

**BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION**

Campaign Legal Center
215 E Street, NE
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Democracy 21
2000 Massachusetts Avenue, NW
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v.

MUR No. _____

Richard John “Rick” Santorum
c/o Patriot Voices
P.O. Box 247
Verona, PA 15147

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Richard John “Rick” Santorum has been “testing the waters” of a 2016 presidential campaign and has not complied with and will not comply with the requirement that “testing the waters” activities be paid for with funds that comply with the Federal Election Campaign Act’s (“FECA”) candidate contribution limits and restrictions, in violation of FECA provisions, 52 U.S.C. § 30101, *et seq.*, and Commission regulations.
2. Additionally, this complaint is based on information providing reason to believe that Rick Santorum moved beyond “testing the waters” to become a “candidate” under FECA and violated the candidate registration and reporting requirements, contribution limits and restrictions, and “soft money” prohibitions of FECA, 52 U.S.C. § 30101, *et seq.*, and Commission regulations.

3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission shall make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

FACTS

4. Former Senator and 2012 presidential candidate Rick Santorum “has long indicated he would run again” and early in 2015 held a “string of gatherings” to “plot out another presidential bid” as he “gears up for another run.”¹ Santorum communications aide Matt Beynon told *ABC News* in January that Santorum and his wife “continue to seriously consider a run for the presidency in 2016[.]”²
5. On a Tuesday night in mid-January 2015, Santorum reportedly “huddled in Washington with 33 friends and advisers, including his former Senate chiefs of staff, to discuss his 2016 plans.”³ According to “Santorum confidant” Matthew Beynon, “The Senator talked about his 2012 run, lessons learned from 2012, how he has laid the groundwork for a potential 2016 run[.]”⁴
6. Days later, Foster Friess, who gave more than \$2 million to a super PAC supporting Santorum’s 2012 presidential campaign, reportedly hosted a “private gathering in Scottsdale, Ariz., . . . to rally support behind Santorum’s potential 2016 bid.”⁵ Santorum

¹ Cameron Joseph, *Santorum, top backer gathering support*, THE HILL, Jan. 15, 2015, <http://thehill.com/blogs/ballot-box/presidential-races/229592-santorum-super-pac-backer-gathering-support-for-another>.

² Shushannah Walshe, *Rick Santorum Preps for 2016, Meets with Aides to Plan Details*, ABC NEWS, Jan. 21, 2015, <http://abcnews.go.com/Politics/rick-santorum-preps-2016-meets-aides-plan-details/story?id=28384584&singlePage=true>.

³ Robert Costa, *GOP donor Foster Friess launches new effort to boost Rick Santorum*, WASH. POST, Jan. 14, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/01/14/gop-donor-foster-friess-launches-new-effort-to-boost-rick-santorum/>.

⁴ *Id.*

⁵ *Id.*

and Friess were both expected to “address attendees and make clear they are working together as Santorum moves toward a run.”⁶ John Brabender, a longtime Santorum adviser, confirmed the meetings at which “[a] group of Republican business executives, as well as GOP consultants from South Carolina and Iowa, [we]re scheduled to have conversations with Santorum about his strategy and with Friess about financing a national political operation.”⁷

7. *ABC News* reported one week later that Santorum met with advisors in Leesburg, Virginia “to map out a possible new presidential bid aiming to avoid some of the mistakes that doomed his last candidacy.”⁸ “The four-plus hour meeting was described to *ABC News* by an aide who attended as a discussion of ‘lessons learned’ from the 2012 campaign that they could use to improve their operation if he ‘makes the leap.’ . . . Among the topics discussed were Santorum’s potential timeline for a decision and possible roll-out, finance and fundraising plans, possible staff additions, early-state movements, communications strategy, political discussions, and putting the experiences and lessons from 2012 ‘into practice.’”⁹
8. Like many other prospective 2016 presidential candidates, Santorum traveled to Iowa in late January 2015 to speak at the Iowa Freedom Summit.¹⁰
9. In late February 2015, Santorum attended and spoke at the Conservative Political Action Conference (CPAC), where he spoke at length about his 2012 presidential campaign and what it will take to win in 2016, commenting, for example: “Pundits have often wondered

⁶ *Id.*

⁷ *Id.*

⁸ Walshe, *supra* note 2.

