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*Stephen B. Russell*

State Attorney

April 6, 2017

The Honorable Rick Scott  
Governor of the State of Florida  
The Capitol  
Tallahassee, Florida 32399-0001

RE: Executive Order No. 16-289  
Complaint Against Donald J. Trump and Attorney General Pamela Jo Bondi

Dear Governor Scott:

On December 23, 2016 pursuant to Executive Order 16-289, I accepted this assignment on behalf of the Thirteenth Judicial Circuit of Florida with regard to a complaint filed by J. Whitfield Larrabee against Donald J. Trump and Attorney General Pamela Jo Bondi alleging against each a violation of Chapter §838, specifically, Bribery, F.S. §838.015.

The matter was assigned to Chief Assistant State Attorney Amira D. Fox. As detailed in her attached memorandum, she found insufficient evidence to pursue a criminal charge in this matter. After reviewing the findings and after further consultation with her, I concur fully with Ms. Fox's conclusions.

There being nothing further to be done in this matter, it is respectfully requested that the State Attorney of the Twentieth Circuit be discharged from further duty with reference to Executive Order 16-289.

I appreciate the opportunity to have been of service in this matter.

Sincerely,

A handwritten signature in black ink that reads "Stephen B. Russell".

Stephen B. Russell  
State Attorney

SBR/so  
Attachment

cc: Hon. Andrew Warren  
State Attorney  
Thirteenth Judicial Circuit

**OFFICE OF THE STATE ATTORNEY  
20<sup>TH</sup> JUDICIAL CIRCUIT  
P.O. BOX 399  
FORT MYERS, FLORIDA 33902**

**Stephen B. Russell, State Attorney**

**MEMO**

TO: Stephen B. Russell, State Attorney

FROM: Amira D. Fox, Chief Assistant State Attorney

DATE: April 6, 2017

RE: Office of the Governor  
Executive Order Number 16-289  
Complaint Against Donald J. Trump and Attorney-General Pamela Jo Bondi

**INTRODUCTION**

Florida Governor Rick Scott signed Executive Order 16-289 on December 23, 2016 naming you as “Assigned State Attorney” for the Thirteenth Judicial Circuit of Florida to review a non-sworn complaint filed by J. Whitfield Larrabee, against Donald J. Trump (hereinafter Trump) and Florida Attorney General Pamela Jo Bondi (hereinafter Bondi). Larrabee forwarded his complaint to the State Attorney of the Thirteenth Judicial Circuit, Mark A. Ober, on August 1, 2016. The complaint, explained in detail below, alleges criminal conduct by Trump and Bondi. State Attorney Ober advised Governor Scott that Bondi was a longstanding prior employee of the State Attorney’s Office for the Thirteenth Judicial Circuit during his tenure as State Attorney and that Bondi is a personal friend of his and of others who remained employed by the office.

**COMPLAINT**

Larrabee is a Massachusetts lawyer with no apparent ties to Florida. He prepared a non-sworn complaint alleging that probable cause exists to prosecute both Trump and Bondi for a violation of Florida Statute Chapter 838, specifically, Bribery, §838.015. The non-sworn complaint alleges that in 2013 Trump, through the *Trump Foundation*, a tax-exempt non-profit corporation based in the State of New York formed pursuant to Internal Revenue Code §501(c)(3), contributed \$25,000.00 to a Florida political action committee *And Justice For All* based in Hillsborough County, Florida and established by Bondi to assist in her bid for re-election to the position of Florida Attorney General in 2014.

## REVIEW OF ALLEGATIONS

*And Justice For All* was established on August 6, 2013. Well prior to, and during, this same time period, New York Attorney General Eric T. Schneiderman was investigating numerous consumer complaints relating to the business practices of *The Trump Entrepreneur Initiative* (TTEI), a privately held for-profit education venture. TTEI was originally named *Trump University, LLC* and was formed as a New York company in 2004. On August 24, 2013, New York filed suit against TTEI and sought \$40 million in damages. *People of State of New York v. Trump Entrepreneur Initiative, LLC f/k/a Trump University LLC et al*, No: Dkt 310 Index 451463/13 N.Y. Sup. Ct. (August 24, 2013).

On September 11 and 13, 2013, weeks after the creation of *And Justice For All* and the filing of the New York suit, it was reported in Florida media outlets that the Florida Attorney General's Office (OAG) was reviewing the allegations made in the New York suit and that Florida was considering joining the lawsuit. On September 17, 2013, records from the State of Florida Department of State, Division of Elections indicate that the *Trump Foundation's* contribution in the amount of \$25,000.00 to *And Justice For All* was recorded. It is important to note that the contribution check was dated September 9, 2013, or prior to the first news reporting. Additionally, this was the second Trump-related donation to Bondi. He made a personal donation to her campaign account in the amount of \$500.00 on July 15, 2013.

