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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 6540
DATE RECEIVED: March 20, 2012
DATE ACTIVATED: July 19, 2012
SOL: February 17, 2017

COMPLAINANT: Joe DiSano

RESPONDENTS: Rick Santorum for President and Nadine Maenza in her official capacity as treasurer
Michigan Faith & Freedom Coalition
Glenn Clark¹
The Palazzo Grande, Inc.

RELEVANT STATUTES: 2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441b
11 C.F.R. § 100.52(d)
11 C.F.R. § 109.20
11 C.F.R. § 114.2(b)(1)
11 C.F.R. § 114.2(d)
11 C.F.R. § 114.4(b)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Federal Election Campaign Act (the "Act") prohibits corporations from making in-kind contributions to federal candidates or their committees, whether by providing free goods

¹ Clark—in his personal capacity—was identified as a respondent and separately notified of the Complaint. Because the information available concerns only Clark's conduct in his capacity as president of the Michigan Faith & Freedom Coalition, however, we recommend taking no action at this time regarding Clark in his individual capacity.

1 and services or by coordinating expenditures.² On February 17, 2012, the Michigan Faith &
2 Freedom Coalition ("MFFC"), a non-profit corporation, organized, promoted, and staged an
3 event it called the "Road to Victory Rally '12" (the "Rally") "featuring Senator Rick Santorum"
4 in Shelby Township, Michigan. MFFC promoted the Rally as a chance for the public to hear
5 from "the leading presidential candidate." Speaking at the Rally, Santorum, who was seeking
6 the Republican nomination for President, delivered a campaign speech. His authorized campaign
7 committee is Rick Santorum for President and Nadine Maenza in her official capacity as
8 treasurer (the "Santorum Committee"), and MFFC's president, Glenn Clark—who arranged the
9 Rally in consultation with the Santorum Committee—was a volunteer for the Santorum
10 Committee at the time.

11 The central issue now before the Commission is whether there is reason to believe that,
12 by staging the Rally and making other election-related expenditures, MFFC violated the ban on
13 corporate in-kind corporate contributions set forth in 2 U.S.C. § 441b of the Act. The Complaint
14 asserts that, because the Rally promoted Santorum's candidacy, MFFC and The Palazzo Grande,
15 Inc.—the owner of the space in which the Rally was held—made prohibited corporate
16 contributions to the Santorum Committee in violation of the Act.³ And because of Clark's roles
17 as both president of MFFC and the "Statewide Grassroots Coordinator" for the Santorum
18 Committee, the Complaint asserts that MFFC coordinated all of its election-related expenditures
19 with the Santorum Committee, thus making prohibited corporate in-kind contributions.⁴

² See 2 U.S.C. §§ 441a(a)(7)(B)(i), 441b(a), 441b(b)(2); see also 11 C.F.R. §§ 100.52(d)(1), 109.20, 114.1(a)(1), 114.2(b)(1).

³ Compl. at 1 (Mar. 20, 2012) (citing 2 U.S.C. § 441b).

⁴ *Id.* at 1-2 (quoting 11 C.F.R. § 109.20).

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1 MFFC generally denies the allegations.⁵ The Santorum Committee, for its part, asserts
2 that the Rally was a permissible candidate appearance to which all presidential candidates were
3 invited, and the Santorum Committee argues that there cannot be coordination because the three-
4 part test for coordinated communications has not been satisfied.⁶ Palazzo Grande was notified of
5 the Complaint but did not submit a response.

6 After reviewing the available information, we recommend that the Commission find
7 reason to believe that MFFC and Palazzo Grande made and the Santorum Committee accepted
8 prohibited in-kind corporate contributions in the form of goods and services associated with the
9 Rally. We also recommend that the Commission find reason to believe that the Santorum
10 Committee accepted corporate in-kind contributions by coordinating with MFFC on MFFC's
11 Rally-related and perhaps other expenditures. Because the Santorum Committee failed to
12 disclose these contributions in its reports filed with the Commission, we also recommend that the
13 Commission find reason to believe that the Santorum Committee violated its disclosure
14 obligations under the Act. Finally, we recommend that the Commission authorize a limited
15 investigation to determine the value of the prohibited contributions and identify whether MFFC
16 coordinated other expenditures with the Santorum Committee.

⁵ MFFC Resp. at 1 (Apr. 10, 2012).

⁶ Santorum Committee Resp. at 1, 2 (May 18, 2012) (citing 11 C.F.R. §§ 109.21, 114.4(b)(1)(ii)).

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1 **II. FACTUAL SUMMARY⁷**

2 **A. MFFC**

3 According to Michigan public records, Glenn Clark incorporated MFFC in 2011 as a
4 non-stock, non-profit, director-managed corporation.⁸ Clark is listed as MFFC's registered agent
5 and president.⁹

6 According to its website, MFFC aims to "influence public policy and enact legislation
7 that strengthens families, promotes time-honored values, protects the dignity of life and
8 marriage, lowers the tax burden on small business and families, and requires government to
9 tighten its belt and live within its means."¹⁰ MFFC's website has tabs inviting users to "Take
10 Action" by signing onto a mailing list and "Contribute" by donating money, but it does not have
11 a membership option.¹¹

12 **B. Clark**

13 Clark endorsed Santorum's candidacy.¹² Clark also was associated with the Santorum
14 Committee, although media reports differ somewhat in their descriptions of Clark's precise
15 involvement. The *Detroit News*, for example, called Clark a "volunteer statewide grassroots

⁷ During our review of this matter, we identified publicly available news articles and website information relevant to the issues raised in the Complaint. We provided copies of this material to the Santorum Committee and MFFC and invited them to supplement their responses if they wished to do so. See Letter from Leonard O. Evans III, Attorney, FEC, to Cleta Mitchell, Counsel to the Santorum Committee (Oct. 2, 2012); Letter from Leonard O. Evans III, Attorney, FEC, to Glenn Clark, President, MFFC (Oct. 2, 2012). We received a response from the Santorum Committee and have considered the additional arguments presented. See Letter from Cleta Mitchell to Leonard O. Evans III (Oct. 19, 2012) ("Supp. Resp.").

