



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 20 2007

Cleta Mitchell, Esq.
Foley & Lardner, LLP
3000 K Street NW, Suite 500
Washington, DC 20007

RE: MUR 5780
Santorum 2006 and
Gregg Melinson, in his
official capacity as treasurer

Dear Ms Mitchell:

On August 8, 2006, the Federal Election Commission (the "Commission") notified your clients, Santorum 2006 and Gregg Melinson, in his official capacity as treasurer, of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended, and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission on March 6, 2007, found reason to believe that Santorum 2006 and Gregg Melinson, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c)(2), a provision of the Act, and 11 C.F.R. §§ 110.11 (c)(2)(ii) and 102.17(c)(1)-(2). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

28044190245

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures
Factual and Legal Analysis

cc: candidate

28044190246

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Santorum 2006 and
Gregg Melinson, in his
official capacity as treasurer

MUR: 5780

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by William R. Caroselli. *See* 2 U.S.C. § 437g(a)(1). The complaint alleged that Santorum 2006 violated the Federal Election Campaign Act of 1971, as amended ("the Act") in two ways. First, the complaint alleges that Senator Rick Santorum's authorized campaign committee, Santorum 2006, and the Republican Federal Committee of Pennsylvania held a joint fundraising event on June 14, 2005, but failed to establish a joint fundraising committee or representative committee. *See* 11 C.F.R. § 102.17(c). Second, the complaint avers that Santorum 2006 failed to include a printed box around a disclaimer on an invitation for a March 2006 fundraiser. *See* 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii).

II. FACTUAL AND LEGAL ANALYSIS

A. June 2005 Fundraising Event

On June 14, 2005, Hilarie and Mitchell Morgan hosted a fundraising event for Senator Rick Santorum and the Republican Federal Committee of Pennsylvania ("RFCP") at their private residence in Bryn Mawr, Pennsylvania. Santorum 2006 and the RFCP each sent out separate invitations for the luncheon reception, and claim that despite the same date, location, timing and guest speaker, each committee held its own separate event.

28044190248

The separate invitations sent out by Santorum 2006 and the RFCP appear to be similar in wording and almost identical in layout. The Santorum 2006 invitation states "Hilarie and Mitchell Morgan cordially invite you to join them in welcoming President George W. Bush in honor of U.S. Senator Rick Santorum." The invitation distributed by the RFCP states "Hilarie and Mitchell Morgan, on behalf of the Pennsylvania GOP, cordially invite you to join us in welcoming our special guests, President George W. Bush and Senator Rick Santorum." Each invitation specifies the date of the event as June 14, 2005 with a luncheon reception from 11 a.m. to 1 p.m., and each invitation offers a photo opportunity with the President for \$10,000.¹ The Santorum 2006 invitation also offers a private luncheon reception for a \$1,000 contribution, and a general luncheon reception was \$500 per person or couple. Each invitation packet also contains the names of individuals and couples designated as "Co-Chairmen" of the event—a list of 55 on the Santorum 2006 invitation and a list of 36 on the RFCP's invitation. Fifteen of the "co-chairmen" listed on the Santorum 2006 invitation were also listed as "co-chairmen" in the RFCP's invitation.

At the event itself, President Bush reportedly made one 15-minute speech to all fundraiser attendees who donated less than \$10,000, regardless of whether they had contributed to Santorum 2006 or the RFCP. These attendees were reportedly gathered in one central location for this speech. See Carrie Budoff and Marc Schogol, *A Main Line Gusher for Bush*, PHILADELPHIA INQUIRER, June 15, 2006. Likewise, all donors who qualified for the photo opportunity with the President reportedly gathered in another area of the house, regardless of whether they had donated to Santorum 2006 or the RFCP. See *id.*

¹ For the photo opportunity, the RFCP invitation solicited "\$10,000 per person or couple" and the Santorum 2006 invitation specified "\$10,000 raised per person or couple."

Disclosure reports filed by Santorum 2006 and the RFCP indicate that each committee disbursed funds in connection with the June 14th event and that the committees may have shared some of the expenses related to the event. For example, it appears that each made disbursements to some of the same vendors in connection with the event.² However, other expenses associated with the fundraising event appear to have been paid exclusively by only one of the two committees. For example, a spokesman for Santorum 2006 publicly stated that Santorum 2006 would reimburse the President's travel costs associated with attending the event, while the RFCP's disclosure reports indicate that it paid for the motorcade signage from the airport to the residence where the event was held as well as identity badges for attendees.³ See Carrie Budoff, *Bush in Bryn Mawr for Santorum Luncheon*, PHILADELPHIA INQUIRER, June 14, 2005; 2005 August Monthly Report, Schedule B, Republican Federal Committee of Pennsylvania.

