

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6928  
COMPLAINT FILED: March 31, 2015  
NOTIFICATION: April 3, 2015  
LAST RESPONSE: June 1, 2015  
ACTIVATED: June 29, 2015

ELECTION CYCLE: 2016  
EARLIEST SOL: January 12, 2020  
LATEST SOL: May 28, 2020

**COMPLAINANTS:**

Campaign Legal Center  
Democracy 21

**RESPONDENTS:**

Richard John "Rick" Santorum  
Santorum for President 2016 and Greg Rothman in  
his official capacity as treasurer  
Patriot Voices PAC and Nadine Maenza in her  
official capacity as treasurer  
Patriot Voices, Inc.

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(2)  
52 U.S.C. § 30102(e)(1)  
52 U.S.C. § 30103  
52 U.S.C. § 30104  
52 U.S.C. § 30116(a)(1), (f)  
52 U.S.C. § 30118(a)  
52 U.S.C. § 30125(e)  
11 C.F.R. § 100.72  
11 C.F.R. § 100.131  
11 C.F.R. § 104.13(a)  
11 C.F.R. § 110.2(l)  
11 C.F.R. § 300.2(c)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

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1     **I.     INTRODUCTION**

2           Months before Rick Santorum established a testing-the-waters account in April 2015, he  
3 engaged in a number of activities that the Complaint alleges evaded the requirements of the  
4 Federal Election Campaign Act of 1971, as amended (the "Act"). According to the Complaint,  
5 Santorum used impermissible funds to test the waters in January 2015, including funds from a  
6 non-profit corporation founded by him, called Patriot Voices, Inc. ("PV Corp."), and a  
7 multicandidate committee, called Patriot Voices PAC ("PV PAC").<sup>1</sup> In addition, the Complaint  
8 alleges that Santorum became a candidate prior to April 2015, and thus failed to timely register  
9 and report with the Federal Election Commission (the "Commission").<sup>2</sup> Given his candidate  
10 status, the Complaint alleges that Santorum accepted excessive and/or prohibited contributions  
11 and also violated the soft money prohibitions of the Act.<sup>3</sup>

12           Santorum, PV Corp., and PV PAC submitted a joint Response denying that they violated  
13 the Act.<sup>4</sup> The Response asserts that Santorum did not begin testing the waters until April 2015  
14 and then properly established a testing-the-waters account to finance those activities on April 6,  
15 2015.<sup>5</sup> The Response also denies that PV Corp. or PV PAC made expenditures in connection

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<sup>1</sup> See Compl. ¶¶ 1, 38 (Mar. 31, 2015).

<sup>2</sup> See *id.* ¶¶ 2, 43-44.

<sup>3</sup> See *id.* at ¶ 44.

<sup>4</sup> Rick Santorum, PV PAC, PV Corp. Resp. ("Resp.") at 1 (June 1, 2015). Although notified of the Complaint, Santorum for President did not file a response. See Letter from Jeff S. Jordan, Assis. Gen. Counsel, FEC to Greg Rothman, Treasurer, Rick Santorum for Pres. 2016 (Nov. 3, 2015).

<sup>5</sup> Resp. at 2.

1 with Santorum's testing-the-waters activities.<sup>6</sup> Rather, the Response asserts that Santorum was  
2 engaged in a "pre-pre-candidacy phase" where an individual conducts activities that may benefit  
3 a potential candidacy, but does not trigger candidacy or testing-the-waters requirements.<sup>7</sup>

4 As discussed further below, the Commission has not recognized what Respondents  
5 identify as a "pre-pre-candidacy phase," and the available information indicates that Santorum  
6 began testing the waters by at least January 2015. Accordingly, we recommend that the  
7 Commission find reason to believe that: (1) Santorum violated 11 C.F.R. §§ 100.72 and 100.131  
8 by using non-federal funds to test the waters; (2) PV Corp. and PV PAC made, and Santorum  
9 and Santorum for President accepted, excessive and/or prohibited contributions in violation of 52  
10 U.S.C. §§ 30116(a), (f) and 30118(a); and (3) Santorum for President violated 52 U.S.C.  
11 § 30104(a) and 11 C.F.R. §§ 100.72 and 100.131 by failing to file reports of receipts and  
12 disbursements covering the testing-the-waters period. Because an investigation is necessary to  
13 determine the precise testing-the-waters period, we request that the Commission authorize  
14 compulsory process.

15 With respect to the allegations that Santorum actually became a candidate prior to May  
16 2015 and may have violated the soft money prohibitions of the Act, there is insufficient  
17 information in the current factual record to make a definitive recommendation. If during the  
18 course of the investigation we uncover additional information concerning those allegations, we  
19 will make the appropriate recommendations. Accordingly, we recommend that the Commission  
20 take no action at this time with respect to the allegations that: (1) Santorum violated 52 U.S.C.  
21 § 30102(e)(1) by failing to timely file a Statement of Candidacy and designate a principal

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 8.

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1 campaign committee; (2) Santorum for President violated 52 U.S.C. §§ 30103(a) and 30104 by  
2 failing to timely file a Statement of Organization and disclosure reports; and (3) Santorum, PV  
3 Corp., and PV PAC solicited, received, directed, transferred, or spent non-federal funds in  
4 connection with a federal election in violation of 52 U.S.C. § 30125(e)(1).

## 5 II. FACTUAL BACKGROUND

6 On May 27, 2015, former two-term United States Senator Rick Santorum,<sup>8</sup> who had run  
7 unsuccessfully for the Republican nomination for President in 2012, announced that he was  
8 again running for President in the 2016 election.<sup>9</sup> On May 28, 2015, Santorum filed his  
9 Statement of Candidacy with the Commission,<sup>10</sup> designating Santorum for President 2016 as his  
10 authorized campaign committee with Greg Rothman as its treasurer (the "Committee").<sup>11</sup>  
11 Santorum asserts that he began testing the waters in April 2015 and properly established a  
12 testing-the-waters account to finance those activities on April 6, 2015.<sup>12</sup> As described below, the  
13 Complaint, relying on press reports, alleges that Santorum participated in a series of meetings  
14 and spoke at political events that demonstrated that he was testing the waters at least as early as  
15 January 2015, and that he triggered candidacy prior to May 28, 2015, when he filed a Statement  
16 of Candidacy.<sup>13</sup>

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<sup>8</sup> Rick Santorum served in the United States Senate from 1995 to 2007.

<sup>9</sup> See Richard Santorum Aff. ¶ 1; Santorum for President 2016, [http://www.ricksantorum.com/about\\_rick](http://www.ricksantorum.com/about_rick).

<sup>10</sup> See Richard J. Santorum, Statement of Candidacy (May 28, 2015).

<sup>11</sup> Santorum for President 2016, Statement of Organization (June 18, 2015); see also Santorum for President 2016, Amended Statement of Organization (June 18, 2015) (adding "2016" to the committee name). Santorum suspended his campaign on February 3, 2016. See Jesse Burns, *Santorum Dropping Out of GOP Race: Report*, THE HILL, Feb. 3, 2016, <http://thehill.com/blogs/ballot-box/gop-primaries/268071-santorum-dropping-out-of-gop-race-report>.

<sup>12</sup> Resp. at 2.

<sup>13</sup> Compl. at 1, 13-14; see Richard J. Santorum, Statement of Candidacy (May 28, 2015).

