

**ALABAMA
DEMOCRATS**

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ALADEMS.ORG

July 14, 2011

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Alabama Secretary of State
Elections Division
State Capitol Building - Suite E-208
600 Dexter Avenue
Montgomery, Alabama 36103-5616

New Hampshire Secretary of State
State House, Room 204
107 North Main Street
Concord, N.H. 03301

Iowa Ethics & Campaign Disclosure Board
510 E 12th, Suite 1A
Des Moines, IA 50319

Michigan Department of State
Bureau of Elections
P.O. Box 20126
Lansing, MI 48901

South Carolina State Ethics Commission
5000 Thurmond Mall, Suite 250
Columbia, SC 29201

Re: Campaign Finance Violation by Mitt Romney

Dear Federal and State Campaign Finance Authorities:

After reviewing news articles and other publicly available sources, we believe that Mitt Romney and his political committees, including Romney for President Inc. and the five state affiliates of the Commonwealth PAC located in Alabama, New Hampshire, Iowa, Michigan, and South Carolina may have violated numerous Federal and State campaign finance laws.

RECEIVED
FEDERAL ELECTION
COMMISSION

2011 AUG -1 PM 1:47

OFFICE OF GENERAL
COUNSEL

MUR # 6484

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Mr. Romney and his advisers appear to have engaged in a multi-state scheme to evade Federal campaign finance law by raising and spending "soft money" to advance Mr. Romney's presidential campaign. This scheme has been well-documented by various media outlets. Attached please find a complaint that we are filing with the Federal Election Commission. This follows on the heels of a complaint filed by the New Hampshire Democratic Party in April, with respect to similar activities. The initial complaint is also attached.

We respectfully request that each of you investigate whether these activities violate the laws of your jurisdiction. Should you determine that the law has been violated, we request that Mr. Romney and his political committees be enjoined from further violations and that all other remedies under the law be pursued in full.

In Service,



Justice H. Mark Kennedy
Chairman

Enclosures

20110701154001

RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE
FEDERAL ELECTION COMMISSION

2011 AUG -1 PM 1:48

OFFICE OF GENERAL
COUNSEL

New Hampshire Democratic Party
105 N. State Street
Concord, NH 03301

Alabama Democratic Party
501 Adams Avenue
Montgomery, AL 36104

MUR # 6484

Complainants,

v.

Mitt Romney
585 Commercial St.
Boston, MA 02109

Romney for President Inc.
585 Commercial St.
Boston, MA 02109

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Mitt Romney, Romney for President Inc., and any other committees authorized by Mr. Romney to support his presidential candidacy ("Respondents") for violations of the Federal Election Campaign Act ("Act"), as described below.

As the New Hampshire Democratic Party set forth in its April complaint with the Federal Election Commission ("FEC"), in the two years leading up to his declaration of candidacy for President, Mr. Romney used "soft money" PACs in five states – Alabama, New Hampshire, Iowa, Michigan, and South Carolina (collectively, the "State PACs") – to raise funds in excess of Federal limits and spend those funds in support of his nascent

presidential candidacy.¹ According to media accounts, the State PACs raised \$1.5 million in 2010, much of it in "soft money" contributions (e.g. contributions in excess of \$5,000, the Federal limit). Just last week, the *Birmingham News* published an article describing how Mr. Romney exploited Alabama's loose campaign finance rules to set up a PAC in the State, raise unlimited contributions into the PAC, and, rather than use the money to help Alabama candidates, instead funnel it back to Massachusetts to bankroll his presidential campaign operation.²

But even after this egregious conduct came to light, Mr. Romney and his advisers have shown no signs of abating it. In fact, according to the article, the Alabama PAC's fundraising has "never really stopped."³ It is time for the FEC – and the relevant authorities in Alabama, New Hampshire, Iowa, Michigan, and South Carolina – to put an end to Mr. Romney's scheme.