Separate invitations notwithstanding, it appears that Santorum 2006 and the RFCP may have coordinated the distribution of the proceeds from the event. Santorum's media consultant, John Brabender, reportedly stated that of the \$1.7 million raised at the fundraiser, \$1.1 million would go to the Santorum campaign, and \$600,000 would be deposited into the federal account of the Republican State Committee. See Carrie Budoff and Marc Schogol, *A Main Line Gusher for Bush*, PHILADELPHIA INQUIRER, June 15, 2006; Brett Lieberman, *Bush Appearance Signals Significance of '06 Senate Race*, THE PATRIOT NEWS, June 5, 2005. One source indicated that

² Santorum 2006 and the RFCP each disclosed disbursements to Rosen Catering and Alber-Haff Parking Services in close proximity to the June 14, 2005 fundraiser. Santorum 2006 disbursed \$720 to Alber-Haff for "fundraising event costs" on July 1, 2005, and RFCP disbursed the same amount, \$720, to Alber-Haff on July 13, 2005 for "Generic Party Fundraising - parking." Similarly, Santorum 2006 disbursed \$30,000 to Rosen Catering for "fundraising event costs" on June 10, 2005; RFCP disbursed \$15,143.69 to Rosen Catering on July 7, 2005 for "Generic Party Fundraising - catering." See 2005 August Monthly Report, Schedule B, Republican Federal Committee of Pennsylvania; 2005 July Quarterly Report, Schedule B, Santorum 2006 Committee.

³ RFCP made disbursements to Conlin's Digital Print & Copy Center for "Motorcade Signs" and "Generic Party Fundraising - Identity Badges." See 2005 August Monthly Report, Republican Federal Committee of Pennsylvania.

proceeds from those who contributed \$10,000 in order to have a photo opportunity with President Bush were deposited into the RFCP account. See Carrie Budoff, *Bush in Bryn Mawr for Santorum Luncheon*, PHILADELPHIA INQUIRER, June 14, 2005. After the event, Santorum told the media that "the event netted more than \$1.5 million," making no mention of two separate events. See Edwin Chen, *Bush Hopes Fundraising Pays Off*, LOS ANGELES TIMES, June 15, 2006.

The complaint alleges that this was a joint fundraising event and that both participating committees violated 11 C.F.R. § 102.17 by failing to follow any of the Commission's regulations regarding joint fundraising. In response to the complaint, the respondents aver that the fundraiser was "two wholly separate events, held on the same day within a time period immediately adjacent to each other" and that all logistics, costs, solicitations, locations, and arrangements were managed separately, and all receipts and disbursements were kept separate.

The Commission's joint fundraising regulations at 11 C.F.R. § 102.17(a) allow political committees to engage in joint fundraising efforts, but to do so, they must either establish a separate committee or designate a participating committee as the fundraising representative. See 11 C.F.R. § 102.17(a)(1)(i). Participants must enter into a written agreement that identifies the fundraising representative and states the formula for the allocation of fundraising proceeds. See 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for a period of three years and make it available to the Commission upon request. *Id.*

The regulations also provide that a joint fundraising notice shall be included with every solicitation for contributions. 11 C.F.R. § 102.17(c)(2). The notice shall include the names of all participating committees; the allocation formula to be used; a notice that, notwithstanding the stated allocation formula, contributors may designate that their contributions be allocated

differently; and a notice that the allocation formula may change if a contributor makes a contribution which would exceed the amount that a contributor may give to a participant.

11 C.F.R. § 102.17(c)(2)(i).

Furthermore, joint fundraising participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. 11 C.F.R. § 102.17(c)(3)(i). Gross proceeds as well as expenses and the distribution of net proceeds from joint fundraising efforts are to be allocated according to the formula provided in the written agreement. See 11 C.F.R. § 102.17(c)(6)-(7).

