



Democracy 21

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Fred Wertheimer
President

March 5, 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: Investigation of Romney candidate-specific Super PAC

Dear Attorney General Holder:

Democracy 21 is writing to provide additional information regarding the connections between the presidential campaign of former Governor Mitt Romney and the candidate-specific Super PAC supporting the Romney campaign, Restore Our Future PAC, and to again request an investigation into whether the Super PAC has engaged in illegal coordination with the campaign.

We have previously written to request investigations of apparent illegal coordination by the candidate-specific Super PACs supporting President Barack Obama, former Governor Mitt Romney, former Senator Rick Santorum, former House Speaker Newt Gingrich, Governor Rick Perry, and former Governor Jon Huntsman.

In our prior letters to you dated January 10, 2012, January 13, 2012, February 15, 2012 and February 21, 2012, we presented compelling evidence of what we believe is illegal coordination between the Romney for President campaign and Restore Our Future, the supposedly “independent” Super PAC dedicated exclusively to supporting the Romney campaign. These submissions also provided similar evidence regarding the relationships between other major presidential candidates and the candidate-specific Super PACs supporting them.

As an article in *The New York Times* recently noted, “In practice, super PACs have become a way for candidates to bypass the limits [on contributions] by steering rich donors to these ostensibly independent groups, which function almost as adjuncts of the campaigns.”¹

¹ M. McIntire & M. Luo, “Fine Line Between ‘Super PACs’ and Campaigns,” *The New York Times* (Feb. 25, 2012).

Coordination between a candidate and an outside spender is prohibited by law. 2 U.S.C. §441a(a)(7)(B). That statutory provision applies to all expenditures made “in cooperation, consultation or concert with, or at the request or suggestion of” a candidate, the candidate’s campaign committee or agents of the candidate or committee.

If a Super PAC is coordinating its spending with a campaign, the spending is treated as a contribution to the campaign and is subject to the applicable contribution limit. Under federal law a PAC can give no more than \$5,000 per year to a candidate, and a Super PAC is prohibited from making any contributions whatsoever, since its acceptance of non-federal contributions is conditioned on its refraining entirely from making contributions to federal candidates.

The *New York Times* story took note of the “ineffectual enforcement of rules intended to prevent candidates from coordinating their activities with outside groups.”

In our January 10 letter and in a Democracy 21 Report that accompanied it, we discussed the web of connections and inter-relationships between various presidential campaigns, including the Romney campaign, and the candidate-specific Super PACs set up to raise and spend unlimited donations to support those campaigns.

In the case of the Romney campaign, this web includes lawyer Charlie Spies, political director Carl Forti and adman Larry McCarthy, all of whom worked for Romney’s 2008 presidential campaign and who now serve in key positions with Restore Our Future PAC.²

Recent published reports indicate there are further connections between the Romney campaign and Restore Our Future that raise serious questions of illegal coordination. These connections involve the use of common vendors and employees, apparent shared fundraising expenses and republication by the Super PAC of a previous Romney campaign TV ad.

One report in *The Washington Times* noted that the Romney campaign and the Super PAC “share many of the same top-level workers, a fact both groups have helped mask by paying high-level aides through companies that appear to exist largely as conduits to avoid disclosure.”³

According to the *Washington Times* report, a “top Romney aide,” Steve C. Roche, served as regional finance director for the Romney campaign into the summer of 2011. He then left the campaign to work for Podium Capital Group, LLC, a Delaware limited liability corporation that he apparently established while working for the Romney campaign.

Once Roche left the campaign, Podium immediately became a vendor for Restore Our Future. (According to disclosure reports, Podium received a payment of \$1 million from Restore

² Democracy 21, “Report on Presidential Super PACs” (January 4, 2012) at 6-7.

³ L. Rosiak, “Romney camp, super PAC share high-level aides,” *The Washington Times* (Feb. 26, 2012).