1           **A. Santorum's Activities Prior to His Declaration of Candidacy in May 2015**

2           Santorum engaged in a series of meetings in January 2015 to discuss a possible 2016  
3           presidential candidacy. First, on January 13, 2015, Santorum reportedly met with 33 friends,  
4           advisers, and former Senate chiefs of staff in Washington, D.C.,<sup>14</sup> and according to Santorum's  
5           staff member Matt Beynon, who attended the meeting, "[t]he Senator talked about his 2012 run,  
6           lessons learned from 2012, how he has laid the groundwork for a potential 2016 run."<sup>15</sup>  
7           Second, during the weekend of January 16, 2015, Santorum attended a private meeting which  
8           was being planned and hosted by Santorum supporter Foster Friess in Scottsdale, Arizona.<sup>16</sup> The  
9           purpose of this meeting was "to rally support behind Santorum's potential 2016 bid" and to  
10          strategize "about financing a national political operation."<sup>17</sup> Third, on January 21, 2015,  
11          Santorum held a meeting in Leesburg, VA, during which he and a group of advisors<sup>18</sup> apparently  
12          spent four hours planning a possible presidential campaign, which included mapping out a  
13          timeline for the campaign's roll-out and discussing fundraising, finances, staffing, and strategies

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<sup>14</sup> Compl. ¶ 5 (citing Robert Costa, *GOP Donor Foster Friess Launches New Effort to Boost Rick Santorum*, WASHINGTON POST, Jan. 14, 2015, [https://www.washingtonpost.com/news/post-politics/wp/2015/01/14/gop-donor-foster-friess-launches-new-effort-to-boost-rick-santorum/?utm\\_term=.2557bb6393be](https://www.washingtonpost.com/news/post-politics/wp/2015/01/14/gop-donor-foster-friess-launches-new-effort-to-boost-rick-santorum/?utm_term=.2557bb6393be)).

<sup>15</sup> Compl. ¶ 5. According to the article cited by the Complaint, Beynon made the statement in an email he sent to the Washington Post. *See* Costa, *supra* note 14.

<sup>16</sup> Compl. ¶ 6 (citing same).

<sup>17</sup> *Id.*

<sup>18</sup> Participants and presenters at the Leesburg meeting included John Brabender, Nadine Maenza, Rob Bickhart, Virginia Davis and Matt Beynon, all of whom (according to disclosure reports) were alumni of Santorum's prior political campaigns and were either employed by PV Corp. and PV PAC (Maenza, Bickhart) or consultants for PV PAC (Brabender, Davis and Beynon).

1 for the early primary states.<sup>19</sup> One news report quotes Beynon as stating the meeting in  
2 Leesburg was “another step in his [Santorum’s] decision-making process.”<sup>20</sup>

3 On January 24, 2015, Santorum, along with other prospective presidential candidates,  
4 traveled to Iowa to speak at the Iowa Freedom Summit, and also made a speech concerning the  
5 2016 election at the Conservative Political Action Conference (“CPAC”) on February 5, 2015.  
6 Further, Santorum spoke at the Iowa Republican party’s annual Lincoln Dinner on May 15,  
7 2015, which has been promoted as an “important stepping stone” for candidates on their way to  
8 the Iowa caucuses in February 2016.<sup>21</sup>

9 The Response does not dispute that Santorum attended any of the meetings or made the  
10 speeches referenced in the Complaint. Although the Response contends that the meetings or  
11 speeches were not for the purpose of furthering Santorum’s 2016 presidential candidacy, it  
12 acknowledges that discussion of a potential candidacy occurred at the January 13, 2015 meeting  
13 billed as a reunion among former Santorum staffers.<sup>22</sup> Further, the Response does not contest  
14 that Santorum’s representatives made the statements to the press as cited in the Complaint,  
15 although it argues that some of the statements mischaracterized Santorum as a potential  
16 candidate.<sup>23</sup>

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<sup>19</sup> Compl. at 3 (citing Shushannah Walshe, *Rick Santorum Preps for 2016, Meets with Aides to Plan Details*, ABC NEWS, Jan. 21 2015, <http://abcnews.go.com/Politics/rick-santorum-preps-2016-meets-aides-plan-details/story?id=28384584>).

<sup>20</sup> *Id.*

<sup>21</sup> Compl. at 3-4 (citing Press Release, Republican Party of Iowa, *Iowa GOP to Host Star-Studded Lincoln Dinner on May 16* (Mar. 26, 2015)).

<sup>22</sup> Resp. at 3.

<sup>23</sup> *See id.* at 2, 6 (referencing statements made by John Brabender to the *Washington Post* and Matt Beynon to the *New York Times*).

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1 According to Santorum, he did not make a “final decision about pursuing a potential  
2 presidential campaign until the first part of April, 2015” and established a testing-the-waters  
3 account on April 6, 2015.<sup>24</sup>

4 **B. PV Corp.’s Activities**

5 Several months after dropping out of the 2012 presidential race, Santorum founded PV  
6 Corp., a non-profit corporation organized under section 501(c)(4) of the Internal Revenue  
7 Code.<sup>25</sup> PV Corp.’s mission is to “mobilize citizens to support public policies that reinforce  
8 America’s founding principles.”<sup>26</sup> Nadine Maenza is its President and Executive Director.<sup>27</sup>  
9 From about May 2012 until May 4, 2015, Santorum served as Co-Chairman and as a member of  
10 PV Corp.’s Board of Directors.<sup>28</sup> During that period, Santorum states that he was involved in  
11 fundraising for and on behalf of PV Corp. and its “political arm,” PV PAC, a multicandidate

<sup>24</sup> Santorum Aff. ¶¶ 12-13.

<sup>25</sup> Santorum Aff. ¶ 2. PV Corp. was incorporated on May 21, 2012 in Delaware. State of Delaware, Department of State, Division of Corporations, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>; see also Rachel Weiner, *Rick Santorum's Next Move: 'Patriot Voices,'* WASHINGTON POST, June 8, 2012, [https://www.washingtonpost.com/blogs/the-fix/post/rick-santorums-next-move-patriot-voices/2012/06/08/gJQA8K2sNV\\_blog.html](https://www.washingtonpost.com/blogs/the-fix/post/rick-santorums-next-move-patriot-voices/2012/06/08/gJQA8K2sNV_blog.html).

<sup>26</sup> Form 990, 2015 Tax Return of Patriot Voices, Inc. (Nov. 15, 2016) at 1 (“PV Corp. 2015 Form 990”).

<sup>27</sup> *Id.* at 1, 7. Maenza was Patriot Voices’ only salaried employee in 2015 and 2014. *Id.*; Form 990, 2014 Tax Return of Patriot Voices, Inc. (Nov. 14, 2015) at 7 (“PV Corp. 2014 Form 990”). Both Maenza and Santorum were compensated by Patriot Voices in 2013, with Santorum receiving \$17,509. See Form 990, 2013 Tax Return of Patriot Voices, Inc. (Nov. 15, 2016) (“PV Corp. 2013 Form 990”) at 7.

<sup>28</sup> The other members of Patriot Voices’s Board of Directors were Nadine Maenza, who is the President of the corporation, and Eustace Mita, who serves as Treasurer. See PV Corp. 2014 Form 990 at 7; see also Patriot Voices website, [http://www.patriotvoices.com/who\\_we\\_are](http://www.patriotvoices.com/who_we_are). In Maenza’s affidavit, she also identifies herself as Patriot Voices’ Executive Director. Nadine Maenza Aff. (Patriot Voices) ¶ 1.