In an accompanying letter addressed also to state authorities, we are seeking a full inquiry into the violations of both Federal and state laws raised on these facts. Mr. Romney has engaged in the evident subterfuge of using state laws not for the state election-related purposes for which they were enacted, but to advance his Federal candidacy with the aid of "soft money". He has misled the authorities of those states, filing reports of "state" activities which were never bona fide state activities in the first instance. The state committees were set up as shell operations through which soft money flowed back to Massachusetts to support his Federal candidacy. Only through full Federal and state investigations can the full facts be uncovered and the violations at issue

¹ This amended complaint incorporates, by reference, the factual and legal allegations made against Respondents in the complaint labeled by the FEC, which is attached as Exhibit A.

² See Mary Orndorff, "National candidates can take advantage of Alabama's campaign finance laws," THE BIRMINGHAM NEWS (July 4, 2011) (attached as Exhibit B).

³ See *id.*

be redressed.

A. LEGAL ARGUMENT

- 1. Respondents may have violated the Act and state laws in Alabama, New Hampshire, Iowa, South Carolina, and Michigan by raising "soft money" contributions into the State PACs and using the money to support his presidential candidacy.**

In April, the New Hampshire Democratic Party filed a complaint with the FEC, which alleged that Mr. Romney and the other Respondents may have violated the Act by soliciting and using "soft money" contributions (e.g. contributions in excess of \$5,000, the Federal limit) into the State PACs and funneling the money back to Massachusetts to advance Mr. Romney's presidential candidacy.

The diversion of state contributions for Federal purposes likely violated the Act *and* state laws. Federal law permits presidential candidates to accept \$5,000 in "contributions" from each individual, with \$2,500 designated for the primary election and \$2,500 designated for the general election.⁴ Federal law defines a "contribution" to include 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*"⁵ Likewise, as an example, Alabama defines "contribution" to include "[a] gift, subscription, loan, advance, deposit of money or anything of value, a payment, a forgiveness of a loan, or payment of a third party, *made for the purpose of influencing the result of an election*," with "election" being limited to Alabama – not Federal – elections.⁶

Consequently, when a PAC raises money to influence a Federal election, it must

⁴ See 2 U.S.C. § 441a(a)(1)(A).

⁵ See 11 C.F.R. § 100.52(a) (emphasis added)

⁶ See Ala. Code §§ 17-5-2(a)(2), (4) (emphasis added).

abide by Federal limits (e.g. \$5,000 per contribution). Likewise, when money is raised into a State PAC, it must be done for the purpose of influencing an election in that State. But Mr. Romney did not abide by these rules. To avoid Federal limits, Mr. Romney raised the money into the State PAC and, in contravention of state and Federal law, plowed the money back into his Boston-based operation, to pay for staff salaries, consultant fees, and other expenses of his nascent presidential candidacy.⁷ For example, Mr. Romney's Alabama PAC raised more than \$440,000 in 2010, but donated only \$21,500 (less than 5 percent) to state and local candidates in Alabama.⁸ As the April complaint pointed out, two of Mr. Romney's large donors understood that they were making these contributions to aid Mr. Romney's national candidacy, not any state efforts.⁹ There is little doubt that, if questioned, Mr. Romney's other large donors would also confirm that they understood that their contributions were being used to advance Mr. Romney's presidential candidacy.

2. If the State PACs raised or spent soft money after Mr. Romney became a declared candidate, Mr. Romney violated the Act.

Federal law prohibits the State PACs from raising or spending *any* "soft money" after April 11, 2011, the day on which Mr. Romney formally filed his candidacy papers with the FEC. Federal law makes it illegal for a candidate or "*an entity directly or*

⁷ See Michel Luo, "Romney, Weighing Run, Leans on State PACs," NEW YORK TIMES (Nov. 20, 2010) (attached as Exhibit C), available at <http://www.nytimes.com/2010/11/21/us/politics/21romney.html>.

⁸ See Jeanne Cummings and Andy Bart, "End run: Romney's crafty financing," POLITICO (Aug. 8, 2010) (attached as Exhibit D), available at <http://www.politico.com/news/stories/0810/41228.html> ("the vast majority of the money raised by Romney's five state committees ... is actually spent to support ... Romney's campaign apparatus.").