⁹ *Id.*

¹⁰ Jennifer Jacobs, *Prominent speakers at the Iowa Freedom Summit*, DES MOINES REG., Jan. 24, 2015, <http://www.desmoinesregister.com/story/news/politics/2015/01/18/iowa-freedom-summit-speakers/21934883/>.

how I was able to win eleven states [in 2012] even though I was outspent four and five to one. They posited it was because I was simply the last man standing. They were wrong. I won because I stood for someone, the little guy, the American worker. And if we're going to win in 2016, we need to stand for the little guy too." Santorum went on to answer questions about what his 2016 presidential campaign would look like and how he would lead as president.¹¹

10. Santorum is a confirmed speaker for the Iowa Republican party's annual Lincoln dinner on May 16, 2015. The Party's announcement explains: "There's always the chance for a candidate to have a defining moment at an event like this in Iowa. This dinner is an opportunity for our distinguished guests to set themselves apart and announce to Iowa and the country why they should be the next President of the United States. . . . The Lincoln Dinner is an important stepping stone for candidates on their way to the caucuses in February 2016."¹²
11. In a late-February 2015 *New York Times* article about the many events and meetings in which presidential candidates and prospective candidates participate, Santorum aide and agent Matt Beynon made clear that Santorum is a presidential candidate: "You have to understand what is the best use of your candidate's time, and their appeal, and who is going to gravitate towards the candidate[.]"¹³
12. Santorum presently operates the 501(c)(4) organization Patriot Voices that raises unlimited, undisclosed donations, as well as a "hybrid" federal PAC called Patriot Voices

¹¹ Rick Santorum Remarks at CPAC (C-SPAN television broadcast Feb. 27, 2015), available at <http://www.c-span.org/video/?324558-13/rick-santorum-remarks-cpac>.

¹² Press Release, Republican Party of Iowa, *Iowa GOP to Host Star-Studded Lincoln Dinner on May 16*, Mar. 26, 2015, <http://www.iowagop.org/2015/03/26/iowa-gop-to-host-star-studded-lincoln-dinner-on-may-16/>.

¹³ Nicholas Confessore and Jonathan Martin, *G.O.P. Race Starts in Lavish Haunts of Rich Donors*, N.Y. TIMES, Feb. 28, 2015, http://www.nytimes.com/2015/03/01/us/politics/gop-race-starts-in-lavish-haunts-of-rich-donors.html?smid=tw-share&_r=0.

PAC (FEC ID# C00528307), which is effectively a multicandidate PAC raising funds under a \$5,000 limit and a super PAC raising unlimited contributions operating as a single legal entity.

13. Patriot Voices PAC reported to the Commission total receipts exceeding \$1.5 million during the 2014 election cycle and reported receiving individual contributions exceeding \$2,700, including a \$250,000 contribution received from Foster Friess on December 31, 2014.¹⁴
14. In January 2015 Santorum “announced his senior finance team for Patriot Voices and Patriot Voices PAC: Nadine Maenza, Roy Jones, and Rob Bickhart.”¹⁵ Santorum said in the press release: “Nadine, Rob, and Roy will play a crucial role in ensuring we have the resources necessary to be a leader in the coming national debate, particularly as we tackle challenges confronting blue-collar families across this country.”¹⁶
15. Santorum added to his campaign team in March 2015, announcing that Iowa Rep. Walt Rogers would serve as “Iowa chairman” of Patriot Voices. Rogers commented at the time: “I think a lot of people are looking at who’s the hot commodity right now, who’s the hot candidate[.] . . . I think the caucuses will in one sense weed out some of the people who really aren’t ready for this, and Rick has already been through it one cycle. . . . I think he understands what it takes to win the Iowa caucus and to go on from there, so I’m excited to be on board and lend a hand[.]”¹⁷ Santorum explained: “I am excited to announce the addition of Walt Rogers to our growing Iowa team, and I am

¹⁴ See, e.g., Patriot Voices PAC, 2014 Year-End Report (filed Jan. 30, 2015).

¹⁵ Press Release, Patriot Voices PAC, *Rick Santorum and Patriot Voices PAC Announce Senior Finance Team*, Jan. 20, 2015,

http://www.patriotvoices.com/rick_santorum_and_patriot_voices_pac_announce_senior_finance_team.