⁸ See MFFC Articles of Incorporation, http://www.dleg.state.mi.us/bcs_corp/image.asp?FILE_TYPE=ELF&FILE_NAME=D201104\2011096\EO172921.TIF, as corrected by http://www.dleg.state.mi.us/bcs_corp/image.asp?FILE_TYPE=ELF&FILE_NAME=D201104\2011110\EO102928.TIF.

⁹ See *id.*

¹⁰ See <http://www.michiganffc.com>.

¹¹ See *id.*

¹² See Brad D. Bates, *Santorum to Speak Friday at Shelby Township Event*, C&G NEWS (Feb. 14, 2012), available at <http://www.candgnews.com/news/santorum-speak-friday-shelby-township-event> ("Bates Article").

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1 coordinator.”¹³ The *Pittsburgh Tribune-Review* said Clark was “Santorum’s state political
2 director.”¹⁴ The *Guardian* said, “In order to cement support with Christian voters in the state,
3 Santorum’s campaign quickly signed up influential Michigan social conservative Glenn Clark,
4 head of the state’s Faith and Family [sic] Coalition.”¹⁵ And the Associated Press described the
5 Santorum Committee’s Michigan operation this way: “The core of Santorum’s campaign is
6 largely two people: Glenn Clark, a conservative activist from the Detroit suburb of Troy who has
7 headed [MFFC], and John Yob, a strategist.”¹⁶

8 The Santorum Committee in its Supplemental Response—which was unsworn—
9 maintained that Clark “was and is a valued volunteer and supporter of Sen. Santorum, but was
10 not in a position to know or share any proprietary or non-public information about the needs,
11 activities, plans[,] or projects of the Santorum presidential campaign.”¹⁷

12 **C. The “Road to Victory Rally ’12” at the Palazzo Grande Event Center**

13 Clark reportedly explained to *C&G News* that MFFC organized the Rally because, “We
14 want to have a big impact on the Michigan presidential primary,’ . . . ‘And we want people out

¹³ Compl., Ex. A (Marissa Schultz, *Michigan Santorum Volunteer Under Fire for Rally*, DETROIT NEWS (Feb. 20, 2012) (“Feb. 20 Schultz Article”). Exhibit A to the Complaint is a printed copy of an online version of a February 20, 2012, *Detroit News* article by Marissa Schultz with the headline “Michigan Santorum volunteer under fire for rally.” This copy mistakenly omits the second and fourth pages of the article. For completeness, we refer to the complete article, available on Westlaw and attached to this Report, but continue to cite to Exhibit A.

¹⁴ Salena Zito, *Michigan Pivotal for GOP Front-runners*, PITTSBURGH TRIBUNE-REVIEW (Feb. 18, 2012), available at http://triblive.com/x/pittsburghtrib/news/s_782298.html/#axzz26Ms2J3oa.

¹⁵ Paul Harris, *Evangelicals Spread the Gospel of Rick Santorum in Blue-collar Michigan*, THE GUARDIAN (Feb. 16, 2012), available at <http://www.guardian.co.uk/world/2012/feb/16/evangelicals-rick-santorum-michigan> (“Harris Article”).

¹⁶ Associated Press, *Romney’s Organizational Strength Helps in Michigan*, KINGSPORT TIMES-NEWS (Feb. 26, 2012), available at <http://www.timesnews.net/article/9042919/romney39s-organizational-strength-helps-in-michigan>.

¹⁷ Supp. Resp. at 2.

1 hearing from a presidential candidate—the leading presidential candidate.”¹⁸ Clark reportedly
2 approached Santorum about being the Rally’s featured speaker: “We talked to him about doing
3 something last October when they had the debate at Oakland University, but that fell apart. So
4 this is something we’ve been working on for a couple of months.”¹⁹ The Rally took place 11
5 days before the Michigan presidential primary.

6 MFFC reportedly used its resources to promote the Rally to the broadest possible
7 audience. “‘There are not enough hours to reach out to everyone, but we have wide arms and
8 open doors,’ Clark said of the open invitation to all interested parties.”²⁰ MFFC circulated a
9 flyer describing the Rally as an event open to all:

10 Michigan Faith & Freedom Coalition
11 Road to Victory Rally '12
12 Featuring
13 Senator Rick Santorum
14 Fighting for Faith, Family & Freedom
15 Friday, February 17th
16 Doors open – 10:30 AM
17 Rally begins – 11:15 AM
18 Complimentary event, bring friends & cameras
19 The Palazzo Grande
20 Banquet & Event Center
21 54660 Van Dyke Avenue (south of 25 Mile Road)
22 Shelby Township, Michigan
23 Senator Santorum will take questions from the audience.

24 Notice: Family-friendly placards/signs only. We reserve right to prohibit questionable material.
25 Stay updated on Road to Victory Rally '12 at: www.michiganffc.com²¹

¹⁸ Bates Article.

¹⁹ *Id.*; see also Compl., Ex. A (Feb. 20 Schultz Article). (“When he tells me he’s going to do it, he’s going to do it These other guys (candidates), I have no idea.” (internal quotation marks omitted)).

²⁰ Bates Article.

²¹ *Road to Victory Rally '12*, <http://rcnmc.com/wp-content/uploads/2012/02/MFFC-Road-to-Victory-Rally-12-v2.pdf> (last visited Sept. 13, 2012).