⁹ See Donovan Slack, "Romney makes the most of funding rules," BOSTON GLOBE (Apr. 15, 2011) (attached as Exhibit E), available at http://articles.boston.com/2011-04-15/news/29422211_1_strong-america-pac-exploratory-committee-political-committees. For example, when asked why he contributed to Mr. Romney's State PACs, Richard Marriott "said he contributed so much because he believes the country could use Romney's business acumen." Likewise, another donor to Mr. Romney's State PACs, John C. Kennedy told the Boston Globe, "I see everybody else who I think is running, and some of the other candidates are also, let's say, likable ... [b]ut ... I appreciate sitting across the table from someone who at least understands how business works, how business operates."

indirectly established, financed, maintained or controlled by a candidate to "solicit, receive, direct, transfer, or spend" any "soft money" in connection with an election.¹⁰ As the Supreme Court has said, this rule is necessary because "[l]arge soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder."¹¹ Just last month, in a rare show of unanimity, all six FEC Commissioners reaffirmed that Federal candidates remain subject to the "soft money" ban, even after *Citizens United*.¹²

The State PACs are subject to this prohibition because they were established by a Federal candidate, Mr. Romney.¹³ Yet despite this clear prohibition, the State PACs have not pledged to stop raising or spending "soft money" during the course of Mr. Romney's candidacy. In fact, in article published last week, the *Birmingham News* says that the Alabama PAC's fundraising has "never really stopped."¹⁴ Recognizing that the continued operation of these "soft money" PACs poses legal problems for their candidate, Mr. Romney's advisers are now trying to hide Mr. Romney's role in establishing the State PACs. In the weeks leading up to April 11, 2011, Mr. Romney's advisers filed paperwork to change the name of the PACs from "Free and Strong America PAC" to

¹⁰ See 2 U.S.C. § 441i(e)(1)(A), (B) (emphasis added).

¹¹ *McConnell v. FEC*, 540 U.S. 93, 182, 124 S.Ct. 619, 683, 157 L.Ed.2d 491 (2003).

¹² See Advisory Opinion 2011-12.

¹³ There is no question that Mr. Romney "established" the State PACs. Under FEC regulations, an entity is established by a candidate when the candidate, "directly or through its agent, had an active or significant role in the formation of the entity." 11 C.F.R. § 300.2(c)(2)(ix). Prior to his 2008 presidential candidacy, Mr. Romney established "The Commonwealth PAC" with the FEC, and then established "Commonwealth PAC" affiliates at the state level. See Brian C. Mooney, "Romney left Mass. on 212 days in '06: Visited 35 states; built a national network," BOSTON GLOBE (Dec. 24, 2006) ("When he formally enters the race for the White House, Romney will have a ready-made campaign apparatus assembled and paid for by The Commonwealth PAC, the Romney vehicle established in 2004 to support 'electing Republican candidates across America,' according to its website ... Romney has expanded their use by placing Commonwealth PAC affiliates in several states."). Similarly, when Mr. Romney retired the Commonwealth PAC to register the Free and Strong America PAC with the FEC, the state affiliates also saw their names change to "Free and Strong America PAC." See Exhibit F.

¹⁴ See Orndorff, "National candidates can take advantage of Alabama's campaign finance laws."

"The Commonwealth PAC."¹⁵ The Chairperson of the Alabama PAC, a partner at a high-profile Washington D.C. law firm, explained to the *Birmingham News* that this was part of a concerted effort "to clarify that [the PAC] was no longer associated with the Romney presidential campaign."¹⁶

But the law does not allow candidates to evade the "soft money" ban this easily. As the FEC confirmed in a 2003 advisory opinion, an entity that has been established by a Federal candidate is barred from raising or spending "soft money," regardless of the candidate's day-to-day involvement in the entity's operations.¹⁷ To sever his association with the PAC and escape liability for the actions of the PAC that he established, the candidate must have no material contact or involvement with the PAC for fully two years.¹⁸ Of course, Mr. Romney cannot satisfy this two year standard. Nor has he even suggested that he could. In fact, under the FEC's rules, the vehicle for demonstrating that he is no longer liable for the PAC he established is an Advisory Opinion request to the Commission that shows "all material connections between the sponsor and the entity have been severed for two years."¹⁹ Mr. Romney has not sought such an opinion, nor has he indicated that he plans to do so. Mr. Romney has disregarded both the law and the legal process designed to hold him accountable.