1 political action committee, which registered with the Commission on August 21, 2012.<sup>29</sup>

2 According to its 2015 Form 990, which is the last IRS filing available, PV Corp. had  
3 gross receipts of \$1,463,468 and total expenses of \$1,643,984.<sup>30</sup> Although we lack specific  
4 information regarding the source of donations received by PV Corp., between August 2012 and  
5 May 2015, PV Corp. received \$825,000 in donations from PV PAC.<sup>31</sup> PV Corp. received no  
6 funds from PV PAC in 2016. The following chart summarizes all donations that PV PAC made  
7 to PV Corp. based upon data obtained through Commission disclosure reports:

8 **Disbursements from PV PAC to PV Corp.**

Date	Purpose	Amount
8/20/2012	In-Kind: List Expense	\$250,000.00
1/16/2013	Donation	\$90,000.00
6/6/2014	Donation	\$20,000.00
6/20/2014	Donation	\$30,000.00
7/23/2014	Donation	\$20,000.00
8/7/2014	Donation	\$20,000.00
8/28/2014	Donation	\$25,000.00
9/12/2014	Donation	\$15,000.00
9/25/2014	Donation	\$15,000.00
10/10/2014	Donation	\$20,000.00
10/23/2014	Donation	\$20,000.00
12/10/2014	Donation	\$15,000.00
1/12/2015	Donation	\$100,000.00

<sup>29</sup> Santorum Aff. ¶ 5; see Patriot Voices PAC, Amended Statement of Organization (Sept. 6, 2012); Patriot Voices PAC, Notification of Multicandidate Status (Mar. 31, 2013). In September 2012, PV PAC filed a notice with the Commission that it intended to maintain a separate (non-contribution) account for the purpose of raising and spending funds in unlimited amounts for purposes other than making direct, indirect, in-kind, or coordinated contributions to federal candidates and committees in accordance with *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011). Form 1, Notification Letter from Nadine Maenza, Treasurer (Sept. 6, 2012).

<sup>30</sup> PV Corp. 2015 Form 990 at 1. The previous year, PV Corp. had gross receipts of \$1,664,621 and total expenses of \$1,653,017. PV Corp. 2014 Form 990 at 1. Patriot Voices had gross receipts of \$2,022,786 in 2013 and \$1,572,378 in 2012. PV Corp. 2013 Form 990 at 1.

<sup>31</sup> Patriot Voices PAC 2015 Mid-Year Report at 86, 87. There were four disbursements to Patriot Voices: \$100,000 (Jan. 12, 2015); \$100,000 (Feb. 23, 2015); \$25,000 (Apr. 27, 2015); and, \$60,000 (May 5, 2015). *Id.* PV PAC had made several previous donations to Patriot Voices: \$90,000 on January 16, 2013 and \$20,000 on October 23, 2014. Patriot Voices PAC 2013 Post-Special Report at 60; Patriot Voices 2014 Post General Report at 86.

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Date	Purpose	Amount
2/23/2015	Donation	\$100,000.00
4/27/2015	Donation	\$25,000.00
5/5/2015	Donation	\$60,000.00
<b>TOTAL</b>		<b>\$825,000.00</b>

1  
2 PV Corp.'s disbursements in 2015 included payments for program services, professional  
3 fundraising expenses, management consulting, advertising, travel, and compensation for staff.<sup>32</sup>  
4 In particular, the Response states that PV Corp. sponsored the three January 2015 meetings  
5 described by the Complaint above, as well as Santorum's appearances at the Iowa Freedom  
6 Summit and CPAC in Iowa, which it co-sponsored.<sup>33</sup> Further, Santorum states that he still  
7 participated in activities for the Patriot Voices entities during the time period he purports to have  
8 been testing the waters, but then resigned as Chair of PV Corp. on May 4, 2015.

9 **C. PV PAC's Activities**

10 On August 21, 2012, PV PAC registered with the Commission as a political action  
11 committee.<sup>34</sup> On September 6, 2012, PV PAC notified the Commission that it would establish a  
12 non-contribution account consistent with *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).<sup>35</sup>

<sup>32</sup> PV Corp. 2015 Form 990 at 10. Expenditures included \$857,478 for program services; travel costs of \$114,825; fundraising fees of \$37,280; Maenza's salary of \$115,000 and salary for a new unnamed staffer; lobbying costs of \$32,000; conference fees of \$4,978; advertising and promotional payments of \$55,000; and direct mail costs of over \$400,000. *Id.* at 1, 5, 10. Based on the 2015 filing, it appears that program services expenditures included but were not limited to: sponsoring a regular radio show about current issues; educating the public and advocating against the "Iran deal;" sponsoring education efforts regarding ISIS; advocating for the defunding of Planned Parenthood and for the First Amendment Defense Act; and the costs of traveling to Washington to advocate in support of Israel and Prime Minister Benjamin Netanyahu. *Id.* at 2. In 2014, PV Corp. program services included participation in the Values Summit in Washington, D.C., and sending a delegation (which included Santorum) to Israel. PV Corp. 2014 Form 990 at 2.

<sup>33</sup> See Resp. at 3-5.

<sup>34</sup> See Patriot Voices PAC, Amended Statement of Organization (Sept. 6, 2012); Patriot Voices PAC, Notification of Multicandidate Status (Mar. 31, 2013).

<sup>35</sup> See Form 1, Notification Letter from Nadine Maenza, Treasurer to the Federal Election Commission (Sept. 6, 2012).

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1 According to its website, PV PAC's mission is to elect "true conservatives running for office."<sup>36</sup>

2 Maenza also served as the PAC's treasurer and fundraising consultant.<sup>37</sup>

3 Although the Response asserts that Santorum's only role with the group was as  
4 spokesman, Santorum admits that he was a fundraiser for PV PAC.<sup>38</sup> In addition, PV PAC press  
5 releases identify Santorum as the "Chairman" of the committee.<sup>39</sup>

6 The following chart summarizes PV PAC's financial activity from 2012 through 2016:

7 **PV PAC Activity: 2012-2016**

	2012	2013	2014	2015	2016
<b>Total Receipts</b>	\$904,633.04	\$685,057.24	\$1,576,141.00	\$340,143.45	\$71,800.00
<i>Contribution Account</i>	\$140,486.77	\$115,449.37	\$298,067.47	\$21,771.06	\$34,949.00
<i>Non-Contribution Account</i>	\$763,707.12	\$569,423.79	\$1,177,474.63	\$317,715.92	\$36,843.50
<b>Total Expenditures</b>	\$610,234.22	\$944,218.41	\$1,174,410.18	\$768,146.29	\$74,811.38
<i>Independent Expenditures</i>	\$79,900.56	\$53,329.92	\$34,690.62	\$420.94	\$14,218.08
<i>Contributions To Other Committees</i>	\$20,284.56	\$0.00	\$23,000.00	\$0.00	\$5,000.00
<b>Ending COH</b>	\$294,498.82	\$35,337.65	\$437,068.70	\$9,065.86	\$6,054.48

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<sup>36</sup> PV PAC Homepage, <http://www.patriotvoicespac.com/>.