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1 MFFC also promoted the Rally on Facebook, other websites,²² and in traditional media.
2 C&G News reported, "Clark said the Rally is not ticketed, which means that all are welcome and
3 there is no charge for admission."²³

4 According to several news reports, more than 1,500 people turned out for the Rally. The
5 Palazzo Grande Banquet & Event Center was "packed."²⁴

6 The Palazzo Grande, Inc., the venue's owner and operator, is a Michigan for-profit
7 corporation.²⁵ On its website, Palazzo Grande promotes its 25,000 square feet of ballroom space,
8 including kitchen facilities, as capable of accommodating any size event.²⁶ According to its
9 website, Palazzo Grande makes this space and related services available for an unspecified fee.²⁷
10 For the Rally featuring Santorum, however, Palazzo Grande reportedly provided its facilities and
11 services without charge.²⁸ As Clark reportedly told the *Detroit News*, "We are not paying a

²² See, e.g., MFFC, *Road to Victory Rally '12 Featuring Sen. Rick Santorum*, FACEBOOK (Feb. 17, 2012), <http://www.facebook.com/events/329973113711267/> (last visited Sept. 12, 2012) (categorizing it as "public event" and announcing that Macomb County Republican Party, Metro Detroit Freedom Coalition Tea Party, Romeo Area Tea Party, and Southeast Michigan 9.12 Tea Party would co-sponsor event); Rob Montilla, *Road to Victory Rally '12 Featuring Senator Rick Santorum*, REPUBLICAN CMTE OF N. MACOMB COUNTY (Feb. 14, 2012), <http://rcnmc.com/2012/02/road-to-victory-rally-12-featuring-senator-rick-santorum/> (last visited Sept. 12, 2012).

²³ Bates Article.

²⁴ See, e.g., Compl., Ex. A (Feb. 20 Schultz Article) ("packed rally" and "event drew about 1500 people"); Chad Selwesi, "Michigan Can Set This Race on Its Ear," *Santorum Tells Macomb County*, THE OAKLAND PRESS (Feb. 17, 2012), available at http://www.theoaklandpress.com/articles/2012/02/17/news/local_news/doc4f3ef2db04df9205452847.txt ("Selwesi Article") ("huge crowd" and "standing-room-only crowd of 1500"); Marina Cracchiolo, *Rick Santorum: Turn Away from "Snobbish Elite,"* HARTLAND PATCH (Feb. 17, 2012), <http://hartland.patch.com/articles/rick-santorum-pleads-with-shelby-township-to-pick-right-candidate> ("Cracchiolo Article") ("full house" and "about 1500 people").

²⁵ See Michigan Corporate Entity Details, http://www.dleg.state.mi.us/bcs_corp/dt_corp.asp?id_nbr=00958K&name_entity=THE%20PALAZZO%20GRANDE,%20INC. (last visited Sept. 13, 2012).

²⁶ See <http://thepalazzogrande.com/index.html>.

²⁷ See <http://thepalazzogrande.com/floorplan.html> (last visited Sept. 13, 2012) (describing various cost, deposit and rate payment requirements but not listing specific rates).

²⁸ See Compl., Ex. B (Marissa Schultz, *Group Pushing for Santorum's Mich. Campaign Coordinator to Quit Post*, DETROIT NEWS (Feb. 23, 2012) ("Feb. 23 Schultz Article") (reporting, "[B]anquet hall space was donated for the event at no charge").

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1 dime for today' 'How is that possible? These people love Rick Santorum. They like me,
2 But they love him.'"²⁹

3 Clark spoke at the Rally, reportedly introducing himself as MFFC's president and a
4 "Santorum backer."³⁰ When Santorum took the podium, he reportedly referred specifically to
5 the presidential election, saying, "Your country needs you to step forward here in Michigan. . . .
6 First, to make sure we have [t]he right candidate in the general election."³¹ The *Oakland Press*
7 reported that Santorum added, "Michigan can set this race on its ear" and "you have an
8 opportunity to speak loudly What . . . this race comes down to is, what kind of country do
9 you want to give to your children?"³² The *Oakland Press* noted that, during his speech,
10 Santorum also "addressed a variety of topics from health care to income inequalities in America,
11 and he also stated his stance on Iran."³³

12 **D. The National Faith & Freedom Coalition's Concern About the Legality of**
13 **MFFC's Rally**

14 The *Detroit News* reported, "Gary Marx, executive director of the national Faith and
15 Freedom Coalition [(“FFC”)], raised concerns about the Michigan affiliate sponsoring the
16 Santorum event and Clark promoting the rally and accepting a position with the Santorum
17 campaign. Marx said the concerns 'are serious.'"³⁴ FFC apparently "believe[d] invitations
18 should have gone out to other candidates for the [February 17] event."³⁵ In fact, Marx reportedly

²⁹ *Id.*

³⁰ Compl., Ex. A (Feb. 20 Schultz Article).

³¹ Cracchiolo Article.

³² Selweski Article (second ellipses in original).

³³ *Id.*

³⁴ Compl., Ex. A (Feb. 20 Schultz Article).

³⁵ Compl., Ex. B (Feb. 23 Schultz Article).

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1 directed Clark before the Rally occurred to invite all the other candidates to it. But Clark did not
2 respond, and Marx "'assumed he did not' listen."³⁶

3 According to the *Detroit News*, Clark dismissed Marx's concerns. "As a rule, [Clark]
4 said the [FFC] invites all candidates to events. He extended invitations to candidates in the past,
5 but 'not for today.'"³⁷ Clark also reportedly dismissed any questions about his simultaneous
6 roles with MFFC and the Santorum Committee or MFFC's sponsorship of the event by saying,
7 "I'm not coordinating in any way," and noting, "[T]he Santorum rally didn't cost anything
8 because the banquet hall space was donated by the Palazzo Grande center."³⁸

9 Marx reportedly asked Clark to "take a leave of absence as president while with the
10 Santorum campaign."³⁹ He also reportedly recommended launching an internal investigation.⁴⁰
11 To address its concerns further, the FFC also reportedly scheduled a Michigan-only telephonic
12 town hall meeting for February 26, 2012, and invited Newt Gingrich, Ron Paul, and Mitt
13 Romney to participate.⁴¹

14 **E. The Complaint Alleging Prohibited Corporate In-Kind Contributions and**
15 **Responses**

16 On March 20, 2012, Joe DiSano, a Michigan political strategist,⁴² filed a Complaint with
17 the Commission alleging two violations of the Act. First, it alleges that the February 17 event
18 was a "rally" promoting Santorum's candidacy, and therefore MFFC's and Palazzo Grande's use

³⁶ Compl., Ex. A (Feb. 20 Schultz Article).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See Compl., Ex. B (Feb. 23 Schultz Article).

