



Democracy 21

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February 21, 2012

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
Main Justice Building
950 Pennsylvania Ave NW
Washington, DC 20530

Re: Santorum candidate-specific Super PAC in the 2012 elections

Dear Attorney General Holder:

On January 10, 2012, Democracy 21 sent you a letter and a Report regarding the serious questions that exist about the legality of the presidential candidate-specific Super PACs operating in the 2012 national election. In that letter and in a subsequent letter dated January 13, 2012, we called on the Department to closely monitor and, where appropriate, conduct investigations into whether these Super PACs are operating in coordination with their respective presidential campaigns in violation of the law.

On February 15, 2012, based on new developments, Democracy 21 sent you a letter that requested an investigation into whether the candidate-specific Super PACs associated with the presidential campaigns of President Barack Obama and former Governor Mitt Romney “are engaged in massive violations of the campaign finance laws.”

We are writing today to request an investigation into whether another candidate-specific Super PAC, the one supporting former Senator Rick Santorum, is similarly engaged in violations of the campaign finance laws.

Our January 13 letter noted that one wealthy donor, Foster Friess, had reportedly made a \$1 million donation to the Red, White and Blue Fund, the candidate-specific Super PAC supporting the presidential campaign of former Senator Santorum.¹ According to an FEC report filed by the Super PAC, Friess contributed \$669,000 to the Super PAC during the period January 1, 2012 through January 31, 2012, bringing his total contributions to the PAC to \$1 million.

According to published reports cited in the letter, Friess has been materially involved in

¹ K. Vogel, “3 billionaires who’ll drag out the race,” *Politico* (Jan. 12, 2012).

discussions with the Super PAC about the campaign ads the Super PAC was running to support Santorum. According to one article, Friess “said he’s told the operatives running the Super PAC that ‘any money that I’m connected to, I want the ads to be dignified, and I want them to be honest. I’m fine with contrast ads, but I’m very, very adverse to some of the ads that I think are destructive.’”²

Our letter noted that, at the same time, Friess had been actively campaigning with Santorum as part of his campaign entourage.

Subsequent press reports since our January 13 letter provide additional evidence of the dual role played by Friess in connecting the Santorum campaign to the candidate-specific Super PAC supporting Santorum. One published report on February 13, 2012 noted that Friess is a member of Santorum’s “inner circle” and had participated in discussions about the campaign’s ads:

Friess has become part of Santorum’s campaign inner circle, traveling with the candidate on the trail and participating in sensitive conversations about campaign advertising. Santorum told reporters last week that Friess is “someone who I talk to, who gives me plenty of advice on how I say it and what I say.”³

This report continued:

Perhaps the most extreme cross-pollination between a campaign and a super PAC is the case of Friess, a 71-year old retired mutual fund manager. Through the end of last year, he had donated \$381,000 to a pair of super PACs that buoyed Santorum with ads and robo-calls at a time when his campaign lacked the resources for such important expenditures.

The two men campaigned together nearly around-the-clock in the days before Santorum’s victory in January’s Iowa caucuses and his sweep of last week’s contests in Colorado, Minnesota and Missouri. During Santorum’s victory speeches in both instances, Friess stood beaming on stage behind the former Pennsylvania senator. Then on Friday, it was Friess at the podium at the Conservative Political Action Conference in Washington, introducing Santorum as “a dear friend” and “the next president of the United States.”

Another published report on February 9, 2012, noted that Friess had provided suggestions to the campaign about media strategy. The report stated:

Foster Friess, the primary funder of the pro-Santorum Super PAC “Red, White and Blue Fund,” travels with the inner circle of the campaign; he has given suggestions to advisers about media strategy; and on Friday, he will introduce the

² K. Vogel, “3 billionaires who’ll drag out the race,” *Politico* (January 12, 2012).

³ K. Vogel, “Super PACs echo parodies,” *Politico* (Feb. 13, 2012) (emphasis added).

presidential hopeful at the Conservative Political Action Conference. The relationship between Friess and the campaign he supports is one of the clearest examples of how candidates are pushing the limits of the only rule governing their relationship with Super PACs – no coordination.⁴

When questioned about his relationship with Friess, Santorum described Friess as a “friend” who provides “plenty of advice” to him:

“He’s a friend who has been a friend for many, many years and has traveled with him in the past even before there was a Super PAC and someone who I talk to and who gives me plenty of advice on how I say it and what I say and someone who has been involved in a lot of public policy issues that I’ve been involved in for years and again is someone I enjoy their company, but we never ever even begin to broach the topic of what the super PAC is or does or what he does or does with it,” Santorum told reporters after an energy conference here.⁵

This report continued:

Its clear advice is given. Monday evening, Friess was questioning staff about interviews the candidate was doing and he compliments Santorum on certain lines he thinks are more powerful than others.

Another report noted the extent of the time that Friess spends with Santorum:

Friess and Santorum continue to spend time together. At CPAC, Friess was one of only a few advisers with Santorum in the suite during my interview. And he was there from the start. He recalls he spent two days in Iowa with Santorum traveling around in a Dodge truck. “At one point we had to drive four hours to get someplace. “We joked, ‘Hey Mitt’s probably flying over us in a jet.’” But he witnessed firsthand the intensity of interest in Santorum’s campaign.⁶

Another report discussed Friess’ travels with Santorum:

Friess has been with Santorum at several stops during the campaign. He was with him in Iowa in the lead-up to the state’s caucuses, introduced him at an event in

⁴ A. Rafferty, “Major Super PAC donor’s public role with Santorum campaign,” *NBC News* (Feb. 9, 2012) (emphasis added).

⁵ S. Walshe, “Santorum and His Super Pac: Just Friends, Not Coordination,” *ABC News* (Feb. 6, 2012).