<sup>37</sup> See Patriot Voices PAC, Amended Statement of Organization (Sept. 6, 2012); Patriot Voices PAC, Notification of Multicandidate Status (Mar. 31, 2013). See also Nadine Maenza Aff. (on behalf of PV PAC) at 1.

<sup>38</sup> Santorum Aff. ¶5. According to a PV PAC press release, Santorum selected the PAC's finance team in January 2015. See Patriot Voices Homepage, Latest News, *Rick Santorum and Patriot Voices PAC Announce Senior Finance Team*, [http://www.patriotvoices.com/rick\\_santorum\\_and\\_patriot\\_voices\\_pac\\_announce\\_senior\\_finance\\_team](http://www.patriotvoices.com/rick_santorum_and_patriot_voices_pac_announce_senior_finance_team).

<sup>39</sup> As Chairman of the PAC, Santorum announced PV PAC's endorsement of PAC officials as well as candidates in Louisiana's 2015 attorney general and gubernatorial races. Patriot Voices Website, Press Releases (Feb. 20, 2015; Mar. 1, 2015; Mar. 3, 2015), [http://www.patriotvoices.com/santorum\\_endorses\\_landry](http://www.patriotvoices.com/santorum_endorses_landry); [http://www.patriotvoices.com/santorum\\_and\\_patriot\\_voices\\_pac\\_announces\\_senate\\_majority\\_leader\\_corman\\_as\\_honorary\\_pennsylvania\\_chairman](http://www.patriotvoices.com/santorum_and_patriot_voices_pac_announces_senate_majority_leader_corman_as_honorary_pennsylvania_chairman); [http://www.patriotvoices.com/santorum\\_endorses\\_vitter\\_governor](http://www.patriotvoices.com/santorum_endorses_vitter_governor).

1           The chart above indicates that prior to Santorum's establishing a testing-the-waters  
2 account and declaring his candidacy, PV PAC raised and spent significant sums of money. In  
3 2012, the PAC received nearly \$1 million in contributions and spent over \$600,000. Although  
4 the PAC's fundraising declined slightly in 2013, its spending increased to almost \$1 million. In  
5 2014, the PAC accepted more than \$1.5 million in contributions and spent more than \$1.1  
6 million. After Santorum officially declared his candidacy in May 2015, however, PV PAC's  
7 level of activity substantially decreased. According to its 2015 Year End Report, covering the  
8 period from July 1, 2015 to December 31, 2015, PV PAC's receipts totaled only \$29,181 (\$400  
9 for the contribution account; \$28,661 for the non-contribution account) and disbursements  
10 totaled \$53,930.81.<sup>40</sup>

11           Although PV PAC was registered as a multicandidate committee, the PAC spent only 0-  
12 2% of funds on contributions to candidates other than Santorum between 2012 and 2016. While  
13 the PAC also established a non-contribution account to make independent expenditures and  
14 received almost \$3 million in that account, it only spent approximately \$182,000 to actually  
15 make independent expenditures between 2012 and 2016.<sup>41</sup> As discussed above, during that time  
16 period, the PAC transferred \$825,000 to PV Corp., disclosing the purpose as a "donation" or as  
17 an "in-kind: list expense" contribution.

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<sup>40</sup> Patriot Voices PAC, Year End Report (Jan. 29, 2016). As indicated on the chart, in 2016, PV PAC resumed contributing to candidate committees (\$5,000) and made \$14,218.08 in independent expenditures, which was significantly larger than the amount expended during 2015.

<sup>41</sup> PV PAC's 2015 Mid-Year Report indicates that the committee received a \$250.00 corporate contribution on January 6, 2015 and two \$120,000 contributions on April 4, 2015 for its non-contribution account. Patriot Voices PAC, Mid-Year Report at 9, 21. PV PAC's 2014 Year End report indicates it received a number of large contributions for its non-contribution account on December 31, 2014, a \$250,000 contribution from Foster Friess, a contribution of \$100,000, and a corporate contribution of \$20,000. Patriot Voices PAC, 2014 Year-End Report at 17, 34, and 37.

1 In addition, disclosure reports indicate that PV PAC disbursed substantial sums from its  
2 non-contribution account on PAC consulting services<sup>1</sup> for fundraising, compliance, grassroots  
3 outreach, and telemarketing. PV PAC's 2015 Mid-Year Report indicates that the committee  
4 ramped up its hiring in the first half of that year, retaining ten additional "grassroots consultants"  
5 in key states, a communication consultant, and several fundraising consultants and  
6 administrators.<sup>42</sup> Of the twenty-four individuals who provided consulting services to PVP PAC  
7 from January through June 2015, eighteen became consultants for the Santorum Committee as  
8 well.<sup>43</sup>

### 9 III. LEGAL ANALYSIS

#### 10 A. There is Reason to Believe that Santorum Violated the Testing-the-Waters 11 Regulations Beginning in January 2015

12  
13 An individual becomes a candidate under the Act if: (a) such individual receives  
14 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her  
15 consent to another person to receive contributions or make expenditures on behalf of such  
16 individual and if such person has received such contributions or has made such expenditures in  
17 excess of \$5,000.<sup>44</sup> Once the \$5,000 threshold has been met, the candidate has 15 days to  
18 designate a principal campaign committee by filing a Statement of Candidacy with the

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<sup>42</sup> As indicated in the PAC's 2015 Mid-Year Report, the committee disbursed funds from both its contribution and non-contribution accounts to pay these individuals, with the vast majority of payments made from the non-contribution account.

<sup>43</sup> Disclosure reports indicate that the following PV PAC consultants subsequently served as consultants to the Santorum Committee: Nadine Maenza; PVP National Grassroots Director Shelley Alhsmeyer; Jessica Colon/Colon & Company; Infocision; Bob Bickhard/Capital Resources Group; John Brabender/Brabender & Associates; Matt Beynon/Madison Ventures LLC; Nancy Garver; Jennifer Lee; Debbi Lehardy; Matt Garver; Tina Henold; Carey Pemberton; Emily Ziarko; Amy Petraglia; Carey Sirianni.

<sup>44</sup> 52 U.S.C. § 30101(2).

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1 Commission.<sup>45</sup> The principal campaign committee must file a Statement of Organization within  
2 ten days of its designation,<sup>46</sup> and must file disclosure reports with the Commission in accordance  
3 with 52 U.S.C. § 30104(a) and (b).<sup>47</sup>

4 The Commission has established limited “testing the waters” exemptions that permit an  
5 individual to test the feasibility of a campaign for federal office without becoming a candidate  
6 under the Act.<sup>48</sup> These exemptions exclude from the definition of “contribution” and  
7 “expenditure” those funds received and payments made solely to determine whether an  
8 individual should become a candidate.<sup>49</sup> These regulations seek to draw a distinction between  
9 activities directed to an evaluation of the feasibility of one’s candidacy and conduct signifying  
10 that a decision to become a candidate has been made.<sup>50</sup> Testing-the-waters activities include, but  
11 are not limited to, payments for polling, telephone calls, and travel, and only funds permissible  
12 under the Act may be used for such activities.<sup>51</sup> An individual who tests the waters must keep  
13 financial records, and if she/he becomes a candidate, all funds received, or payments made in

<sup>45</sup> *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>46</sup> *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>47</sup> *See, e.g.,* Factual and Legal Analysis at 5, MUR 6449 (Jon Brunning); Factual and Legal Analysis at 2, MUR 5363 (Alfred C. Sharpton).