⁴¹ See *id.*

⁴² See, e.g., Compl., Ex. B (Feb. 23 Schultz Article) (describing DiSano as Democratic strategist).

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1 of resources to hold the event amounted to the provision of free goods and services to the
2 Santorum campaign.⁴³ Second, the Complaint alleges that MFFC coordinated all of its election-
3 related expenditures with the Santorum Committee—making them prohibited corporate in-kind
4 contributions—because Clark was both president of MFFC and the “Statewide Grassroots
5 Coordinator” for the Santorum Committee.⁴⁴ In support of these allegations, DiSano references
6 and attaches the February 20 and 23, 2012, *Detroit News* articles described above, which
7 reported on the controversy surrounding the Rally and Clark’s role in staging it.⁴⁵

8 The Santorum Committee denies the allegations on two essentially legal grounds.⁴⁶ First,
9 the Santorum Committee argues that the Rally was permissible under 11 C.F.R. § 114.4(b)(1)(ii)
10 because it was a candidate appearance to which all presidential candidates were invited.⁴⁷
11 Second, as to the coordinated expenditures allegation, the Santorum Committee argues that there
12 was not coordination because the three-part test for coordinated communications under 11 C.F.R.
13 § 109.21 was not satisfied.⁴⁸

14 MFFC’s response, in the form of an unsworn letter signed by Clark, denies the
15 allegations on essentially factual grounds.⁴⁹ In particular, MFFC asserts that it originally had
16 scheduled a candidate forum event for October 2011, but received a favorable response only

⁴³ Compl. at 1 (citing 2 U.S.C. § 441b).

⁴⁴ *Id.* at 1-2 (quoting 11 C.F.R. § 109.20).

⁴⁵ See *id.* at 1 (referencing Compl., Ex. A, headlined “Michigan Santorum volunteer under fire after rally,” and Compl., Ex. B, headlined “Group pushing for Santorum’s Mich. campaign coordinator to quit post”).

⁴⁶ The Santorum Committee provided a copy of MFFC’s response but did not include an affidavit or other exhibits of its own.

⁴⁷ Santorum Committee Resp. at 1.

⁴⁸ *Id.* at 2.

⁴⁹ MFFC did not provide any affidavits or supporting documentation.

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1 from Santorum's staff and ultimately had to reschedule the event.⁵⁰ MFFC says it then decided
2 to change the format for the forum from a single event with multiple candidates to a series of
3 events, each with a single candidate participating, at different sites around the state.⁵¹ After
4 adopting this new format, MFFC asserts that Santorum simply was the only candidate who
5 accepted the invitation, even though it invited all the Republican candidates to participate.⁵²

6 As for the Rally itself, MFFC contends that Santorum was one of many speakers,
7 including two members of the clergy and a physician.⁵³ MFFC also claims, "Candidate
8 literature, signs stickers, and other Santorum for President materials were not allowed on site for
9 our event. His campaign did not have control of the agenda, meeting room or the event in any
10 fashion."⁵⁴ In its words, MFFC simply offered Santorum "an opportunity to share with us his
11 perspective on faith and values, as well as his ideas related to important public policy issues
12 related to people of faith."⁵⁵

13 III. LEGAL ANALYSIS

14 A. MFFC and Palazzo Grande Made Prohibited Corporate In-Kind 15 Contributions

16 The Act and Commission regulations prohibit corporations, including non-profit
17 corporations, from making contributions to candidates or their committees in connection with
18 federal elections.⁵⁶ Corporations may not make direct or indirect payments or gifts or provide

⁵⁰ MFFC Resp. at 2.

⁵¹ *Id.*

⁵² *Id.*, see also Compl., Ex. A (Feb. 20 Schultz Article) ("As a rule, [Clark] said the [MFFC] invites all candidates to events. He extended invitations to candidates in the past, but 'not for today.'").

⁵³ MFFC Resp. at 2.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1).

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1 "anything of value," including "in-kind contributions," to federal candidates or their
2 committees.⁵⁷ This includes the provision of goods or services without charge, or at a charge
3 less than the usual and normal charge.⁵⁸ Commission regulations specify that impermissible
4 corporate contributions include providing free or reduced-charge facilities, equipment, supplies,
5 personnel, advertising services, membership lists, and mailing lists.⁵⁹

6 There are exceptions, however, which permit corporate activity that otherwise would
7 constitute an expenditure or in-kind contribution.⁶⁰ Corporations, for example, may invite
8 candidates to address their stockholders and executive and administrative personnel (or
9 employees) and their families at a meeting, convention, or other function without that appearance
10 constituting a contribution to the candidate.⁶¹ And under certain circumstances, corporations
11 may sponsor the public appearance of an officeholder who is also a candidate without making a
12 prohibited contribution.⁶² As the Commission has explained, the candidate appearance
13 regulations "do not adversely affect the ability of corporations . . . to invite their restricted class,
14 other employees or the general public to attend a speech given by an officeholder . . . who is also

⁵⁷ 2 U.S.C. § 441b(b)(2); 11 C.F.R. §§ 100.52(d)(1), 114.1(a)(1).

⁵⁸ 11 C.F.R. § 100.52(d)(1).

⁵⁹ 11 C.F.R. § 100.52(d)(1). The in-kind contribution regulation incorporates by reference several specific exceptions, none of which is applicable to the facts of this case. *See id.* § 100.52(d) (referencing exceptions contained in 11 C.F.R. part 100, subpart C). For example, this matter does not involve the use of a church, community room, or residence. *See id.* §§ 100.76, 100.77.

⁶⁰ *See* 11 C.F.R. § 114.1(a)(2)(x) (excluding from the definition of "contribution" and "expenditure" any corporate, union, or membership-organization activity "specifically permitted by [11 C.F.R.] part 114").