¹⁶ *Id.*

¹⁷ Christinia Crippes, *Rogers joins with Santorum’s Patriot Voices*, WATERLOO CEDAR FALLS COURIER, Mar. 16, 2015, http://wfcourier.com/news/local/govt-and-politics/rogers-joins-with-santorum-s-patriot-voices/article_9cc4b441-7fba-59c3-a6a3-c90397f7bf55.html.

confident that his support today will again be a terrific lift for our efforts in the Hawkeye State[.]”¹⁸

SUMMARY OF THE LAW

I. “CANDIDATE” STATUS & “TESTING THE WATERS”

16. The term “candidate” is defined in FECA to mean “an individual who seeks nomination for election, or election, to Federal office,” and for purposes of the statutory definition an individual is deemed to seek nomination for election, or election, “if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000” or “given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$5,000 or has made such expenditures aggregating in excess of \$5,000.” 52 U.S.C. § 30101(2) (emphasis added); *see also* 11 C.F.R. § 100.3(a).
17. The term “contribution” is defined in FECA to mean “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.51–100.56.
18. The term “expenditure” is defined in FECA to mean “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.110–100.114.
19. The Commission has explained that under FECA, “an individual is deemed a ‘candidate’ . . . if he or she receives contributions or makes expenditures in excess of

¹⁸ *Id.*

\$5,000 or gives consent to another person” to do so on his or her behalf. *See* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992–93 (Mar. 13, 1985) (Final Rules and Explanation and Justification).¹⁹

20. The Commission has further explained: “The Act thus establishes automatic dollar thresholds for attaining candidate status which trigger its registration and reporting requirements.” However, “[t]hrough its regulations, the Commission has established limited exceptions to these automatic thresholds which permit an individual to test the feasibility of a campaign for Federal office without becoming a candidate under the Act.” *See* Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9992–93 (emphasis added).
21. These “limited exceptions” to the definitions of “contribution” and “expenditure” are commonly referred to as the “testing the waters” exceptions and are found at 11 C.F.R. §§ 100.72 and 100.131. In the absence of these regulatory exemptions, funds raised and spent for the activities described therein would be “contributions” and “expenditures” under federal law and would therefore trigger “candidate” status when they exceeded \$5,000.
22. Section 100.72(a), structured as a limited exception to the definition of “contribution,,: provides:

Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. . . . Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

11 C.F.R. § 100.72(a) (emphasis added).

¹⁹ Available at http://www.fec.gov/law/cfr/ej_compilation/1985/50fr9992.pdf.

23. Section 100.72(b) makes clear that the exception is “not applicable to individuals who have decided to become candidates[,]” nor “for activities relevant to conducting a campaign.” 11 C.F.R. § 100.72(b) (emphasis added). Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

- (1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
- (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.
- (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.
- (4) The individual conducts activities in close proximity to the election or over a protracted period of time.
- (5) The individual has taken action to qualify for the ballot under State law.

11 C.F.R. § 100.72(b) (emphasis added).

24. Section 100.131 creates a near-identical exception to the definition of “expenditure,” replacing the opening phrase “funds received” with the phrase “payments made.” 11 C.F.R. § 100.131.

25. Sections 110.2(l) and 9034.10 establish certain activities as *de facto* “testing the waters” activities—payments for:

- Polling expenses for determining the favorability, name recognition, or relative support level of the candidate involved;
- Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate’s home state and in or near the District of Columbia;
- Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in States where Presidential primaries, caucuses, or preference polls are to be held, other than offices in the candidate’s home state and in or near the District of Columbia; or
- Expenses of individuals seeking to become delegates in the Presidential nomination process.

11 C.F.R. §§ 110.2(l)(1) and 9034.10(a).

26. These regulations, 11 C.F.R. §§ 110.2(l) and 9034.10, make clear that payments for such activities benefiting presidential candidates, paid for by federal multicandidate committees before the individual announces her candidacy, constitute in-kind “contributions” from the multicandidate committee to the candidate subject to the \$5,000 limit on contributions from multicandidate committees to candidates—unless reimbursed by the candidate. The Commission has explained:

These provisions were designed to address situations where unauthorized political committees closely associated with a particular individual planning to run for President defray costs that are properly treated as in-kind contributions unless reimbursed by the Presidential campaign. . . . The focus of the final rules, therefore, is those expenses paid by multicandidate political committees prior to actual candidacy under the law, i.e., during the “testing the waters” phase and before.