⁶ J. Rubin, “Meet Foster Friess, Rick Santorum’s super PAC patron,” *The Washington Post* (Feb. 13, 2012).

Lee's Summit, Missouri last week and was standing next to him Tuesday night at his victory speech in St. Charles, Missouri.⁷

As these reports make clear, Friess is in close contact with Santorum, provides campaign advice to Santorum, is part of the candidate's "inner circle," serves as a key adviser to the candidate and his campaign, and has participated in discussions about campaign ads with the candidate or his aides.

At the same time, press reports have indicated Friess is the major donor to the principal candidate-specific Super PAC supporting Santorum, the Red, White and Blue Fund, and has advised and attempted to influence the Super PAC regarding the content of the ads it is running in support of Santorum.

Friess has stated that he does not talk to Santorum about the activities of the Super PAC, but that observation misses the point. In serving as a close adviser to Santorum, in participating in discussions with Santorum and his aides about the campaign and in participating in discussions with the campaign about ads and media strategy, Friess clearly has obtained information about campaign strategy, campaign plans and campaign activities that is material to the Santorum campaign. The *Politico* story noted that "Friess has been privy to sensitive campaign business, including fundraising figures. . . ."⁸

In a situation where Friess is the primary donor to the Super PAC making expenditures for Santorum's benefit, and where Friess himself has stated that he advises the Super PAC about the tone and content of its ads, the Super PAC is not operating independently of the Santorum campaign. As a matter of law, the expenditures by the Super PAC are being made "in cooperation, consultation, or concert, with, or at the request of suggestion of" a candidate or his agents. 2 U.S.C. § 441a(a)(7)(B)(i).

The report in *Politico* also discussed a specific instance in which Friess and Santorum were reportedly involved with a supposedly "independent" effort that was apparently coordinated with the Santorum campaign. According to the *Politico* report:

Behind the scenes, Friess has been even more important to Santorum's effort.

Days after influential Iowa conservative leader Bob Vander Plaats gave his coveted endorsement to Santorum in the run-up to his state's caucuses, his organization established Leaders For Families Super PAC, which quickly took in \$125,000 – almost all of its cash – from Friess, and a pro-Santorum super PAC called the Red, White and Blue Fund, for which Friess is the biggest donor.

⁷ K. Bohn, "Santorum Super PAC ramps up," *CNN* (Feb. 10, 2012).

⁸ K. Vogel, "Super PACs echo parodies," *Politico* (Feb. 13, 2012).

Leaders For Families used the cash to air radio and television ads and place automated telephone calls touting the endorsement from Vander Plaats, who had reportedly told Santorum he “needed money to promote the endorsement.”

The Vander Plaats endorsement and promotion thereof “was world changing,” Friess told *Politico*.

Id. Thus, after Vander Plaats reportedly told Santorum that he needed money to publicize his endorsement of Santorum, Friess reportedly gave money to a Super PAC set up for the purpose of publicizing Vander Plaats’ endorsement of Santorum.

To the extent Friess worked in conjunction with the Santorum campaign in funding the Vander Plaats Super PAC and its activities, the expenditures by this Super PAC were made “in cooperation, consultation, or concert, with, or at the request of suggestion of” a candidate or his agents, and thus, in violation of the law prohibiting coordination. 2 U.S.C. § 441a(a)(7)(B)(i).

The circumstances surrounding the inter-connected relationship of Friess with Santorum and the Santorum campaign, on the one hand, and with the Red, White and Blue Fund Super PAC on the other, warrant a Justice Department investigation into whether the Santorum campaign and the Red, White and Blue Fund Super PAC have violated the prohibition on coordination in the campaign finance law.

The circumstances surrounding the relationship between Santorum, Friess, Vander Platts and the Vander Platts Super PAC also warrant a similar Justice Department investigation into whether the Santorum campaign and the Vander Platts Super PAC has violated the prohibition on coordination in the campaign finance law.

More generally, Friess’ status as the principal donor as well as an adviser to the candidate-specific Super PAC supporting Santorum, while he is simultaneously a member of the Santorum campaign’s inner circle of advisers, cannot plausibly be said to meet the standard set by the Supreme Court that “independent” spending must be “totally independent,” *Buckley*, 424 U.S. 1, 47 (1976); “wholly independent,” *McConnell v. FEC*, 540 U.S. 93, 221 (2003); “truly independent,” *id.*, and made “without any candidate’s approval (or wink or nod). . . .” *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 442 (2001).

In the 2012 campaign, candidate-specific Super PACs are operating as vehicles for wealthy donors to circumvent and evade the limits on contributions to federal candidates which were enacted to prevent corruption.

When wealthy donors give large contributions to a Super PAC that is devoted exclusively to promoting that donor’s favored candidate, the donors in essence are making contributions to directly benefit the candidate, in circumvention of the contribution limits.

When, as here, a wealthy donor in addition is operating as a close adviser to the candidate and is functionally part of the campaign itself, the funneling of that donor’s money through a

Super PAC that the donor is primarily funding is an even more egregious evasion of the contribution limits.

Democracy 21 strongly urges the Justice Department to promptly open an investigation into the the Red, White and Blue Fund Super PAC and the Santorum campaign in order to determine whether this Super PAC has engaged in violations of the nation's campaign finance laws. We also strongly urge the Justice Department to promptly open an investigation into the the Vander Platts Super PAC Fund and the Santorum campaign in order to determine whether this Super PAC has engaged in violations of the nation's campaign finance laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Wertheimer", with a long horizontal flourish extending to the right.

Fred Wertheimer
President

Copy to:

Lanny Breuer, Assistant Attorney General, Criminal Division
Jack Smith, Chief, Public Integrity Section