⁶¹ 11 C.F.R. §§ 114.3(c)(2), 114.4(b)(1); *see also* Corporate and Labor Organization Activity: Express Advocacy and Coordination with Candidates, 60 Fed. Reg. 64,260, 64,267 (Dec. 14, 1995) ("Corporate E&J") ("Prohibited contributions include in-kind contributions resulting from the coordination of election-related corporate . . . communications with candidates, except for certain activities described in [11 C.F.R. § 114.3 and 114.4], which may involve limited types of coordination with candidates."); 11 C.F.R. §§ 114.1(j), 114.1(c), 100.134(c) (defining "restricted class," "executive or administrative personnel," "stockholder," "executive or administrative personnel," "membership organization," and "members").

⁶² Advisory Op. 1996-11 at 5 (Nat'l Right to Life Conventions, Inc.) (analyzing such an event staged by a membership organization).

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1 a Federal candidate, if the speech is not campaign-related and the individual is not appearing in
2 his or her capacity as a candidate for Federal office.”⁶³

3 1. MFFC and Palazzo Grande Provided Free Goods and Services to the
4 Santorum Committee

5 MFFC and Palazzo Grande each provided things of value to the Santorum Committee.
6 MFFC used its resources to organize, promote, and stage the Rally, which generated a large
7 crowd and provided Santorum with a platform to deliver his campaign message. And Palazzo
8 Grande provided a banquet room, and possibly other goods and related services, at no charge.

9 These corporations provided these free goods and services in connection with Santorum's
10 primary campaign. The speech itself appears to have been staged in a manner that afforded
11 Santorum an opportunity to promote his candidacy and expressly advocate his election.⁶⁴ First,
12 Santorum tied the Rally to the election by apparently using his remarks to deliver a campaign
13 message—reportedly telling the audience to “make sure we have [t]he right candidate in the
14 general election.”⁶⁵ Second, MFFC referred to it as the “Road to Victory Rally '12” and publicly
15 promoted it as part of MFFC's effort to have an impact on the election. As Clark reportedly told
16 *C&G News* in reference to Santorum's appearance at the Rally: “We want to have a big impact
17 on the Michigan presidential primary, *‘And we want people out hearing from a*
18 *presidential candidate—the leading presidential candidate.*”⁶⁶ Third, MFFC scheduled the
19 Rally to occur less than two weeks before the primary.

⁶³ Corporate E&J, 60 Fed. Reg. at 64,266; see also Advisory Op. 1996-11 (Nat'l Right to Life Conventions, Inc.) at 5 (and advisory opinions cited therein) (concluding that candidate speeches and collateral campaign events at NRL's convention “are linked by their timing and purpose to presidential . . . elections and are therefore campaign-related”).

⁶⁴ See Advisory Op. 1996-11 (Nat'l Right to Life Conventions, Inc.).

⁶⁵ Cracchiolo Article.

⁶⁶ Bates Article (emphasis added).

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1 In their responses, the Santorum Committee and MFFC claim that Santorum campaign
2 material was not permitted at the Rally; the Santorum Committee did not control the Rally,
3 agenda, or location; and Santorum was invited to share "his perspective on faith and values."⁶⁷
4 But elsewhere in their responses, the Santorum Committee and MFFC each acknowledge that, in
5 fact, the Rally was campaign-related by arguing, "All the *presidential candidates* were invited to
6 attend,"⁶⁸ and "[Clark] invited all *candidates on the ballot*."⁶⁹ As the Commission has
7 previously recognized, "[I]nvitations extended to multiple candidates for the same office, or
8 invitations extended to candidates *qua* candidates, establish that the event planned is, in fact, in
9 connection with a federal election."⁷⁰ Regardless of whether MFFC invited only Santorum or
10 included other presidential candidates, MFFC issued its invitation because he was a candidate in
11 the Michigan Presidential primary election.

12 Therefore, the Rally was campaign-related. And MFFC's and Palazzo Grande's
13 provision of free goods and services is an in-kind contribution to the Santorum Committee in
14 violation of the Act's prohibition on corporate contributions.⁷¹

15 2. The Exceptions for Candidate Appearances at Corporation-Sponsored
16 Events Do Not Apply

17 The Santorum Committee and MFFC argue that the exceptions for corporation-sponsored
18 candidate appearances apply and permit MFFC's and Palazzo Grande's use of resources to stage

⁶⁷ MFFC Resp. at 2; Santorum Committee Resp. at 1, 2.

⁶⁸ Santorum Committee Resp. at 1 (emphasis added).

⁶⁹ MFFC Resp. at 2 (emphasis added).

⁷⁰ Advisory Op. 1999-2 (Premera Blue Cross) (citations omitted) (permitting corporation to stage candidate forum for its employees at its corporate headquarters based on application of candidate-appearance regulations); *see also* Advisory Op. 1996-11 (Nat'l Right to Life Conventions, Inc.).

⁷¹ *See, e.g.,* Advisory Op. 1994-15 (Leslie Byrne) (paying for event in which federal candidate participates is contribution if it involves fundraising or express advocacy but absence of these facts does not preclude finding that event is campaign-related); Advisory Op. 1992-37 (Randall Terry) (same); Advisory Op. 1992-6 (David Duke) (same); Advisory Op. 1992-5 (James Moran) (same); Advisory Op. 1986-37 (Nat'l Conservative Found.) (same).

1 the Rally.⁷² Not so. The exceptions permitting candidate appearances at corporate events for
2 their restricted classes and employees do not apply here because it is apparent that MFFC did not
3 limit attendance to its restricted class, employees, and their families.⁷³ Instead, the available
4 record shows that the Rally was open to the public. For example, leading up to the Rally, the
5 *Oakland Press* reported, "Clark said the event is not ticketed, which means that all are welcome
6 and there is no charge for admission."⁷⁴ And multiple news reports say the Rally drew a "huge
7 crowd" or a "standing-room-only crowd of 1,500."⁷⁵

8 Nor was attendance limited to MFFC's "membership and supporters" as MFFC
9 suggests.⁷⁶ There is no factual support for the proposition that MFFC has "members" as that
10 term is used to define the restricted class before which candidates may appear.⁷⁷ And the
11 inclusion of "supporters" in the audience for the Rally is simply another way of saying that the
12 Rally was open to the general public. Thus, in short, the exceptions that permit corporations to
13 stage events for candidates do not apply.⁷⁸

⁷² See Santorum Committee Resp. at 1 (citing 11 C.F.R. § 114.4(b)(1)(ii)); MFFC Resp. at 2-3 (referring to Rally as "forum" to which all other candidates had been invited).