Therefore, because Mr. Romney established the State PACs and retains liability for their continued fundraising, they may not raise or spend any "soft money" during the course of his candidacy. The raising or spending of even a dime of soft money by any of

¹⁵ See Exhibit F.

¹⁶ See Orndorff, "National candidates can take advantage of Alabama's campaign finance laws."

¹⁷ See Advisory Opinion 2003-12 (Flake). The only way to sever this association is to seek an advisory opinion from the FEC, which demonstrates that "all material connections between the sponsor and the entity have been severed for two years." See 11 C.F.R. § 300.2(c)(4)(ii). Mr. Romney has not sought such an opinion, nor has he indicated that he plans to do so.

¹⁸ See 11 C.F.R. § 300.2(c)(4)(ii).

¹⁹ See *id.*

the State PACs violates Federal law.²⁰

B. REQUESTED ACTION

As we have shown, there is substantial evidence that Respondents have violated the Act and further investigation is likely to reveal additional violations. We respectfully request the FEC to investigate these violations, including whether they were knowing and willful. Specifically, the FEC should demand a full accounting of all contributions and expenditures made by Mr. Romney's State PACs since January 1, 2011. Without intervention by the FEC, Mr. Romney's PACs would be able to engage in these illegal activities, undetected, until the State PACs are required to file their next campaign finance reports. In Alabama, for example, the next reporting deadline is not until January 31, 2012.²¹

Likewise, by accompanying letter, the relevant authorities in Alabama, New Hampshire, Iowa, Michigan, and South Carolina are being requested investigate whether, by disguising Federal "contributions" and "expenditures" as state "contributions" and "expenditures" on the reports it filed with each state, Mr. Romney violated state law as well.

Should the FEC determine that Respondents have violated the Act, we request that Respondents be enjoined from further violations and all other remedies under the law applied in full.

²⁰ "The Commonwealth PAC – Alabama" still has "soft money" sitting in its bank account. As the *Birmingham News* reported, "Romney's Alabama PAC collected \$456,750 last year from 41 individual donors," with one South Dakota household giving "two checks of \$35,000 each, on the same day." See Orndorff, "National candidates can take advantage of Alabama's campaign finance laws." As of its last report, filed on February 12, 2011, the PAC has \$156,594.43 in remaining funds. See Alabama Secretary of State Records, <http://arc-sos.state.al.us/cgi/elcdetail.mbr/detail?&elcpass=39574>.

²¹ See Ala. Code § 17-5-8(b).

Sincerely,

Montgomery, Chairman

SUBSCRIBED AND SWORN to before me this 14 day of July, 2011.

Stephanie M. Brass
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 29, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS

BEFORE THE
FEDERAL ELECTION COMMISSION

New Hampshire Democratic Party
105 N. State Street
Concord, NH 03301

Complainant,

v.

MUR # 6484

Mitt Romney
80 Hayden Ave.
Lexington, MA 02421

Romney for President Exploratory Committee Inc.
80 Hayden Ave.
Lexington, MA 02421.

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Mitt Romney, Romney for President Exploratory Committee Inc., and any other committees authorized by Mr. Romney to support his presidential candidacy ("Respondents") for violations of the Federal Election Campaign Act ("Act"), as described below.