In this matter, it appears that the June 14, 2005 event in Bryn Mawr constitutes a joint fundraiser under the Commission's regulations, and triggers the requirements of 11 C.F.R. § 102.17. The event(s) in question occurred on the same date, at the same time, and at the same private residence. While respondents argue that both committees kept all expenses related to the event separate, the facts before us demonstrate otherwise. The available information indicates that the RFCP and Santorum 2006 may have coordinated disbursements for the event together and allocated certain expenses without publishing their allocation formula. For example, it appears that each committee used the same caterer and parking service and shared the costs. In addition, the available evidence suggests that one committee paid for the President's travel costs, although the disbursement was made for the benefit of both committees. Furthermore, as previously discussed, it appears that the committees coordinated how the contributions raised in connection with the event would be distributed between the two committees. According to one source, donations of \$10,000, which exceed the contribution limit for Santorum 2006, were deposited into the account of the RFCP.

It appears that the June 14, 2005 event in Bryn Mawr was a joint fundraiser, and Santorum 2006 and the RFCP apparently failed to follow the Commission's regulations for conducting joint fundraisers. They apparently did not establish or designate a joint fundraising committee, did not enter into a written agreement or determine an allocation formula, and did not allocate receipts and expenditures according to an established formula. See 11 C.F.R. § 102.17(c)(1)-(2). Therefore, there is reason to believe that Santorum 2006 and Gregg Melinson, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c).

B. March 2006 Solicitation

In early 2006, Santorum 2006 sent out an invitation to a fundraiser to be held on March 24, 2006. The invitation stated, "Mr. and Mrs. Richard P. Simmons cordially invite you to join them in welcoming President George W. Bush in honor of U.S. Senator Rick Santorum." The invitation solicited contributions in the amount of \$1,000 per person to attend a private reception and offered a photo opportunity with the President for individuals or couples who raised at least \$10,000. The solicitation contained the following disclaimer: "Contributions are not tax deductible for federal income tax purposes. Paid for by Santorum 2006." The disclaimer did not have a printed box around it.

The complaint alleges that Santorum 2006 violated the Act by failing to include a printed box around the disclaimer on the solicitation. Santorum 2006's response to the complaint admitted that the disclaimer was not contained within a printed box. However, the committee argued that "[t]he absence of a text box and the 12-point type face does not negate the clear statement on the invitation as to the source of the payment of the event," and that the "disclaimer is in substantial compliance with the requirements of the Act."

Pursuant to the Act, whenever a candidate's authorized political committee solicits any contributions through a mass mailing or any other type of general public political advertising, such communication shall clearly state that the authorized political committee paid for the communication.⁴ 2 U.S.C. § 441d(a)(1); *see also* 11 C.F.R. § 110.11. "Mass mailing" is defined as more than 500 pieces of identical or substantially similar mail. *See* 2 U.S.C. §§ 431(22), 431(23). Furthermore, such disclaimers must be contained in a printed box set apart from the rest of the communication. *See* 2 U.S.C. § 441d(c)(2), 11 C.F.R. § 110.11(c)(2)(ii).

Although Santorum 2006 did not disclose the number of recipients of the March 2006 solicitation in its response, the event attracted an estimated 500 attendees, suggesting that the solicitation consisted of more than 500 pieces.⁵ *See* David M. Brown and Craig Smith, *Bush Stop Earns Santorum \$700K*, PITTSBURGH TRIBUNE-REVIEW, March 26, 2006. As such, it appears that the solicitation is subject to the Act's disclaimer requirements, but did not contain the disclaimer within a printed box. Therefore, there is reason to believe that Santorum 2006 and Gregg Melinson, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11.

⁴ The Explanation and Justification published with the Commission's disclaimer regulations states that "each form of communication specifically listed in the definition of 'public communication' must be a form of 'general public political advertising.'" 67 Fed. Reg. 76962, 76963 (December 13, 2002). "Public communication" is defined at 2 U.S.C. § 431(22) as "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." *See also*, 11 C.F.R. § 100.26.

⁵ For a similar fundraiser in June 2005, a reported 7,500 solicitations yielded a crowd of 1,000 in attendance at the event. *See* Brett Lieberman, *Bush Appearance Signals Significance of '06 Senate Race*, THE PATRIOT NEWS, June 5, 2005. Based upon that participation rate, since the March 2006 event had approximately 500 attendees, the Committee may have sent out as many as 3,750 solicitations.