Our Future on August 4, 2011.) Roche, through Podium, now serves as “the top fundraiser for Restore Our Future.”⁴

As one published report notes:

Roche is a longtime fundraiser for Romney, back to Romney’s days as Massachusetts governor. He worked directly for Romney’s campaign until last summer, and then shifted to the PAC’s chief fundraising job.⁵

According to the *Washington Times* report, “Any gap between Mr. Roche’s tenure as a campaign official and his super PAC work lasted days at most. Mr. Roche received checks from the campaign as recently as Aug. 1 for ‘travel reimbursement.’”

Thus, this report indicates that Roche, a top-level Romney campaign staffer, moved directly and immediately from working for the Romney campaign to working for the Romney Super PAC (apparently using an LLC to mask his work for the Super PAC), with little, if any, intervening time to shift from the campaign to the supposedly “independent” outside spending group.

In addition to the movement of Romney campaign staffer Roche directly to the Restore Our Future Super PAC supporting Romney, there are common vendors who apparently work simultaneously for the Romney campaign and Restore Our Future.

According to a recent article in *The New York Times*, TargetPoint Consulting is providing “voter research” services to both the Romney campaign and to Restore Our Future.⁶ The Romney campaign has paid TargetPoint nearly \$200,000 for “direct mail consulting” while Restore Our Future has paid the group \$350,000 for “survey research.” The *Times* story quotes the founder of TargetPoint, Alexander Gage, as stating about this arrangement that “he understood how it could look ‘ridiculous.’”

Furthermore, Mr. Gage – who was a “senior strategist” in Governor Romney’s 2008 presidential campaign – is married to a deputy campaign manager of the current Romney campaign. *Id.*

The statutory standard in section 441a(a)(7)(B) controls the issue of whether a supposedly “independent” outside spender is engaged in spending that is coordinated with a campaign. The use of common vendors and employees between the Romney campaign and Restore Our Future in itself raises a presumption that spending by the Super PAC is “in

⁴ P. Stone, “Restore our Future fundraiser Steve Roch received \$1.9 million in fees from Super PAC,” *iWatch News – The Center for Public Integrity* (Feb. 23, 2012).

⁵ *Id.*

⁶ M. McIntire & M. Luo, “Fine Line Between ‘Super PACs’ and Campaigns,” *The New York Times* (Feb. 25, 2012).

cooperation, consultation or concert with, or at the request or suggestion of” the Romney campaign and that such vendors or employees serve as *de facto* conduits for coordination.

In addition, the Federal Election Commission has promulgated regulations governing the use of common employees and vendors by both campaigns and supposedly “independent” spending groups. 11 C.F.R. §109.21(d)(4) (“Common vendor”); *id.* at § (d)(5) (“Former employee or independent contractor”). Both regulations provide that it satisfies an element of the test for coordination if a common vendor or former employee has worked for both a campaign and an outside spender during the same 120-day period, a standard clearly met here. *Id.* at (d)(4)(ii); *id.* at (d)(5)(i).

Thus the FEC regulations raise a heightened “coordination” concern about common vendors or employees who serve both a campaign and an outside spender in the same 120-day period – the situation here.

The regulations also require a demonstration that the common vendor or employee “use or convey” to the outside spender “information about the campaign plans, projects, activities or needs” of the candidate which is “material to the creation, production or distribution” of the communication by the outside spender. 11 C.F.R. § 109.21(d)(4)(iii); *id.* at § (d)(5)(ii).

In light of the fact that the Super PAC and the campaign have engaged common vendors and common employees within the 120 day window, an investigation is required to determine whether, under these suspicious circumstances, illegal coordination between the Romney campaign and Restore Our Future is occurring, both under the statutory standard and/or under the test set forth in the FEC regulations.

It is certainly likely that both Roche and TargetPoint have insider information about the plans, needs and activities of the Romney campaign based on their work for the campaign. The fact that both Roche and TargetPoint are working for (or have worked for) the Romney campaign and are also working either concurrently or consecutively for the supposedly “independent” Super PAC supporting Romney creates the strong appearance of coordination and therefore warrants an investigation to determine whether illegal coordination is occurring.

