dysfunction of the FEC, the only place that such enforcement can occur is the Justice Department. The campaign finance investigation conducted by the Justice Department into the 1996 presidential election provides ample precedent for the Department to exercise its independent statutory authority to investigate potential campaign finance violations and to enforce the campaign finance laws.

We strongly urge you as the nation’s chief law enforcement officer to take the enforcement steps necessary to protect the integrity of our democracy and of our elections, and to ensure that the nation’s campaign finance laws are not violated with impunity.

Respectfully submitted,

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Executive Director
Campaign Legal Center

Fred Wertheimer
/S/ Fred Wertheimer
President
Democracy 21

Copy to:

Sally Quillian Yates, Acting Deputy Attorney General
Leslie R. Caldwell, Assistant Attorney General, Criminal Division
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³ E. Lichtblau, “F.E.C. Can’t Curb 2016 Election Abuse, Commission Chief Says,” *The New York Times* (May 2, 2015).