



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of 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, and Patriot Voices, Inc.

)
)
)
)
)
)
)

MUR 6928

**STATEMENT OF REASONS
OF CHAIR ELLEN L. WEINTRAUB**

In the run-up to the 2016 election, the Federal Election Commission (FEC) received a flood of complaints about presidential candidates alleged to be using a variety of dubious methods to fund their early activities without concerning themselves with the laws restricting them to hard money and requiring them to disclose the sources of funds and details of their spending. Some of these complaints implicated the Commission’s “testing the waters” regulations, raising questions as to whether individuals could be said to be in a “pre-candidacy” stage or whether they had already become candidates.

In this matter, Rick Santorum took things a step further and argued he was engaged in *pre-pre-candidacy*. But “pre-pre-candidacy” is not a thing. The FEC’s Office of General Counsel (OGC) concluded that Santorum’s toes had been in the water for months before April 2015, when he says he first dipped them in. I agree.

My Republican colleagues disagreed, and blocked enforcement in this matter. Worse, before doing so, they dragged this case out interminably. OGC recommended on May 15, 2017, that the Commission find reason to believe the law was violated and investigate this case. But it took *nearly two years*, until February 5, 2019, to get my colleagues to vote on this matter. Then, having failed

to lift a finger to pursue any of the allegations, my Republican colleagues voted against taking any action and the Commission closed the file.²

Worse still, most of the 2016 testing-the-waters matters remain unresolved while we get lapped by the next presidential cycle. Numerous individuals have already declared their candidacies for the 2020 presidential election. We appear to be largely past the 2020 testing-the-waters phase.

Whether we fail to do anything (as we unfortunately did in this case) or we actually muster the votes to investigate or seek penalties, the failure to resolve, one way or the other, the 2016 testing-the-waters cases until after the issue has become irrelevant to the 2020 race is an abject failure of the FEC's responsibility to the public, the complainants, the respondents, and every other candidate who is seeking to comply with the law. Our counsel's recommendations in this case were sound, and, if anything, modest in their scope. I was ready to vote years ago.

* * *

On May 28, 2015, Rick Santorum filed his Statement of Candidacy for President with the Commission.³ He asserts that he began testing the waters for this potential 2016 run in April 2015 – just a month before declaring his candidacy.⁴ After reviewing the complaint, response, and public records, OGC determined that Santorum had engaged in testing-the-waters activities for at least several months prior to April 2015, activities that went unreported by his Committee, Santorum for President 2016.⁵ Santorum claimed that this activity was conducted during a “pre-pre-candidacy phase,” a previously unknown status that, according to him, has no limits and does not require reporting.⁶ Again: not a thing. It is a made-up construct that even my Republican colleagues should have been able to see through. In reality, Santorum was dodging the requirements of Federal campaign finance law.

Under Federal campaign finance law, an individual becomes a candidate when he or she has received or made contributions or expenditures in excess of \$5,000.⁷ Candidates are required to

² See Certification in MUR 6928 (Richard John “Rick” Santorum, *et al.*), dated February 5, 2019. The Commission's Office of the General Counsel recommended the Commission find reason to believe that Santorum for President violated 52 U.S.C. § 30104(a) and 11 C.F.R. §§ 100.72 and 100.131 by failing to file reports of receipts and disbursements covering the testing-the-waters period, among other recommendations. First Gen. Counsel's Rpt. at 28, MUR 6928 (Santorum) (May 12, 2017). My colleagues, however, did not support that recommendation or any others. As a result, we lacked the requisite four votes to take Commission action and closed the file. I also voted to find reason to believe that Santorum violated 11 C.F.R. §§ 100.72 and 100.131 by using non-federal funds to test the waters; PV Corp. and PV PAC made, and Santorum and Santorum for President accepted, excessive and/or prohibited contributions in violation of 52 U.S.C. §§ 30116(a), (f) and 30118(a); Santorum violated 52 U.S.C. § 30102(e)(1) by failing to timely file a Statement of Candidacy and designate a principal campaign committee; Santorum for President violated 52 U.S.C. §§ 30103(a) and 30104 by failing to timely file a Statement of Organization and disclosure reports; and Santorum, PV Corp., and PV PAC solicited, received, directed, transferred, or spent non-federal funds in connection with a federal election in violation of 52 U.S.C. § 30125(e)(1).