<sup>48</sup> *See* 11 C.F.R. §§ 100.72, 100.131; Factual and Legal Analysis at 7, MUR 6775 (Hillary Clinton); Factual and Legal Analysis at 8, MUR 6776 (Niger Innis); Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Sestak). The Commission has not recognized a “pre-pre-candidacy” period as suggested by the Respondents. *Resp.* at 7-8, citing Advisory Op. 1986-06 (Fund for America’s Future)(“AFF”) (“AO 1986-06”). In AO 1986-06, the Commission permitted AFF to cover expenses incurred by Vice President George H.W. Bush, its founder and Honorary Chairman, while making appearances on behalf of Republican candidates and organizations, if references to any potential candidacy of the Vice President were purely incidental.

<sup>49</sup> 11 C.F.R. §§ 100.72(a); 100.131(a); Factual and Legal Analysis at 5, MUR 5722 (Chris Lauzen) (dismissal with admonishment for failing to use federal funds to finance testing-the-waters expenses).

<sup>50</sup> *See* Factual and Legal Analysis at 3, MUR 6533 (Perry Haney, *et al.*); Advisory Op. 1981-32 at 4 (Askew) (“AO 1981-32”).

<sup>51</sup> 11 C.F.R. §§ 100.72(a); 100.131(a); Factual and Legal Analysis at 2, MUR 6533 (Perry Haney, *et al.*); AO 1981-32 at 3.

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1 connection with testing the waters shall be considered contributions and expenditures under the  
2 Act, and shall be reported in accordance with the Act and Commission regulations in the first  
3 report filed by the candidate's principal campaign committee.<sup>52</sup>

4 1. Private Meetings

5 As alleged in the Complaint, in January 2015, Santorum held a series of private meetings  
6 with friends, advisors, former campaign staffers, as well as PV Corp. and PV PAC staff. While  
7 the Response denies that the purpose of those meetings was for testing the waters, it admits that  
8 the January 13, 2015 reunion among former Santorum staffers included "some discussion about  
9 whether Sen. Santorum might have any interest in making another race and, if so, what that  
10 might involve."<sup>53</sup>

11 The Response argues that those discussions did not constitute testing-the-waters activities  
12 because "[t]he meeting was a private discussion among close associates and family friends."<sup>54</sup>  
13 This argument is without support under Commission regulations, which do not differentiate  
14 between activities conducted in private versus public, so long as they involve conduct to  
15 determine whether an individual should run for office, which appears to have happened here.  
16 Rather, the Commission has determined that testing-the-waters activities are those "conducted to  
17 determine whether an individual should be a candidate."<sup>55</sup> In Advisory Opinion 1981-32  
18 (Askew), the Commission determined that testing-the-waters activities included travel for the  
19 purpose of speaking with opinion makers and political and nonpolitical groups for the purpose of

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<sup>52</sup> 11 C.F.R. § 101.3.

<sup>53</sup> Resp. at 3.

<sup>54</sup> *Id.*

<sup>55</sup> 11 C.F.R. §§ 100.72(a); 100.131(a); *see also* AO 1981-32 at 4.

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1 deciding whether potential political support exists for a national campaign. In Advisory Opinion  
2 1985-40 (Republican Majority Fund), the Commission concluded that expenses for holding  
3 private meetings with party leaders should be allocated to an individuals' potential candidacy.<sup>56</sup>  
4 Further, in Advisory Opinion 1986-06 (Fund for America's Future), the Commission determined  
5 that costs for "holding meetings (which constitute more than incidental contacts) with individuals  
6 or the press regarding . . . a potential candidacy" could constitute in-kind contributions to the  
7 potential candidate.<sup>57</sup>

8 Finally, while the Response pointedly disputes the characterization of some of the  
9 statements made by Santorum's representatives in news articles, it does not dispute a number of  
10 the other statements indicating that Santorum was exploring a potential candidacy. For example,  
11 the Response does not challenge the email statement sent by Beynon to the Washington Post,  
12 acknowledging that at the January 13, 2015 meeting in Washington, D.C., "[t]he Senator talked  
13 about his 2012 run, lessons learned from 2012, how he has laid the groundwork for a potential  
14 2015 run . . . ."<sup>58</sup> Further, it does not deny that Beynon told ABC News that Santorum and his  
15 wife "continue to seriously consider a run for the presidency in 2016."<sup>59</sup>

16 2. Public Statements

17 Santorum also made a series of public statements indicating that he was exploring a  
18 potential candidacy long before he established a testing-the-waters account in April 2015. After  
19 a fundraiser for PV PAC in October 2014 in Ridgeland, Mississippi, Santorum reportedly stated:

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<sup>56</sup> AO 1985-40 at 8.

<sup>57</sup> See AO 1986-06 at 4 (citing AO 1985-40).

<sup>58</sup> Costa, *supra* note 14.

<sup>59</sup> Walshe, *supra* note 19.

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1 I've been very clear I'm open to running in 2016, and I met with some supporters  
2 here today who were very encouraging to me. . . . We bring something different  
3 to the table. National security experience is one such thing. There's no one in the  
4 field that's kicking around that has any kind of national security experience . . .  
5 We have the bona fides that nobody else has. I have a long track record on these  
6 issues that has put me on the right side of history.<sup>60</sup>

7  
8 Here, Santorum acknowledges that he was deliberating a presidential candidacy in 2014  
9 and traveled to meet with supporters who apparently encouraged him to run. Such conduct  
10 qualifies as testing the waters under Commission regulations. Although Santorum also made  
11 appearances on behalf of PV PAC during his travels, the statement above suggests that Santorum  
12 may have separately engaged in activities that were conducted for the purpose of determining  
13 whether he should run for the presidency in 2016.

14 During an interview before making a speech at the South Carolina Tea Party Coalition  
15 Convention on January 19, 2015, Santorum made a number of statements leaving little doubt that  
16 he was testing the waters at that time.<sup>61</sup>

17 **Interviewer:** Looking forward. Patriot Voices. You were active on the  
18 campaign trail in Mississippi in 2014. You were an aggressive candidate in 2012.  
19 You're past the point of kicking the tires on this thing. Let me pose you a  
20 question: There are some who say you and maybe a Mike Huckabee are looking  
21 for the same cohort of voters. There's only so much oxygen in the room. How  
22 are you going to distinguish yourself?

23  
24 **Santorum:** You know I heard that 4 years ago when . . . . There's all these folks  
25 who could run. There's all these folks who are gonna run, and you're not a  
26 national figure. You've never run for president before. People didn't know who  
27 you were. You weren't in elected office yet. You had no chance. We ended up  
28 being the last man standing and having won eleven of 30 states we competed in  
29 and had we had a couple of extra dollars and not being outspent four and five to

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<sup>60</sup> Geoff Pender, *Santorum Tests 2016 Waters, Backs Away from McDaniel*, THE CLARION-LEDGER, Oct. 8, 2014, <http://www.clarionledger.com/story/news/2014/10/08/santorum-tests-waters-backs-away-mcdaniel/16940733/>.

<sup>61</sup> Tr. of Backstage Interview of Rick Santorum at the 2015 South Carolina Tea Party Coalition Convention at 1 (Jan. 19, 2015).