As Florida media outlets learned of the campaign contribution, they followed up with the OAG regarding that status of its review of the allegations in the New York suit and the propriety of the campaign contribution. On October 15, 2013, the OAG reported that it never conducted an investigation into TTEI and hence, there was no reason for Florida to join the New York lawsuit. It is this confluence of events, combined with Bondi's subsequent support of Trump during the 2016 Republican Presidential nomination process, (after first supporting and endorsing former Florida Governor Jeb Bush in 2015) and Trump's ultimate nomination as the Republican Party candidate for President of the United States which brought Larrabee's accusations.

Larrabee's complaint lists numerous factual bases in support of his allegation that F.S. §838.015 was violated by Trump and Bondi. He demands a full, fair and impartial investigation into his complaint and a presentation of evidence to a statewide grand jury. He then presumes of the statewide grand jury that it indict Trump and Bondi for Bribery.

Larrabee's complaint is insufficient on its face to conduct a criminal investigation into the events surrounding the campaign contribution made in September, 2013. There is nothing contained therein that indicates Larrabee has any direct knowledge, physical evidence or sworn testimonial evidence that the offense of Bribery occurred. The majority of the complaint consists of insinuation without any material evidence in support. Larrabee cites to media reporting nine (9) times in his complaint then pieces together numerous conclusions that Trump and Bondi acted with the corrupt intent that the failure of the OAG to file suit against TTEI was the *quid pro quo* for the contribution. For example, contained in the non-sworn complaint are public statements made by Trump during his presidential campaign which Larrabee concludes provides "compelling evidence of his corrupt motivations and intentions." No reasonable nexus exists between his campaign pronouncements in 2015 and 2016 and the contribution to *And Justice For*

*All* in 2013. Larrabee cites to the failure of the State of Texas to file suit against TTEI in 2010 when (now Texas Governor) Gregory Abbott was Texas Attorney General. In 2013, Trump contributed money to Abbott's gubernatorial run. Larrabee's direct accusation, without a shred of direct evidence, is that the contribution to Abbott was a bribe and influence peddling – made three (3) years after Texas determined not to file suit and is proof beyond a reasonable doubt that the September, 2013 contribution to *And Justice For All* must have been a bribe.

It is curious that Larrabee filed his complaint with the Thirteenth Judicial Circuit on August 1, 2016, just 13 days after Trump won the Republican Party nomination; almost three (3) years after the contribution was made and during the pendency of not only New York's lawsuit, but also two (2) other class action suits winding their way through federal court. The first of these suits was filed in 2010. *See Low, et. al. v. Trump University, LLC and Donald Trump* (Class Action) No: 3:10-cv-0940-GPC (WVG) U.S. District Court Southern District of California (San Diego) (April 30, 2010). A second suit, alleging RICO, was filed in 2013. *See Cohen, et. al. v. Donald J. Trump* (Class Action) No 3:13-cv-02519-GPC (WVG) U.S. District Court Southern District of California (San Diego) (October 18, 2013). Given the high profile nature of these civil suits, including the announced global settlement terms of \$25 million (global as to wrap both federal suits with the New York action), at no time prior to the summer of 2016, during the height of the Republican Presidential nomination process, did there appear to be a clamor for a criminal investigation into the campaign contribution. On June 10, 2016, Governor Scott rejected calls for an investigation.

What followed after Governor Scott's pronouncement was a fusillade of complaints and requests by Larrabee to various courts and bodies demanding criminal and administrative investigations against Trump and Bondi. The following is a summary of those complaints/requests:

- 1) June 29, 2016: *Complaint Against Donald J. Trump, the Donald J. Trump Foundation and Florida Attorney General Pamela Bondi*. Filed by J. Whitfield Larrabee to the Honorable Eric T. Schneiderman, Attorney General for the State of New York, alleging bribery of a public servant in violation of the New York penal code.
- 2) June 29, 2016: *Complaint in the Matter of Donald J. Trump and Pamela Jo Bondi*. Filed by J. Whitfield Larrabee to the United States Department of Justice, Office of the United States Attorney for the Eastern District of New York, alleging numerous violations of the United States Code relating to bribery, mail fraud, wire fraud and conspiracy.
- 3) June 29, 2016: *Complaint in the Matter of Donald J. Trump and Pamela Jo Bondi*. Filed by J. Whitfield Larrabee to the United States Department of Justice, Office of the United States Attorney for the Northern District of Florida, alleging violations of the United States Code relating to bribery, mail fraud, wire fraud and conspiracy. This complaint is identical to that filed in 2) above.

The complaints filed in 1), 2), and 3) above mimic, in form, if not substance, the instant complaint and contain similar allegations relying almost entirely on media news sources. The

complaints attempt to fit those allegations into a probable cause argument in violation of a variety of federal and state crimes. In those complaints, Larrabee demands grand juries to be convened and presumptively demands indictments.