Public Financing of Presidential Candidates and Nominating Conventions, 68 Fed. Reg. 47386, 47387, 47407 (Aug. 8, 2003) (Final Rules and Explanation and Justification).

27. In Advisory Opinion 1985-40, the Commission concluded that travel expenses and hospitality suite rentals for a prospective presidential candidate’s attendance at state and regional Republican Party meetings and conferences, described as “cattle shows” that would “be attended by party officials, party activists, elected officeholders, political consultants, and the press,” constituted “testing the waters” expenses. Similarly, the Commission concluded that expenses related to the prospective candidate’s “travel to early primary and convention states to meet privately with Republican Party leaders to seek their views on whether he should seek the 1988 Republican presidential nomination” constituted “testing the waters” activities. Finally, the Commission concluded that expenses related to setting up “steering committees in certain states, such as Iowa and New Hampshire, which will hold early caucuses and primaries in connection with the

1988 Republican presidential nomination” constituted “testing the waters” activities. FEC Advisory Opinion 1985-40 at 6–9.

II. Registration & Reporting Requirements

28. No later than 15 days after becoming a candidate, a candidate for federal office must “designate in writing a political committee . . . to serve as the principal campaign committee of such candidate” by filing a Statement of Candidacy using the Commission’s Form 2. 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1. Such a committee must file a statement of organization no later than 10 days after designation as the candidate’s authorized principal campaign committee. 52 U.S.C. § 30103.
29. The treasurer of a political committee must file reports of receipts and disbursements pursuant to 52 U.S.C. § 30104.
30. All funds received or payments made in connection with “testing the waters” activities conducted under 11 C.F.R. §§ 100.72(a) and 100.131(a) prior to becoming a candidate are “considered contributions or expenditures under the Act and shall be reported . . . in the first report filed by such candidate’s principal campaign committee.” 11 C.F.R. § 101.3. An individual “testing the waters” must keep records of the “name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with” “testing the waters” activities. *Id.*

III. CONTRIBUTION LIMITS & RESTRICTIONS

31. A presidential candidate’s principal campaign committee, together with any other committees authorized by the candidate, may not accept contributions from an individual that, in the aggregate, exceed \$2,700 per election. 52 U.S.C. § 30116(a)(1)(A).²⁰

²⁰ As prescribed by statute under 52 U.S.C. § 30116(c), the \$2,000 limit has been adjusted for changes in the cost of living at the beginning of every odd-numbered year since 2002, most recently in this month. *See* Price Index

Candidates may not accept contributions from political party committees and other multicandidate PACs that exceed \$5,000 per election. 52 U.S.C. § 30116(a)(2).

32. Contributions made from a candidate's personal funds to her campaign are not subject to any limits, though they must still be reported. *See* 11 C.F.R. § 110.10; *see also* FEC Advisory Opinions 1991-09, 1990-09 and 1985-33.
33. Candidate committees may not accept contributions from corporations or labor organizations. 52 U.S.C. § 30118(a).
34. A federal candidate, officeholder, or any entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of a candidate is prohibited from soliciting, receiving, directing, transferring or spending funds in connection with a federal election unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 52 U.S.C. § 30125(e)(1).

CAUSES OF ACTION

COUNT I:

There is reason to believe that Rick Santorum has been “testing the waters” of a 2016 presidential campaign and has not complied and will not comply with the requirement that “testing the waters” activities be paid for with funds that comply with FECA’s candidate contribution limits and restrictions in violation of provisions of FECA.

35. FECA and Commission regulations and advisory opinions make clear that activities engaged in for the purpose of determining whether an individual should become a candidate constitute “testing the waters” and must be paid for with funds that comply with FECA’s contribution limits and restrictions, and must be reported by an individual who becomes a candidate on that candidate’s first disclosure report.