1 one, it might have been a different story. So, I don't really worry too much about  
2 that. *The decision making process we're going through really has nothing to do*  
3 *with who else is in the race. People asked me the other day what role do you*  
4 *want to play in this election? And I look back and I say, the winner.*  
5

6 **Interviewer:** That's really the only one worth auditioning for.  
7

8 **Santorum:** I'm not really interested in role playing. And if you're going to do  
9 this and take the time away from your family and ask people to join you and  
10 sacrifice like so many others did last time around. You do it to win and because  
11 you feel like you have a message that's the best for the country and that can unify  
12 this country and head it back to a more responsible working America.  
13

14 In previewing Santorum's speech, the interviewer asks Santorum, "You're about to have  
15 a chance to lay out that vision in the Crocker Ballroom. Let's look into your crystal ball. Let's  
16 say Rick Santorum is the nominee in 2016. Do we flip the key stone state from blue to red?"  
17 Santorum responds in part: "That's the message that I talked about. In order to win  
18 Pennsylvania, Ohio, Michigan and Indiana . . . just go across the states. You have to have a  
19 message that says to decent hard working Americans we're on your side." The interviewer  
20 concludes by stating, "That's gonna wrap it up for this particular interview. This guy was Tea  
21 Party before Tea Party was cool. Can he be president? He's gonna lay out his vision here in just  
22 a second."<sup>62</sup> Santorum's statements during this interview demonstrate that he was testing the  
23 waters in January 2015. He explicitly states that he was in a "decision making process" on  
24 whether to run, and the interview makes clear that the purpose of his speech was to lay out a  
25 vision for a potential candidacy.

26 Further, in introducing Santorum before his speech at the South Carolina Tea Party  
27 Convention, the host describes Santorum as: "of all the announced candidates, and unannounced  
28 candidates at this time around, he's got more national security experience than anyone." And

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<sup>62</sup> *Id.* at 2.

1 when Santorum actually makes his speech, he repeatedly refers to how the lessons he learned  
2 from his underdog 2012 candidacy for Presidency<sup>63</sup> apply to the 2016 election.<sup>64</sup> He asks,  
3 “People ask what’s the difference between last time and this time?” He explains that national  
4 security issues have become central and describes his own qualifications and recent experience  
5 with those issues. Santorum concludes by stating, “Ladies and gentlemen, you’re going to be  
6 important deciders. Number one, who gets in this race and how well they do and I know that  
7 very well. I ask you to make sure that you decide wisely.”<sup>65</sup> While Santorum stops short of  
8 explicitly urging the audience to vote for him, he appears to indicate that he is deliberating over  
9 another run in 2016 and to invite listeners to consider him as being a qualified candidate.

10 Santorum repeats these themes in subsequent speeches, where he focuses again on his  
11 2012 primary victories and the implications for the 2016 election. At the 2015 CPAC, he told  
12 attendees:

13 Pundits have often wondered how I was able to win 11 states, even though I was  
14 outspent four and five to one. They decided it was because I was [the] last man  
15 standing. They were wrong. *I won because I stood for someone, the little guy,*  
16 *the American worker, and if we’re going to win in 2016, we need to stand for the*  
17 *little guy too.*<sup>66</sup>  
18

19 At the 2015 Iowa Freedom Summit, he stated:

20 Ladies and Gentlemen, I don’t envy your charge. I’ve been here many times as  
21 you know and you got a tough time last time around. You made a good decision

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<sup>63</sup> “But I ended up competing in 30 states and winning eleven. Was the last person standing. Why were we standing? Because we stood for something.” Tr. of Rick Santorum’s Speech at the 2015 South Carolina Tea Party Coalition Convention at 2 (Jan. 19, 2015).

<sup>64</sup> “So, in many respects we may have an opportunity here. . . . And, so we have an opportunity to act. . . . We have an opportunity ladies and gentlemen, in this election to have a message that’s at the core of what made America great and can unify the country. What a blessed opportunity. Let’s not blow it. . . .” *Id.* at 5.

<sup>65</sup> *Id.* at 6.

<sup>66</sup> Tr. of Rick Santorum’s Speech at CPAC at 2 (Feb. 27, 2015) (emphasis added).

1 by the way. Albeit somewhat delayed. *You made a good decision and you'll*  
2 *have to do that again. I just want to encourage you. You do a great job, Iowans.*  
3 *... The last time around, everyone told you no, no, don't pick this person. This*  
4 *person has no chance, and you said I think we'll vote for the best person we*  
5 *believe has the best chance, not who Washington and New York think has the best*  
6 *chance. You are serious people when this comes to this, and this is a serious*  
7 *time. I just would say I agree with Chuck Grassley and all the others who say that*  
8 *it is well worth the mileage and the sleep to go to all 99 counties in Iowa. If any*  
9 *one of these other guys want a travel log, I'll be happy to share it with them.*<sup>67</sup>

10  
11 In both of these speeches, Santorum consistently refers back to his 2012 primary victories  
12 and alludes to a possible 2016 candidacy. Although the Respondents assert that Santorum  
13 attended the Iowa Freedom Summit and CPAC in connection with PV Corp., his speech lacked  
14 any reference to that entity, its mission, or its work.<sup>68</sup> In his CPAC speech, he discusses how he  
15 garnered 11 primary victories because he “stood for the little guy” and that to “win in 2016,”  
16 voters would “need to stand for the little guy too.” In his Iowa Freedom Caucus speech, he  
17 describes the “good decision” that Iowa voters made in 2012, *i.e.* the decision to select him as the  
18 winner of the 2012 Iowa caucuses, and asks them to “do that again.” Although it is reasonable to  
19 conclude that Santorum has made a decision to run and is urging voters to vote for him again in  
20 2016, Santorum stops short of declaring himself as a candidate, and appears to leave open the  
21 question of whether he will definitely run. Consequently, under these circumstances, Santorum  
22 is testing the waters at a minimum.

23 3. The Commission has Not Recognized a “Pre-Pre-Candidacy” Phase

24 The Response relies upon AO 1986-06 (Fund for America’s Future) to contend that the  
25 Commission has recognized a “pre-pre-candidacy” phase where an individual may defer testing  
26 the waters to a later date and engage in activities “that might ultimately benefit a potential

<sup>67</sup> Tr. of Rick Santorum’s Speech at the Iowa Freedom Summit at 7 (Jan. 19, 2015) (emphasis added).

<sup>68</sup> Resp. at 4, 5.

1 candidacy but are not deemed to trigger either candidacy or testing-the-waters requirements.”<sup>69</sup>  
2 AO 1986-06 is inapposite. There, the Commission determined that expenditures made by a  
3 multicandidate committee founded by Vice President George H.W. Bush would not result in  
4 expenditures that could be allocable to his potential candidacy where there was no indication that  
5 the Vice President had begun any exploratory efforts nor that any activities could be construed as  
6 ultimately benefitting a potential candidacy. Further, the multicandidate committee in that  
7 request had made contributions to more than 100 Republican candidates. Here, Santorum and  
8 the Response acknowledge that he was conducting meetings regarding a potential candidacy. In  
9 addition, PV PAC’s spending raises legitimate questions as to whether the true purpose of the  
10 PAC was to support other candidates given that it spent only a fraction of its funds on making  
11 contributions to other candidates, and during the entire 2016 election cycle, it only made a single  
12 \$5,000 contribution to Santorum’s own authorized committee to retire its debts.<sup>70</sup>

13 In sum, in as early as August 2014, Santorum was meeting with supporters and attending  
14 public events throughout the nation where he discussed a potential 2016 candidacy. Because  
15 Santorum did not establish a testing-the-waters account until April 2015 and his authorized  
16 committee did not report any testing-the-waters activities that occurred before that time, we  
17 recommend that the Commission find reason to believe that Rick Santorum and Santorum for  
18 President violated 11 C.F.R. §§ 100.72 and 100.131 and that Santorum for President violated  
19 52 U.S.C. § 30104(b).