A. FACTS

In the two years leading up to his April 11, 2011 declaration of candidacy for President, Mr. Romney used "soft money" PACs in five states – Alabama, New Hampshire, Iowa, Michigan, and South Carolina (collectively, the "State PACs") – to raise funds in excess of Federal limits, and spend those funds in support of his nascent presidential candidacy. According to media accounts, the State PACs raised \$1.5 million in 2010.¹ During the period

¹ See Michel Luo, "Romney, Weighing Run, Leans on State PACs," NEW YORK TIMES (Nov. 20, 2010) (attached as Exhibit A), available at <http://www.nytimes.com/2010/11/21/us/politics/21romney.html>.

between January 1, 2009 and June 30, 2010, the State PACs raised \$486,700 from just 24 individuals, which, at more than \$20,000 per individual, is eight times the per-election limit allowed by the Act.² These news reports also suggest that donors to the State PACs made these contributions to assist Mr. Romney's presidential campaign, not to help candidates in New Hampshire, Iowa, Michigan, South Carolina, and Alabama. For example, when asked why he contributed to Mr. Romney's State PACs, Richard Marriott "said he contributed so much because he believes the country could use Romney's business acumen."³ Likewise, another donor to Mr. Romney's State PACs, John C. Kennedy, told the Boston Globe, "I see everybody else who I think is running, and some of the other candidates are also, let's say, likable ... [b]ut ... I appreciate sitting across the table from someone who at least understands how business works, how business operates."⁴

Just as the donors *made* these five- and six-figure contributions for the purpose of assisting Mr. Romney's presidential campaign, Mr. Romney *used* the funds for this illegal purpose as well. Mr. Romney's Alabama PAC, for example, raised more than \$440,000 in 2010, but donated only \$21,500 (less than 5 percent) to state and local candidates in Alabama.⁵ Instead, Mr. Romney plowed this money back into his Boston-based operation, to pay for staff salaries, consultant fees, and other expenses of his nascent presidential candidacy.⁶

Finally, even though Mr. Romney is a declared presidential candidate, subject to the

² See Jeanne Cummings and Ardy Barr, "End run: Romney's crafty financing," POLITICO (Aug. 8, 2010) (attached as Exhibit B), available at <http://www.politico.com/news/stories/0810/41228.html>.

³ See Donovan Slack, "Romney makes the most of funding rules," BOSTON GLOBE (Apr. 15, 2011) (attached as Exhibit C), available at http://articles.boston.com/2011-04-15/news/29422211_1_strong-america-pac-exploratory-committee-political-committees.

⁴ *Id.*

⁵ See Luo, "Romney, Weighing Run, Leans on State PACs."

⁶ See Cummings and Barr, "End run: Romney's crafty financing" ("the vast majority of the money raised by Romney's five state committees ... is actually spent to support ... Romney's campaign apparatus."). For example, these funds were used to pay key staffers – such as Eric Fehrnstrom and Matt Rhoads – and consultants – such as Beth Myers, Field Consulting, and SJZ LLC. See Cummings and Barr, "End run: Romney's crafty financing"; Luo, "Romney, Weighing Run, Leans on State PACs."

McCain-Feingold "soft money" ban, the State PACs remain in existence. The efforts by Mr. Romney and his team to disassociate themselves from the State PACs – by changing their names and officers in the weeks leading up to Mr. Romney's declaration of candidacy – cannot change the fact that Mr. Romney "established" the State PACs and that the State PACs are therefore subject to the McCain-Feingold ban on raising or spending "soft money."⁷

B. LEGAL ARGUMENT

1. Respondents may have violated the Act's contribution limits by accepting contributions in excess of \$5,000.

Federal law permits presidential candidates to accept \$5,000 in "contributions" from each individual, with \$2,500 designated for the primary election and \$2,500 designated for the general election. See 2 U.S.C. § 441a(a)(1)(A). Federal law defines a "contribution" to include 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" 11 C.F.R. § 100.52(a) (emphasis added). Therefore, if donors to Mr. Romney's State PACs intended for their contributions to be used to help Mr. Romney's presidential campaign, these contributions would be subject to Federal limits.

