



Democracy 21

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Fred Wertheimer
President

January 13, 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: Candidate-specific Super PACs in 2012 elections

Dear Attorney General Holder:

On January 10, 2012, I sent you a letter and enclosed a Report issued by Democracy 21 which raised serious questions about the legality of five leading presidential candidate-specific Super PACs.

The Report documents the web of connections and relationships between candidates for President in 2012 and the five candidate-specific Super PACs supporting them. These Super PACs are raising and spending tens of millions of dollars in unlimited contributions to support their respective presidential candidates.

Donors to the Super PACs are giving huge contributions. As noted in our letter, one donor, Sheldon Adelson, a billionaire with major gambling interests, recently gave a single donation of \$5 million to Winning Our Future, the Super PAC supporting former Speaker Newt Gingrich's presidential campaign. A press report called this "the largest single donation that could directly aid a candidate in American history."¹

Our January 10th letter and the accompanying Report provided substantial information that raised serious questions about the legality of these Super PACS. The letter urged you and the Justice Department to closely monitor their activities in the 2012 presidential election.

I am writing today to supplement the information contained in the Report and to provide information on a sixth candidate-specific Super PAC, the Red, White and Blue Fund supporting the presidential campaign of former Senator Rick Santorum.

¹ L. Strickler, "Billionaire Adelson donated \$5 million to help Gingrich but does not want publicity," *CBS News* (Jan. 11, 2012).

Importantly, the new information shows that, in two cases, there are individuals who are involved directly and simultaneously in a presidential candidate's campaign and also with the candidate-specific Super PAC supporting that candidate.

According to an article published in *Politico* yesterday,² key donors to two of the presidential candidate-specific Super PACs have close and ongoing relationships with the candidates supported by those Super PACs. This calls into question whether the Super PACs are operating with the independence from the candidates that is required by the federal campaign finance laws.

According to the article, Foster Friess recently made a \$1 million donation to the Red, White and Blue Fund, the Super PAC supporting the Santorum campaign.

The article indicates that Friess is materially involved in the decisions by the Super PAC about how it is to spend his money. According to the 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.'"

The same article makes clear that Friess has close and ongoing connections to the Santorum presidential campaign and, in fact, is part of Santorum's personal entourage. According to the article:

Friess campaigned with Santorum in the days before the Iowa caucuses, speaking on behalf of the former Pennsylvania senator at a local event, then scoring a prime time spot on stage behind the candidate during his triumphant speech after his second-place caucus finish.

The article thus shows that a billionaire donor who made a \$1 million contribution to a candidate-specific Super PAC supporting former Senator Santorum and is involved in the spending decisions of that Super PAC is, at the same time, actively campaigning with Santorum as part of his official campaign and is in direct, personal contact with the candidate.

The same article sets forth similar facts about the relationship between the presidential campaign of former Governor Jon Huntsman, Jr., his father, Jon Huntsman, Sr., also a billionaire, and Our Destiny PAC which is a candidate-specific Super PAC supporting the Huntsman presidential campaign.

In our Report, we discussed the Huntsman Super PAC and noted that the candidate's father was the largest donor to this supposedly "independent" PAC which is devoted solely to promoting his son's presidential campaign. The *Politico* article states:

Jon Huntsman, Sr., has been a presence throughout the campaign of his son, and they appeared most recently together on stage at a Manchester, N.H. restaurant

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

during a Tuesday night party celebrating the son's third-place finish in the Granite State.

According to the article, former Governor Huntsman has said that "he and his father do not discuss Our Destiny or campaign strategy." But on the other hand, the report states:

The elder Huntsman 'communicates daily with his son' and 'continu[e]s to be a major contributor" to Our Destiny, said Fred Davis, a veteran GOP adman who is a key adviser to the super PAC.

Our Report noted that Davis was a key adviser to the Huntsman for President Committee until July, when he left the campaign to work for the Super PAC supporting Huntsman.

This article thus indicates that John Huntsman, Sr., a major donor (and possibly the principal donor) to the Super PAC supporting presidential candidate Huntsman – in this instance, the presidential candidate's own father – "communicates daily with his son" and is actively campaigning with him.

Thus, Mr. Freiss and Mr. Huntsman are each major donors to a candidate-specific Super PAC and at the same time each is directly involved in the presidential campaign of the candidate supported by the Super PAC and each is in direct contact with the candidate.

These facts raise serious questions about whether these Super PACs and the presidential campaigns supported by the Super PACs are complying with the key requirement of the campaign finance law that the Super PAC's expenditures and activities be conducted independently from the candidate's campaign.

The Supreme Court has spoken in the broadest terms about the degree of independence that is necessary for "independent expenditures" to be considered free of the restrictions that would otherwise apply to what would be in-kind contributions. Such expenditures must be "totally independent," *Buckley v. Valeo*, 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).

The statute reflects these broad standards and provides that if expenditures are "made by any person in cooperation, consultation or concert with, or at the request or suggestion of" a candidate or agent of a candidate, they are coordinated, not independent, expenditures and "shall be considered to be a contribution to such candidate," and therefore subject to the limitations and prohibitions that apply to contributions. 2 U.S.C. § 441a(a)(7)(B)(i).

Absent the "totally," "wholly" and "truly" independent activity required by Supreme Court decisions and the campaign finance laws, the expenditures by a Super PAC would constitute in-kind contributions to the presidential candidate.

As such, they would be subject to the \$5,000 per year contribution limit applicable to political committees making contributions to a federal candidate. Needless to say, the multi-

million dollar amounts being spent by the presidential candidate-specific Super PACs would be in violation of this limit. Further, the huge donations being given to the Super PACs would violate applicable contribution limits as well.

We urge you and the Justice Department to review this new information along with the Report we sent you on January 10th and to closely monitor the activities of the presidential candidate-specific Super PACs in the 2012 presidential election. We also urge the Department to conduct investigations, where appropriate, to ensure that the campaign finance laws are not being violated by presidential candidate-specific Super PACs.

Sincerely,

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

Fred Wertheimer
President

Copy to:

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