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<sup>69</sup> *Id.* at 8.

<sup>70</sup> *See* PV PAC 2016 Year End Report at 9 (Jan. 30, 2017).

1           **B.     There is Reason to Believe that PV Corp. and PV PAC Made Prohibited and**  
2           **Excessive Contributions**

3  
4           Commission regulations provide that all funds raised and spent for testing-the-waters  
5 activities are subject to the Act's limitations and prohibitions.<sup>71</sup> Thus, as a corporation, PV  
6 Corp. was prohibited from making any contributions to Santorum's exploratory efforts and PV  
7 PAC was limited to making a \$5,000 contribution.<sup>72</sup> Under Commission guidance, if Santorum,  
8 as a potential candidate, was engaging in activities on behalf of PV PAC but also undertook  
9 activities relating to his own potential candidacy, he should have allocated any expenses between  
10 PV PAC and his potential candidacy pursuant to 11 C.F.R. § 106.1(a).<sup>73</sup> If PV PAC spent more  
11 than \$5,000 on Santorum's testing-the-waters activities, once Santorum became a candidate, PV  
12 PAC would have made an excessive in-kind contribution to Santorum in violation of 52 U.S.C.  
13 § 30116(a)(2).

14           A potential candidate need not allocate expenses where references to any potential  
15 candidacy "will be made 'in an incidental manner or in response to questions by the public or  
16 press.'"<sup>74</sup> However, an individual's "incidental" references to a potential candidacy "should be  
17 narrowly interpreted to apply only to incidental contacts and incidental remarks, such as those in  
18 response to questions."<sup>75</sup> Thus, the Commission has determined that it would not consider as

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<sup>71</sup> See 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>72</sup> See 52 U.S.C. §§ 30116(a)(2), 30118(a).

<sup>73</sup> See Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter, Donald F. McGahn II, Steven T. Walther, and Ellen L. Weintraub at 3, MUR 5908 (Duncan Hunter) (finding that travel disbursements benefitting both the presidential campaign and leadership PAC "would have been allocable between the two committees"); Advisory Op. 1985-40 (Republican Majority Fund) at 8-9 (leadership PAC required to allocate travel costs where individual holds private meetings for testing-the-waters activities in conjunction with appearances on behalf of federal candidates).

<sup>74</sup> AO 1986-06 at 4-5.

<sup>75</sup> *Id.* at 4.

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1 incidental "public statements" referring to an individual's "possible intent to campaign for  
2 Federal office" and activities such as "soliciting funds, holding meetings (which constitute more  
3 than incidental contacts) with individuals or the press regarding such a potential  
4 candidacy . . . ." <sup>76</sup>

5 The record supports a reasonable inference that PV PAC and/or PV Corp. likely funded  
6 some of Santorum's testing-the-waters activities. As discussed above, in October 2014,  
7 Santorum reportedly met with supporters to discuss a possible candidacy during a trip to  
8 Ridgeland, Mississippi where he also participated in a PV PAC fundraiser. Because Santorum  
9 for President has not reported any testing-the-waters expenses for 2014, Santorum may have  
10 used PV PAC to pay for the entire trip to Mississippi.

11 In addition, given that Santorum was also testing the waters when he made his speeches  
12 at the South Carolina Tea Party Convention, CPAC, and the Iowa Freedom Caucus, Santorum  
13 should have paid for expenses relating to his exploratory efforts with funds that complied with  
14 the Act's prohibitions and limitations. Santorum did not establish a testing-the-waters account  
15 until April 2015. It is, therefore, reasonable to conclude that PV Corp. paid for his testing-the-  
16 waters activities because it has admitted that it sponsored both the Iowa Freedom summit and  
17 CPAC as well. <sup>77</sup> Further, given that PV PAC transferred over \$800,000 to PV Corp., PV PAC  
18 may have also funded those activities. Because Santorum's testing-the-waters activities involve  
19 travels throughout the country dating back to 2014, it is likely that PV PAC paid more than  
20 \$5,000 for such activities and made excessive contributions to Santorum.

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<sup>76</sup> *Id.*

<sup>77</sup> Resp. at 3-6; Maenza Aff. ¶¶ 12-13. PV PAC does not report any travel expenses in its 2015 Mid-Year Report.

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1           The Response contends that any reference to a potential candidacy occurred during a  
2 question and answer period during the CPAC conference, which was co-sponsored by PV Corp.,  
3 after Santorum made his speech. As described above, the record indicates otherwise. While he  
4 was responding to questions during a backstage interview at the South Carolina Tea Party  
5 Convention, the discussion regarding his potential candidacy did not occur in an incidental  
6 manner. Rather, Santorum participated in an on-camera interview, which under Commission  
7 guidance, is akin to a meeting with the press and is not considered to be incidental.<sup>78</sup> Further, at  
8 the CPAC event, references to a potential candidacy extended beyond responses to a question  
9 from the audience during Santorum's speech because the speech itself urges support for a  
10 possible candidacy.

11           Under these circumstances, we recommend that the Commission find reason to believe  
12 that PV Corp. violated 52 U.S.C. § 30118(a) by making prohibited contributions, PV PAC  
13 violated 52 U.S.C. § 30116(a)(2) by making excessive contributions, and Santorum and  
14 Santorum for President violated those same provisions by accepting prohibited and excessive  
15 contributions.

16           **C.     It is Unclear Whether PV PAC Made Excessive In-Kind Contributions to**  
17           **Santorum in Violation of 11 C.F.R. § 110.2(l)**  
18

19           In addition to alleging that Santorum failed to comply with rules governing testing-the-  
20 waters activities, the Complaint suggests that PV PAC made excessive in-kind contributions to  
21 Santorum under 11 C.F.R. § 110.2(l),<sup>79</sup> which governs certain “[p]re-candidacy expenditures by

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<sup>78</sup> See AO 1986-06 at 4 (activities such as “soliciting funds, holding meetings (which constitute more than incidental contacts) with individuals or the press regarding such a potential candidacy” do not constitute incidental contacts and should be attributed to the potential candidate).

<sup>79</sup> Compl. at 8, 11-12.



1 multicandidate political committees deemed in-kind contributions.” Under this regulation, a  
2 payment by a multicandidate political committee is an in-kind contribution to and an expenditure  
3 by a Presidential candidate, although made before he or she becomes a candidate, if three  
4 conditions are met: 1) the expenditure is made on or after January 1 of the year following the  
5 last Presidential election year; 2) with respect to goods or services involved, the candidate  
6 accepted or received them, requested or suggested their provision, or was materially involved or  
7 involved in substantial discussion about providing them; and 3) the goods or services are -  
8 a) polling expenses; b) compensation paid to employees, consultants, vendors for “services  
9 rendered in connection with establishing and staffing offices in States where Presidential  
10 primaries . . . are to be held, other than offices in the candidate’s home state” or DC; or  
11 c) administrative expenses, including rent, utilities, office supplies and equipment, in connection  
12 with establishing and staffing offices described in subsection (b).<sup>80</sup> Travel is not a qualified  
13 expenditure under Section 110.2(l).