⁷³ See 11 C.F.R. §§ 114.3(c)(2), 114.4(b)(1).

⁷⁴ Bates Article.

⁷⁵ Selweski Article; see also Compl., Ex. A (Feb. 20 Schultz Article) ("packed rally" and "event drew about 1,500 people"); Cracchiolo Article ("full house" and "about 1,500 people").

⁷⁶ MFFC Resp. at 2.

⁷⁷ A membership organization's restricted class includes its members. 11 C.F.R. § 114.1(j). A "membership organization" is, by definition, "composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents." 11 C.F.R. § 114.1(e)(1)(i). MFFC does not meet this definition since, as its Articles of Incorporation make clear, it is a director-run entity.

⁷⁸ The Santorum Committee also argues that the event met the conditions for presidential candidate appearances because "[a]ll candidates for President were offered the same opportunity to attend and speak at the event." Santorum Committee Resp. at 1. But this argument does not bring the event within the candidate-appearance regulations for two reasons. First, there is reason to doubt that all other candidates were invited to or knew of the event. According to the *Detroit News* article published shortly after the event, "As a rule, [Clark] said, the Faith and Freedom Coalition invites all candidates to events. He extended invitations to candidates in the past,

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1 Because the candidate-appearance regulations do not apply, MFFC and Palazzo Grande's
2 provision of free goods and services to the Santorum Committee are prohibited corporate in-kind
3 contributions.⁷⁹ Therefore, we recommend that the Commission find reason to believe that
4 MFFC and Palazzo Grande made and the Santorum Committee accepted prohibited corporate in-
5 kind contributions, in violation of 2 U.S.C. § 441b.

6 **B. The Santorum Committee Failed to Report In-Kind Contributions from**
7 **MFFC**

8 Political action committees are required to disclose all the contributions they receive,
9 including in-kind contributions.⁸⁰ When a committee receives an in-kind contribution, it is
10 treated as an expenditure by the committee benefiting from it, which requires the committee to
11 disclose it as an expenditure as well as a contribution.⁸¹ Because, as discussed above, the costs
12 of the Rally were in-kind contributions, the Santorum Committee was required to disclose them
13 as contributions and expenditures in its reports filed with the Commission. It did not do so.
14 Accordingly, we recommend that the Commission find reason to believe that the Santorum
15 Committee violated its disclosure obligations under 2 U.S.C. § 434(b).

but "not for today." Compl., Ex. A (Feb. 20 Schultz Article) (emphasis added). Indeed, FFC was concerned that Clark may have ignored a directive to invite the other candidates, and reportedly "believe[d] invitations should have gone out to other candidates for the [February 17] event." Compl., Ex. B (Feb. 23 Schultz Article); see also Compl., Ex. A (Feb. 20 Schultz Article). Second, and more fundamentally, even if the other candidates had a similar opportunity to appear, as required by section 114.4(b)(1)(ii), the event was not limited to MFFC's restricted class, employees, and their families, as the regulation also requires. See 11 C.F.R. § 114.4(b)(1).

⁷⁹ See, e.g., Statement of Reasons, Comm'rs Huuter, Weintraub, McGahn, Bauerly, Peteraen & Walther, MUR 6459 (Iowa Faith & Freedom Coalition) (2012) (recognizing § 441b violation where corporation used event to benefit "testing the waters" activities of potential presidential candidates but dismissing matter in exercise of prosecutorial discretion because of *de minimis* prorated amount in violation). Unlike the costs in MUR 6459, which would have been apportioned between five candidate speakers, the costs of MFFC's Rally do not need to be prorated. Thus, we conclude that the results here are not similarly *de minimis*.

⁸⁰ 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a), 104.13(a)(1).

⁸¹ 11 C.F.R. § 104.13(a)(2).

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C. Clark's Communications and Close Association with the Santorum Committee Support an Inference that MFFC Coordinated Expenditures with the Santorum Committee

The Complaint also alleges that all of MFFC's expenditures related to the 2012 presidential election, including those related to the Rally, were prohibited corporate in-kind contributions because they were coordinated with the Santorum Committee.⁸² The Complaint bases this allegation on Clark's concurrent roles as MFFC's president and the Santorum Committee's "statewide grassroots coordinator," which the Complaint asserts made Clark an agent of the Santorum Committee.⁸³ Under the Act and Commission regulations, expenditures "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" constitute contributions.⁸⁴

MFFC and the Santorum Committee, in their unsworn responses, deny that there was any coordination. MFFC asserts that there was not "illegal coordination" or "any coordination."⁸⁵ Similarly, the Santorum Committee asserts that Clark "was not in a position to know or share proprietary or non-public information about the needs, activities, plans, or projects of the Santorum presidential campaign."⁸⁶

The available information shows that Clark not only consulted with the Santorum Committee specifically about the Rally, but at the same time he also was an important part of the

⁸² See Compl. at 2 (quoting and citing 11 C.F.R. § 109.20(b)).

⁸³ *Id.*

⁸⁴ 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(b). The term "expenditure" includes any direct or indirect payment, distribution, loan, advance deposit, or gift of money, or any services, or anything of value. See 2 U.S.C. § 441b(b)(2); see also 2 U.S.C. § 431(9)(A)(i).

⁸⁵ MFFC Resp. at 1, 3.

⁸⁶ Supp. Resp. We also note that in its initial response, the Santorum Committee focused its legal argument on the coordinated communications regulation, 11 C.F.R. § 109.21, contending that the three-prong test has not been satisfied. See Santorum Committee Resp. at 2. The coordinated communication regulation, however, is not at issue here, and the Santorum Committee does not address at all the alleged violation of the coordinated expenditure regulation, 11 C.F.R. § 109.20.