Adjustments for Expenditure Limitations and Lobbying Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

36. Whether or not someone is “testing the waters,” and thus subject to the candidate contribution limits and prohibitions of federal law, is a fact-based question and cannot be dismissed solely based on a person’s statements during public appearances that they are not “testing the waters.”
37. Based on published reports detailed above, complainants have reason to believe that Rick Santorum and/or his agents have engaged in activities for the purpose of determining whether he should become a candidate, including but not limited to:
- Telephone calls for the purpose of determining whether an individual should become a candidate;
 - Travel for the purpose of determining whether an individual should become a candidate;
 - Compensation paid to employees, consultants, or vendors for services rendered in connection with establishing and staffing offices in states other than the candidate’s home state and in or near the District of Columbia;
 - Administrative expenses, including rent, utilities, office supplies and equipment, in connection with establishing and staffing offices in states other than the candidate’s home state and in or near the District of Columbia;
 - Travel expenses to attend, address and rent hospitality suites at state political party conferences where the individual “indicates his potential interest in, and his ongoing consideration of whether to seek” his party’s nomination;
 - Travel expenses for private meetings with state party leadership to gauge support of a possible candidacy; and
 - Expenses to set up “steering committees” in early caucus/primary states with the understanding that the committee will become the official campaign organization in the event the individual runs for office.
38. Based on published reports detailed above, complainants have reason to believe that payments have been made for Rick Santorum’s “testing the waters” activities—*i.e.*, activities for the purpose of determining whether to run for president—using funds not in compliance with the candidate contribution limits and restrictions established by 52 U.S.C. §§ 30116(a) and 30118(a), including payments made by Santorum and/or Patriot Voices and/or Patriot Voices PAC and/or others, in violation of federal law candidate contribution limits and restrictions established by 52 U.S.C. §§ 30116(a) and 30118(a).

COUNT II:

There is reason to believe that Rick Santorum moved beyond “testing the waters” to become a “candidate” under FECA and violated the candidate registration and reporting requirements, contribution limits and restrictions, and “soft money” prohibitions of FECA.

39. Under FECA, an individual is deemed a “candidate” if she receives contributions or makes expenditures in excess of \$5,000. *See* 52 U.S.C. § 30101(2); *see also* 11 C.F.R. § 100.3(a).
40. The limited “testing the waters” exception to “candidate” status is “not applicable to individuals who have decided to become candidates[,]” nor “for activities relevant to conducting a campaign.” 11 C.F.R. § 100.72(b) (emphasis added); *see also id.* § 100.131(b). Examples of activities that indicate that an individual has decided to become a candidate include raising “funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate” and making written or oral statements that refer to him or her as a candidate for a particular office.” 11 C.F.R. § 100.72(b) (emphasis added).
41. Based on published reports detailed above, complainants have reason to believe that Rick Santorum has received contributions and made expenditures in excess of \$5,000, triggering “candidate” status under 52 U.S.C. § 30101(2).
42. Based on published reports detailed above, complainants have reason to believe that Rick Santorum has decided to become a candidate, as indicated by his aide and agent’s reference to him as a candidate as quoted in the *New York Times*,²¹ rendering inapplicable

²¹ Nicholas Confessore and Jonathan Martin, *G.O.P. Race Starts in Lavish Haunts of Rich Donors*, N.Y. TIMES, Feb. 28, 2015, http://www.nytimes.com/2015/03/01/us/politics/gop-race-starts-in-lavish-haunts-of-rich-donors.html?smid=tw-share&_r=0.

the “testing the waters” exception to “candidate” status established by 11 C.F.R. §§ 100.72(b) and 100.131(b).

43. Based on published reports detailed above, complainants have reason to believe that Rick Santorum has decided to become a candidate, as indicated by his activities on behalf of or Patriot Voices and/or Patriot Voices PAC to raise “funds in excess of what could reasonably be expected to be used for exploratory activities” and “designed to amass campaign funds that would be spent after he or she becomes a candidate,” rendering inapplicable the “testing the waters” exception to “candidate” status established by 11 C.F.R. §§ 100.72(b) and 100.131(b).
44. Based on published reports detailed above, complainants have reason to believe that as a “candidate” under FECA, Rick Santorum has failed to comply with the candidate registration and reporting requirements established by 52 U.S.C. §§ 30102(e)(1), 30103 and 30104, as well as the candidate contribution limits and restrictions established by 52 U.S.C. §§ 30116(a), 30118 and 30125(e)(1).

PRAYER FOR RELIEF

45. Wherefore, the Commission should find reason to believe that Rick Santorum has violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30116(a), 30118(a), 30102(e)(1), 30103 and 30104, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

March 31, 2015

Respectfully submitted,

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VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

J. Gerald Hebert

Sworn to and subscribed before me this ____ day of March, 2015.

Notary Public

For Complainant Democracy 21

Fred Wertheimer

Sworn to and subscribed before me this ____ day of March, 2015.

Notary Public