Published reports also indicate that the Romney campaign and the Super PAC may be engaging in coordinated expenditures for fundraising purposes. According to the report in *The New York Times*:

Last summer, the super PAC and the Romney campaign employed Creative Edge Parties, a New York catering company, and each sent it a payment on the same day: the super PAC gave a check for \$1,676 for a “fund-raising event,” while the Romney campaign sent \$1,584 for “facility rental/catering services.”

On another occasion, Restore Our Future paid \$1,500 as a fund-raising expense to the Waldorf Astoria in New York, where the Romney campaign held a fund-raiser

in December. Around the same time, the Romney campaign paid the Waldorf \$19,000 for “facility rental/catering services.”⁷

Expenditures for fundraising purposes are not made for “communications.” As such, they fall under the broad statutory standard applying to any expenditures by an outside spender “in cooperation, consultation or concert with” a campaign. 2 U.S.C. § 441a(a)(7)(B). They also fall under the comparably broad FEC regulation that defines “coordinated” to mean any expenditure “made in cooperation, consultation or concert with” a candidate. 11 C.F.R. § 109.20(a).

The published reports that indicate there are complementary payments for fundraising events by the campaign and the Super PAC strongly indicate coordination of these payments in violation of both the statutory and regulatory standards. This warrants investigation and raises the question of how much additional coordination on fundraising expenses may have occurred between the Super PAC and the campaign.

Finally, published reports indicate that Restore Our Future PAC has broadcast an ad which is virtually identical to a 2007 ad broadcast by the Romney campaign. A report states:

On Thursday, Restore Our Future released an ad, titled “Saved,” which is identical to a 2007 Romney campaign ad titled “Searched.” The ad features Robert Gay, a former business partner of Romney, explaining how Romney shut down Bain Capital and brought 50 employees to New York City to track down Gay’s daughter, who had snuck off from home to go to a rave. Both ads feature the same footage and the same monologue from Gay.

The only difference between the ads is that the Restore Our Future ad ends with the line “Brought to you by Restore Our Future” rather than the closing line of the 2007 Romney ad “I’m Mitt Romney and I approved this message.”⁸

Under established law, any such re-broadcast of a Romney campaign ad by the Super PAC would be a contribution by the Super PAC to the Romney campaign and an illegal contribution if the costs exceeded the \$5,000 per year limit on PACs contributions to the campaign.

FEC regulations are clear that “the financing of the dissemination, distribution or republication, in whole or in part, of any broadcast...of campaign materials prepared by the candidate...shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.” 11 C.F.R. § 109.23(a).

The republication of a Romney campaign ad by Restore Our Future falls squarely within the terms of the regulation. The fact that the ad was prepared by the Romney campaign for the

⁷ M. McIntire & M. Luo, “Fine Line Between ‘Super PACs’ and Campaigns,” *The New York Times* (Feb. 25, 2012).

⁸ P. Blumenthal, “Mitt Romney Super PAC Republishes 2007 Romney Ad, Violating Finance Laws, Watchdog Says,” *Huffington Post* (Feb. 23, 2012).

2008 presidential race is immaterial; it is still an authorized Romney campaign ad that may be of continuing relevance and benefit to the 2012 Romney campaign.

Further, whether Restore Our Future purchased a copyright to the ad is similarly immaterial. The regulation does not prohibit the unauthorized republication of authorized campaign materials – it prohibits all republication of authorized campaign materials. Additionally, the regulation does not depend on whether the outside spender directly consulted with or formally coordinated with the campaign about the republication. Even without prior discussion with the campaign, or authorization by the campaign, a spender who republishes campaign materials is making a contribution to the campaign.

Democracy 21 calls on the Justice Department to investigate the new coordination issues we have raised in this letter in conjunction with the coordination issues we have raised in our previous letters to the Department, to determine whether Restore Our Future Super PAC has coordinated expenditures with the Romney campaign in violation of the nation's campaign finance laws.

Sincerely,

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

Fred Wertheimer
President

Copy to:

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