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1 Santorum Committee's effort to gain support from the Michigan evangelical community, of
2 which MFFC was a part. While we do not currently have information that MFFC made any
3 expenditures in connection with the 2012 election other than those relating to the Rally, the
4 circumstances present in the record currently available to us support an inference that, if MFFC
5 did make other election-related expenditures, they may have been coordinated with the Santorum
6 Committee as well.

7 Clark, on behalf of MFFC, arranged the Rally in direct consultation with the Santorum
8 Committee. Indeed, according to media accounts, Clark said that he specifically discussed the
9 Rally with candidate Santorum personally. "We talked to him about doing something last
10 October when they had the debate at Oakland University, but that fell apart. So this is something
11 we've been working on for a couple of months."⁸⁷ Similarly, "When he tells me he's going to do
12 it, he's going to do it These other guys (candidates), I have no idea."⁸⁸

13 The available information shows that Clark also played an important role in Santorum's
14 campaign in Michigan. Identifying Clark as the head of MFFC, the Associated Press reported
15 that he was one of only two people at the core of Santorum's Michigan campaign effort.⁸⁹ Other
16 news accounts describing Clark's relationship with the Santorum Committee make clear the
17 strategic importance of Clark's participation in the campaign. For example:

18 In order to cement support with Christian voters in the state, Santorum's
19 campaign quickly signed up influential Michigan social conservative Glenn Clark,
20 head of the state's Faith and Family [sic] Coalition. "We have a tremendous
21 network of people who are going to come out. The evangelicals I am talking to

⁸⁷ Bates Article. The Santorum Committee does not dispute the accuracy of Clark's statements as reported in the Bates Article.

⁸⁸ Compl., Ex. A (Feb. 20 Schultz Article). (internal quotation marks omitted).

⁸⁹ Associated Press, *Romney's Organizational Strength Helps in Michigan*, KINGSPORT TIMES-NEWS (Feb. 26, 2012), available at <http://www.timesnews.net/article/9042919/romney39s-organizational-strength-helps-in-michigan>.

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1 about a month ago were spread out all over the map. *Now they are concentrating*
2 *and being drawn to Rick Santorum,*" Clark told the *Guardian*.⁹⁰

3 The Santorum Committee, in its response, while attempting to de-emphasize Clark's core
4 role in the Santorum campaign, acknowledges the importance of gaining Clark's support. "He
5 was and is well-acquainted with the faith-based grassroots activists in Michigan and is someone
6 any conservative candidate for office would seek out for support."⁹¹ This hardly negates an
7 inference that MFFC acting through Clark—who was also playing an important role for the
8 Santorum Committee—engaged in impermissible coordination. Likewise, although perhaps a
9 factor, Clark's asserted status as a Santorum Committee volunteer, rather than a paid staffer,
10 does not refute an inference of coordination.

11 As the Commission has decided, a reason-to-believe finding is appropriate when "the
12 available evidence in the matter is at least sufficient to warrant conducting an investigation."⁹²
13 Because the information available here readily meets this standard, we recommend that the
14 Commission find reason to believe that MFFC coordinated expenditures with the Santorum
15 Committee and therefore made and the Santorum Committee therefore accepted prohibited
16 corporate in-kind contributions, in violation of 2 U.S.C. § 441b.

17 IV. INVESTIGATION

18 An investigation is necessary to determine the value of the in-kind contributions
19 associated with the Rally and to determine if MFFC made other expenditures in connection with
20 the 2012 presidential election that were coordinated with the Santorum Committee. While the

⁹⁰ Harris Article (emphasis added); *see also* Compl., Ex. A (Feb. 20 Schultz Article) ("Santorum, who has been surging in the polls, didn't have [a] campaign organization in Michigan and tapped Clark this year to lead efforts here.").

⁹¹ Supp. Resp.

⁹² *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

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1 record shows that MFFC and Palazzo Grande made and the Santorum Committee received
2 prohibited corporate in-kind contributions, the value of those contributions—reflected by the
3 costs associated with the Rally—is not clear.⁹³ For example, the Complaint does not specify, and
4 the available information does not establish, the costs for the use of the Palazzo Grande's
5 facilities, food and beverage, light and sound, staging, signage, advertising, invitations, Rally
6 staffing, and transportation. Similarly, the available information indicates that, if MFFC made
7 expenditures (*i.e.*, in addition to the Rally-related expenditures), those expenditures may also be
8 coordinated expenditures. But we do not now know if MFFC made other expenditures or what,
9 if any, cooperation, consultation, or concerted action there may have been between Clark and the
10 Santorum Committee in connection with those expenditures. Thus, a narrowly tailored
11 investigation—focusing on the value of the in-kind contributions and identifying other
12 potentially coordinated expenditures—is necessary.

13 We will attempt to conduct our proposed investigation using informal, cooperative
14 means. Should our efforts at informal, cooperative discovery fail, however, formal means may
15 be necessary. We therefore recommend that the Commission authorize the use of compulsory
16 process, including subpoenas for written answers to questions, production of documents, and
17 depositions, as necessary.

18 V. CONCLUSION

19 The record in this matter gives reason to believe that MFFC and Palazzo Grande made
20 and the Santorum Committee accepted prohibited corporate contributions by providing free
21 goods and services related to the February 17, 2012, Rally “featuring” candidate Santorum.

⁹³ See 11 C.F.R. § 100.52(d)(2) (discussing valuation of goods and services provided as in-kind contributions).

1 There is also reason to believe that the Santorum Committee did not disclose in its reports filed
2 with the Commission the Rally-related, in-kind contributions it received from MFFC and
3 Palazzo Grande. And there also is reason to believe that MFFC made and the Santorum
4 Committee accepted corporate in-kind contributions by coordinating its Rally-related and
5 perhaps other expenditures with the Santorum Committee. Determining the value of those
6 contributions and identifying whether MPFC coordinated other expenditures with the Santorum
7 Committee, however, will require an investigation.