In addition to criminal allegations, Larrabee has filed other requests for various types of investigations and punishment against Trump and Bondi. These include:

- 4) June, 2016: Complaint to the Florida Bar against Pam Bondi. Filed by J. Whitfield Larrabee.
- 5) June, 2016: Complaint to the Florida Commission on Ethics against Pam Bondi. Filed by J. Whitfield Larrabee.
- 6) August 14, 2016: *Information Referral and Complaint In the Matter of Donald J. Trump and the Trump Organization*. Filed by J. Whitfield Larrabee to the United States Department of the Treasury, Internal Revenue Service.

In this same time period, other requests were made for investigation into Bondi. Noah Bookbinder is the Executive Director of Citizens for Responsibility and Ethics in Washington (CREW). CREW documents were attached to this instant complaint, suggesting that Larrabee and Bookbinder were working in concert. These include:

- 7) June 30, 2016: Complaint to the Florida Commission on Ethics against Pam Bondi. Filed by Noah Bookbinder.
- 8) July 6, 2016: Request for Investigation into Attorney General Pam Bondi. Filed by Noah Bookbinder to the Florida Office of the Attorney General – Inspector General’s Office.

### CONCLUSION

There exists no reasonable suspicion that F.S. §838.015 (2013) was violated either by Donald J. Trump or by Pam Bondi. Absent are any specific and articulable facts from which rational inferences from those facts point to the commission of bribery. *Terry v. Ohio*, 392 U.S. 1 (1968). Instead, the complaint contains an “inchoate and unparticularized suspicion” amounting to a series of “hunches” that the campaign contribution amounted to a bribe. *Id.* at 21. The language of F.S. §838.015 (2013) requires the government to prove a *quid pro quo*. Therefore, it is helpful to look to a number of federal cases, cited by Florida courts, to explain what is necessary to establish a *quid pro quo*. The instant case presents no evidence of a legally necessary *quid pro quo* and the courts require more than an indiscernible accusation:

Not every campaign contribution, we recognize, is a bribe in sheep's clothing. Without anything more, a jury could not reasonably infer that a campaign contribution is a bribe solely because a public official accepts a contribution and later takes an action that benefits a donor.

*United States v. Terry*, 707 F.3d 607 (6<sup>th</sup> Cir. 2013) cited by *State v. Flansbaum-Talabisco*, 121 So. 3d 568, 578 (Fla. 4<sup>th</sup> DCA 2013).

There is no evidence that Bondi demanded and accepted payment from Trump "as an inducement for the promise to perform (or not perform) an official act." *United States v. Dozier*, 672 F.2d 531, 537 (5<sup>th</sup> Cir. 1982), cited by *State v. Flansbaum-Talabisco*, 121 So.3d 568, 578 (Fla. 4<sup>th</sup> DCA 2013). There must be an **explicit** and not a

. . . generalized expectation of some future favorable action . . . The official must agree to take or forego some specific action in order for the doing of it to be criminal...  
*In the absence of such an agreement on a specific action, even a close-in-time relationship between the donation and the act will not suffice.*

*United States v. Siegelman*, 640 F.3d 1159 (11<sup>th</sup> Circ. 2011), cited by *State v. Flansbaum-Talabisco*, 121 So. 3d 568, 578 (Fla. 4<sup>th</sup> DCA 2013) (emphasis added in citing opinion). See also *Evans v. United States*, 504 U.S. 255 (1992) (Kennedy, J., concurring).

Certainly, a campaign contribution could, under some circumstances, constitute a bribe. In any case, the context within which a contribution is made is a factor in determining whether the facts fit the elements. Given the amount of information known and public statements made by both Bondi and officials at the OAG, the context does not show that the contribution constituted an illegal bribe. *United States v. Terry*, 707 F.3d at 613.

For a review of the requirement that an explicit *quid pro quo* is necessary in order to convict of bribery, see *McCormick v. United States*, 500 U.S. 257 (1991) (conviction of elected public official reversed after government failed to establish *quid pro quo* despite a series of facts that were, arguably, far more egregious than those alleged in the instant complaint).

This office received the Governor's assignment in December, 2016. The campaign contribution was made on September 9, 2013 and published on September 17, 2013. Questions about the contribution were raised later that month. At the time of the contribution, Donald J. Trump was a private citizen with residences in New York and Florida. With regard to the complaint against Trump, even if probable cause did exist to charge him with a violation of F.S. §838.015 (2013), which it does not, there exists a legitimate argument that the statute of limitations has run and the State is barred from prosecuting him. Bribery is a second degree felony, a prosecution for which must be commenced within three (3) years after it is committed. F.S. §775.15(2)(b). The time calculation begins on the day after the offense is committed. F.S. §775.15(3). There exists in

Chapter 775 no applicable exception to this time limitation. As Trump was a private individual at the time, he is not subject to elongation or exception per F.S. §775.15(12)(b).

Therefore, it is recommended that no further action by this office is warranted regarding the subject of the Governor's Executive Order 16-289 and that this determination be transmitted to the Office of the Governor in order to have your appointment as "Assigned State Attorney" for the Thirteenth Judicial Circuit withdrawn.