



## Democracy 21

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Fred Wertheimer  
President

March 6, 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: Coordination by candidate-specific Super PAC committees

Dear Attorney General Holder:

Democracy 21 is writing to supplement our previous letters to you calling for an investigation of whether the candidate-specific Super PACs supporting the major presidential candidates in the 2012 election are engaged in coordination with their respective presidential campaigns in violation of the nation's campaign finance laws. Our previous letters were sent on January 10, 2012, January 13, 2012, February 15, 2012, February 21, 2012 and March 5, 2012.

In the letter we sent to you on February 21, 2012, Democracy 21 called the Justice Department's attention to Foster Friess, a Super PAC donor who has reportedly donated \$1 million to the Red, White and Blue Fund, the candidate-specific Super PAC supporting the presidential campaign of former Senator Rick Santorum.

In our February 21 letter we noted that Friess has been actively campaigning with Santorum as part of his campaign entourage. According to press reports, Friess is a member of Santorum's "inner circle" and has participated in discussions with Santorum and his aides 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."<sup>1</sup>

At the same time, we noted that Friess is also the major donor to the principal candidate-specific Super PAC supporting Santorum, the Red, White and Blue Fund, and has advised and

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<sup>1</sup> K. Vogel, "Super PACs echo parodies," *POLITICO* (Feb. 13, 2012) (emphasis added).

attempted to influence the content of the ads that the Super PAC is running in support of Santorum. According to a *POLITICO* article we cited in our February 21 letter, 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.’”<sup>2</sup>

A recent published report provides additional evidence as to the efforts Friess is undertaking to influence the activities and campaign ads of the Super PAC he is principally funding. According to an article in *POLITICO*:

Take Foster Friess, for example. The 71-year-old retired mutual fund manager has been a key donor to the super PAC keeping former Pennsylvania Sen. Rick Santorum’s campaign alive, the Red, White and Blue Fund. Friess considers the threats of Islamic extremism, Iran and Sharia law among his top political issues and primary reasons for backing Santorum.

Friess – who provided the seed funding for the super PAC and has donated at least \$1 million – suggested he may have urged it to focus on those issues. The group has spent \$6.2 million boosting Santorum, including with ads casting him as “a resolute leader of the fight against radical Islam.”

Though Friess said he doesn’t set the super PAC’s strategy, he told *POLITICO*: “I can still encourage an ad, give a suggestion. Let’s say on the issue of violent Islamic extremism. I don’t think it’s out of order to point out that Rick Santorum has been studying this for like five years. He knows the names. He not only can pronounce Ahmadinejad (but) he knows what he’s doing with Chavez in Venezuela.”<sup>3</sup>

Thus, by his own quoted statements, Friess indicates that he has played an active role in suggesting issues on which the Super PAC should focus and has “encourage[d]” certain campaign ads to be run by the Super PAC. Published reports further indicate that the Super PAC has run ads on the issues being “suggested” by Friess. This indicates that Friess is exerting influence on the content of the ads runs by the Super PAC.

In short, published reports indicate that Friess is influencing the campaign ads run by the Super PAC at the same time he is acting as part of Santorum’s “entourage,” and “inner circle,” and in that capacity talking directly with the candidate and his aides about campaign strategy, campaign ads and spending by the campaign.

If this does not qualify as coordination prohibited by the campaign finance laws, it is hard to know what would.

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<sup>2</sup> K. Vogel, “3 billionaires who’ll drag out the race,” *POLITICO* (January 12, 2012).

<sup>3</sup> K. Vogel, “Campaigns push mega-donors’ causes,” *POLITICO* (March 2, 2012) (emphasis added).

The information we have presented strongly supports the conclusion that Friess is functioning as a means of coordination between the Santorum campaign and the candidate-specific Super PAC supporting the Santorum campaign, within the meaning of the campaign finance laws. Any such coordination on ads run by the Super PAC means that the funds spent by the Super PAC constitute contributions to the Santorum campaign and, as such, are in violation of the law. 2 U.S.C. § 441a(a)(7)(B).

We urge the Department of Justice to conduct an investigation into whether the activities of the Red, White and Blue Fund are being coordinated with the Santorum campaign in violation of the campaign finance laws through the activities of a key advisor to Santorum who is also a key funder of the Super PAC, Foster Friess. Mr. Friess is simultaneously serving as a part of Santorum's campaign entourage and inner circle while he is also directly involved in shaping the content of the ads being run by the Super PAC to support Santorum.

On a related matter, Democracy 21 sent you a letter on February 15, 2012 in which we noted that President Obama has authorized White House officials, Cabinet members and his key campaign aides to actively coordinate with the candidate-specific Super PAC supporting the Obama reelection effort, Priorities USA Action, by attending Super PAC fundraising meetings "to deliver speeches about the re-election effort."<sup>4</sup>

According to a recent *New York Times* article, David Plouffe, "a top political adviser to President Obama, is scheduled to appear at a West Coast fund-raising meeting on Friday for the 'super PAC' backing President Obama's re-election bid, according to several people familiar with the event."<sup>5</sup>

The article further notes, "The event comes about a month after Mr. Obama essentially gave his blessing to the outside groups, signing off on a plan to dispatch cabinet officials and other senior White House advisers to address them on his behalf. . . ." *Id.*

As we noted in our February 15 letter, the open collaboration that is now occurring between the Obama campaign and the candidate-specific Super PAC supporting the Obama campaign cannot plausibly be said to meet the statutory standard that activities by a supposedly independent group cannot be "in cooperation, consultation or concert with, or at the request or suggestion of" a candidate, a candidate's campaign committee or any agent of the candidate or his campaign. 2 U.S.C. § 441a(a)(7)(B)(i).

Democracy 21 urges the Justice Department to investigate whether the appearance by "a top political adviser" to President Obama at an event to raise funds for the supposedly "independent" Super PAC supporting president Obama's re-election constitutes a violation of the statutory prohibition against coordination between an outside spending group and a campaign.

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<sup>4</sup> J. Zeleny and J. Rutenberg, "Obama Yields in Marshaling of 'Super PAC,'" *The New York Times* (Feb. 7, 2012).

<sup>5</sup> M. Luo & N. Confessore, "Top Obama Adviser to Appear at 'Super PAC' Meeting," *The New York Times* (March 2, 2012).

Sincerely,

A handwritten signature in black ink that reads "Fred Wertheimer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Fred Wertheimer  
President

Copy to:

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