8 **VI. RECOMMENDATIONS**


- 9 1. Find reason to believe that the Michigan Faith & Freedom Coalition; The Palazzo
10 Grande, Inc.; and Rick Santorum for President and Nadine Maenza in her official
11 capacity as treasurer violated 2 U.S.C. § 441b;
12 2. Find reason to believe Santorum for President and Nadine Maenza in her official
13 capacity as treasurer violated 2 U.S.C. § 434(b);
14 3. Take no action at this time regarding Glenn Clark;
15 4. Authorize the use of compulsory process as necessary;
16 5. Approve the attached Factual and Legal Analysis; and
17 6. Approve the appropriate letters.

18 Anthony Herman
19 General Counsel

20 Dated: 1-10-13

BY:


Kathleen Guith
Deputy Associate General Counsel for
Enforcement


Leonard O. Evans III
Attorney, Enforcement Division

- 1 Attachments:
- 2 1. February 20, 2012 *Detroit News* Article
- 3
- 4
- 5

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February 20, 2012

Section: Nation

Santorum volunteer under fire after rally

February 20, 2012

The Detroit News

Questions have been raised about whether Rick Santorum's Michigan campaign coordinator has a "serious" conflict of interest and has potentially violated federal campaign rules.

Glenn Clark, president of the Michigan Faith and Freedom Coalition who recently became the volunteer coordinator in Michigan for Santorum, organized a packed rally Friday for Santorum in Shelby Township.

One of the rally's sponsors was the Michigan Faith and Freedom Coalition, a nonprofit 501(c)(4) organization that promotes socially conservative values of faith, marriage and protecting the dignity of life. Under its tax status, the coalition cannot coordinate communications with a federal candidate or make cash or in-kind contributions.

Gary Marx, executive director of the national Faith and Freedom Coalition, raised concerns about the Michigan affiliate sponsoring the Santorum event and Clark promoting the rally and accepting a position with the Santorum campaign.

Marx said the concerns "are serious."

"These are questions that need to be answered," Marx said.

The national group hasn't endorsed a presidential contender and invites all candidates to its events, he said. The coalition aims to educate and mobilize like-minded people of faith and conservative principles to influence public policy.

Santorum, who has been surging in the polls, didn't have campaign organization in Michigan and tapped Clark this year to help lead efforts here. Clark said he didn't see his roles in the campaign and the coalition as a problem.

He said he's a "volunteer statewide grassroots coordinator" for the Santorum campaign, but "I'm not coordinating in any way" on expenditures. He noted the Santorum rally didn't cost anything because the banquet hall space was donated by the Palazzo Grande center.

As a rule, he said, the Faith and Freedom Coalition invites all candidates to events. He extended invitations to candidates in the past, but "not for today."

All the candidates were invited to an event that coincided with the Republican debate at Oakland University in November.

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but Santorum was the only one who confirmed, he said.

The fall event was canceled, and Friday's rally was the newly scheduled event for Santorum.

"When he tells me he's going to do it, he's going to do it," Clark said. "These other guys (candidates), I have no idea."

"The terms are completely fine," he said. "The national office asked me if I was ... on staff or payroll (for Santorum). I said no. They said: 'Fine.' "

No conflicts seen

A Santorum top advisor brushed off the concerns as politically motivated by supporters of Mitt Romney or President Barack Obama.

"I see nothing as a conflict of interest whatsoever," Santorum senior strategist John Brabender said.

In a Monday phone call, the national Faith and Freedom Coalition asked Clark to take a leave of absence as president while with the Santorum campaign, Marx said.

Also, they directed him to invite all the other candidates to the coalition-sponsored event. Marx said they never heard back from Clark and "assumed he did not" listen.

One Lansing-area Democrat is lodging a complaint against Clark with the Federal Election Commission and the Internal Revenue Service for alleged violations of election law and the group's tax exempt status.

"I was shocked he came out in a leadership position with the Santorum campaign given his role with the coalition," said Joe DiSano of Pottersville, a Democratic political consultant, who believes Clark's role puts the nonprofit status of the coalition at risk and it could be subject to fines by the FEC.

If the complaint falls under the FEC purview, the commission has to vote first to initiate an investigation. Under federal laws, corporations are prohibited from making contributions of money or anything of value to a candidate, including expenditures for communications that are made in concert with the candidate.

If violations are found, fines could be levied.

If someone is working in a dual capacity for the campaign and a nonprofit that's not supposed to coordinate strategy, what's preventing the person from passing along the information that's prohibited under the law?" said Kathy Kiely of the Sunlight Foundation.

"It's created the appearance of a potential impropriety," said Kiely, managing editor at the nonpartisan organization that promotes government openness and transparency.

"I can see why the Faith and Freedom Coalition would be concerned," she added.

Friday's rally was sponsored by the Michigan Faith and Freedom Coalition, the Macomb County Republican Party, Metropolitan Detroit Freedom Coalition Tea Party, Romeo Area Tea Party and the Southeast Michigan 9/12 Tea Party, according to a news announcement sent out by Clark.

It noted, "sponsorship does not imply endorsement."

The event drew about 1,500 people and Clark introduced himself as president of the coalition and Santorum backer. Paul Welday, a GOP political consultant, said Clark's role with the campaign is "problematic," especially for the Faith and Freedom Coalition. He questions whether the mailing list of the nonprofit would be put to use for Santorum.

'Deserves a second look'

"I think it's probably a little more cozy than it should be under federal campaign law," said Welday, who's not affiliated with a presidential campaign but personally supports Romney. "It raises enough concern; it deserves a second look."

Brabender, Santorum's senior strategist, said Clark is a volunteer who is not violating any coordination rules.

Organization members who support Santorum are expressing their individual freedoms. "There's nothing of a sleight of hand or a conflict of interest in that."

The concerns being raised are a typical tactic "we see in state after state" from the Romney campaign when they don't get an endorsement, "they go after the endorser."

When told a Democrat is filing the complaint, Brabender reiterated it's "politically motivated."

mschultz@detnews.com

(313) 222-2310

--- Index References ---

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