The available evidence suggests that at least some of Mr. Romney's donors made contributions to the State PACs, in excess of Federal limits, for the purpose of assisting Mr. Romney's presidential campaign. As described earlier in this complaint, there are statements on the public record suggesting that Mr. Marriott and Mr. Kennedy – each of whom made contributions well in excess of Federal limits – contributed to the State PACs for the express

⁷ See Exhibit D. On April 1, 2011, Mr. Romney's New Hampshire PAC changed its name from "Free and Strong America PAC - New Hampshire" to "The Commonwealth PAC - New Hampshire." On the same day, Elizabeth Mahoney resigned as PAC chair (replaced by Kirk Jowers) and Mark Sykas resigned as Treasurer (replaced by Beverly Bruce). See *id.*, 15-17.

purpose of assisting Mr. Romney's presidential campaign. We respectfully request the Commission to investigate these potential violations of the Act, and to further investigate whether other donors who contributed more than \$5,000 to Mr. Romney's State PACs did so for the purpose of influencing a Federal election.

2. Respondents may have violated the Act by accepting excessive in-kind contributions from Mr. Romney's Federal and State PACs.

In 2003, the Commission promulgated several rules to prevent presidential candidates from using multicandidate PACs to finance their presidential campaigns. These rules prohibit a PAC from providing more than \$5,000 in goods and services per election to the Federal candidate with whom it is associated. See 2 U.S.C. 441a(a)(1)(A); Leadership PACs, 68 F.R. 67013, 67016 (Dec. 1, 2003). These rules also apply to expenditures made before the presidential candidate declares his candidacy. For example, certain polling, staffing, and other administrative expenses made by a PAC before the candidate declares his candidacy must be treated as in-kind contributions or reimbursed by the campaign within 30 days following the declaration of candidacy. See 11 C.F.R. § 110.2(l).

The evidence on the public record suggests that Mr. Romney may have used funds from his Federal and State PACs to pay for expenses that should have been paid for by his presidential campaign. As described earlier in the complaint, Mr. Romney used funds from his Federal and State PACs to pay his top campaign staffers and consultants. This effort has been taken to such a ridiculous extreme that even "Starbucks purchases by members of [Mr. Romney's] political staff have been divided up to the penny and apportioned across the array of Romney committees."⁸ We respectfully request the Commission to investigate whether the Exploratory Committee must reimburse the Federal and State PACs, pursuant to 11 C.F.R. § 110.2(l).

⁸ See Slack, "Romney makes the most of funding rules."

3. If the State PACs raised or spent soft money after Mr. Romney became a declared candidate, Mr. Romney violated the Act.

Under the McCain-Feingold legislation passed by Congress in 2002, any entity "established, financed, maintained, or controlled" by a Federal candidate is prohibited from raising or spending "soft money" in connection with an election. See 11 C.F.R. §§ 300.60(d), 300.61, 300.62. Mr. Romney clearly "established" the State PACs.⁹ Therefore, regardless of whether he still "finances, maintains, or controls" the PACs, they became subject to the "soft money" restrictions as soon as Mr. Romney became a presidential candidate – which occurred no later than April 11, 2011.

Although Mr. Romney and his campaign have tried to disassociate themselves from the State PACs in recent weeks, the PACs remain in existence and there has been no indication that they intend to shutter their operations. We respectfully request the Commission to investigate whether Mr. Romney's State PACs have raised or spent any "soft money" since Mr. Romney became a presidential candidate. If they have, Mr. Romney has violated Federal law.

C. REQUESTED ACTION

As we have shown, there is substantial evidence that Respondents have violated the Act and further investigation is likely to reveal additional violations. We respectfully request the Commission to investigate these violations, including whether they were knowing and willful. Should the Commission determine that Respondents have violated the Act, we request that Respondents be enjoined from further violations and be fined the maximum amount.

⁹ Under the Commission's regulations, a person who established an entity can seek an advisory opinion from the Commission seeking a determination that the relationship with the entity has been severed. Such a request must show that "all material connections between the sponsor and the entity have been severed for two years." 11 C.F.R. § 300.2(c)(4)(ii). To our knowledge, Mr. Romney has not submitted such a request.

Sincerely,

Royal Buckley

SUBSCRIBED AND SWORN to before me this 26th day of April, 2011.

Ryan P. Mahoney
Notary Public



My Commission Expires:
RYAN P. MAHONEY, Notary Public
My Commission Expires March 10, 2015

CONFIDENTIAL