14 Here, the evidence is unclear as to whether PV PAC paid for any expenses on behalf of  
15 Santorum that would qualify as non-travel pre-candidacy expenditure under section 110.2(l). In  
16 PV PAC’s disclosure reports, there are numerous disbursements from the contribution account  
17 relating to payments for consultants, vendors, and compensation to staff. There is no indication  
18 in the disclosure reports, however, that the payments to consultants who appear to be located in  
19 the primary states of Connecticut, Georgia, Indiana, Ohio, Maryland, or Virginia are connected  
20 to establishing offices in those states. We have found no expenditures for polling.

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<sup>80</sup> 11 C.F.R. 110.2(l)(1). If a candidate, through his authorized committee, reimburses the multicandidate committee within 30 days of becoming a candidate, a payment by the multicandidate committee will not constitute an in-kind contribution. *Id.* § 110.2(l)(2).

1           Thus, under the circumstances, we recommend that the Commission take no action at this  
2 time with respect to the allegation that PV PAC made, and Santorum, and the Santorum  
3 Committee accepted, an excessive in-kind contribution resulting from PV PAC's payment of  
4 certain pre-candidacy expenses. Should we uncover any evidence during the course of the  
5 investigation that PV PAC made payments on Santorum's behalf that qualify as pre-candidacy  
6 expenditures under 110.2(1), we will make the appropriate recommendation.

7           **D.     There is Insufficient Information to Conclude that Santorum Triggered**  
8           **Candidacy Prior to May 2015**

9           The testing-the-waters exemption is no longer available to individuals who have made a  
10 decision to become a candidate.<sup>81</sup> The Commission, in deciding whether an individual is no  
11 longer testing the waters and has made a decision to run for federal office, assesses an  
12 individual's objectively deliberate actions to discern whether and when an individual decided to  
13 become a candidate.<sup>82</sup> Commission regulations set forth a non-exhaustive list of activities that  
14 indicate that an individual is no longer testing the waters and has decided to become a candidate.  
15 Such indicia include: (1) using general public political advertising to publicize his or her  
16 intention to campaign for federal office; (2) raising funds in excess of what could reasonably be  
17 expected to be used for exploratory activities or undertaking activity designed to amass  
18 campaign funds that would be spent after he or she becomes a candidate; (3) making or  
19 authorizing written or oral statements that refer to him or her as a candidate for a particular

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<sup>81</sup> See Advisory Op. 2015-09 (Senate Majority PAC and House Majority PAC) at 5 ("AO 2015-09"); see also Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (exemption "explicitly limited 'solely' to activities designed to evaluate a potential candidacy").

<sup>82</sup> See 11 C.F.R. §§ 100.72(b), 100.131(b).

1 office; (4) conducting activities in close proximity to the election or over a protracted period of  
2 time;<sup>83</sup> and (5) taking action to qualify for the ballot under state law.<sup>84</sup>

3 Because Santorum's statements leave open the question of when he made a determination  
4 to run for president, we do not believe we have sufficient facts at this time to make a  
5 recommendation that Santorum became a candidate before May 28, 2015. Further, while the  
6 Complaint alleges that Santorum raised funds through the Patriot Voices entities in amounts that  
7 would trigger candidacy, the record is still unclear as to exactly how much PV Corp. or PV PAC  
8 raised or spent for Santorum's exploratory or campaign activities. Consequently, we recommend  
9 that the Commission take no action at this time with respect to the allegations that Santorum and  
10 Santorum for President failed to timely register and report with the Commission. Finally,  
11 because the Act's soft money prohibitions only apply to a "candidate," we also recommend that  
12 the Commission take no action at this time with respect to the allegation that Santorum violated  
13 52 U.S.C. § 30125(e). If during the course of the investigation we uncover evidence indicating  
14 that Santorum had become a candidate prior to May 2015, we will make the appropriate  
15 recommendations.

#### 16 IV. INVESTIGATION

17 An investigation would focus on Santorum's activities as they relate to his decision to  
18 seek the Republican presidential nomination in 2016. Specifically, we intend to examine  
19 Santorum's involvement with PV Corp. and PV PAC and determine whether either entity played

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<sup>83</sup> The Commission has advised that there is no specific time limit for such activities, and the length of time spent testing the waters is but one factor in determining whether an individual becomes a candidate. AO 2015-09 at 6.

<sup>84</sup> 11 C.F.R. §§ 100.72(b), 100.131(b); *see also* AO 1981-32 at 4 (explaining that the regulation distinguishes "activities directed to an evaluation of the feasibility of one's candidacy . . . from conduct signifying that a private decision to become a candidate has been made").

1 any role (including providing funds to cover expenses) in connection with his visits to, and  
2 appearances in, key caucus and primary states. We also intend to investigate the extent to which  
3 PV Corp., PV PAC or any other as yet unknown entity provided Santorum with funds, or  
4 provided staff, services and/or equipment to assist Santorum as he tested the waters. We will  
5 seek to conduct our investigation through voluntary means, but recommend that the Commission  
6 authorize the use of compulsory process, including the issuance of appropriate interrogatories,  
7 document subpoenas, and deposition subpoenas, as necessary.

8 **V. RECOMMENDATIONS**


- 9 1. Find reason to believe that Richard John "Rick" Santorum violated 11 C.F.R.  
10 §§ 100.72(a) and 100.131(a) and that Santorum for President 2016 and Greg Rothman  
11 in his official capacity as treasurer violated 52 U.S.C. § 30104; .
- 12 2. Find reason to believe that Patriot Voices, Inc. violated 52 U.S.C. § 30118(a);
- 13 3. Find reason to believe that Richard John "Rick" Santorum, Santorum for President  
14 2016, and Greg Rothman in his official capacity as treasurer violated 52 U.S.C.  
15 § 30118(a)
- 16 4. Find reason to believe Patriot Voices PAC and Nadine Maenza in her official  
17 capacity as treasurer violated 52 U.S.C. § 30116(a) ;
- 18 5. Find reason to believe that Richard John "Rick" Santorum, Santorum for President  
19 2016, and Greg Rothman in his official capacity as treasurer violated 52 U.S.C.  
20 § 30116(f);
- 21 6. Take no action at this time with respect to the allegation that Richard John "Rick"  
22 Santorum violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a) and that  
23 Santorum for President 2016 and Greg Rothman in his official capacity violated  
24 52 U.S.C. §§ 30103(a) and 30104;
- 25 7. Take no action at this time with respect to the allegation that Richard John "Rick"  
26 Santorum violated 30125(e);
- 27 8. Approve the attached Factual and Legal Analysis;
- 28 9. Authorize the use of compulsory process; and
- 29 10. Approve the appropriate letters.

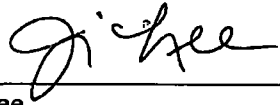
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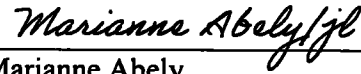
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Date: 5/12/2017

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