³ See Richard J. Santorum, Statement of Candidacy (May 28, 2015).

⁴ Resp. at 2.

⁵ First Gen. Counsel's Rpt. at 13-21, MUR 6928 (Santorum) (May 12, 2017).

⁶ Resp. at 8.

⁷ 52 U.S.C. § 30101(2).

file a Statement of Candidacy with the Commission within fifteen days.⁸ The Commission has established a limited exception to these rules for testing-the-waters activities. An individual need not file reports while engaged in activities that are “*solely* for the purpose of determining whether an individual should become a candidate.”⁹ Importantly, “[t]he individual shall keep records of all such funds received,” and “[i]f the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act” and must be reported after triggering candidacy in the first report filed by the committee.¹⁰ Thus, only hard money, that is, funds that are subject to the contribution limits and source restrictions of the Act, may be used for testing the waters.

Starting in October 2014, Santorum made a series of public comments that indicated that he was exploring a potential campaign.¹¹ By January 2015, he was reportedly holding a series of meetings with friends, advisers, and former staff to discuss a potential 2016 run.¹² This allegedly included a meeting during which he and a group of advisers spent hours planning a possible run and mapping out the details.¹³ By the end of January and early February, Santorum was speaking at prominent Republican events like the Conservative Political Action Conference alongside other prospective presidential candidates.¹⁴

The First General Counsel’s Report in this case details these activities and concludes: “In sum, in as early as August 2014, Santorum was meeting with supporters and attending public events throughout the nation where he discussed a potential 2016 candidacy.”¹⁵ On January 19, 2015, for example, in advance of a speech at the South Carolina Tea Party Coalition Convention, Santorum gave an interview that featured the following exchange, acknowledging that he was neck-deep in his decision on whether to run for President:

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

Santorum: You know I heard that 4 years ago when . . . There’s all these folks who could run. There’s all these folks who are gonna run, and you’re not a national figure. You’ve never run for president before. People didn’t know who you were. You weren’t in elected office yet. You had no chance. We ended up being the last man standing and having won eleven of 30 states we competed in

⁸ 11 C.F.R. § 101.1(a).

⁹ 11 C.F.R. §§ 100.72, 100.131 (emphasis added).

¹⁰ *Id.*

¹¹ 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/>.

¹² Comp. at ¶¶ 5-7.

¹³ Comp. at ¶ 7.

¹⁴ Comp. at ¶ 9.

¹⁵ First Gen. Counsel’s Rpt. at 21, MUR 6928 (Santorum) (May 12, 2017).

and had we had a couple of extra dollars and not being outspent four and five to one, it might have been a different story. So, I don't really worry too much about that. *The decision making process we're going through really has nothing to do with who else is in the race. People asked me the other day what role do you want to play in this election? And I look back and I say, the winner.*¹⁶

Santorum allegedly funded his testing-the-waters activities through two organizations, Patriot Voices Inc., a 501(c)(4) non-profit corporation he founded and served as a co-chairman of until May 2015, that had receipts and expenses of over a million dollars in 2015, and a multicandidate committee – Patriot Voices PAC – which transferred most of its funds between 2012 and 2016, \$825,000, to Patriot Voices Inc.¹⁷ Notably, the purported multi-candidate committee conducted negligible activity in support of any candidate other than Santorum.¹⁸ None of this activity was reported by the Committee to the Commission. In fact, Santorum did not establish a testing-the-waters account until April 2015 and his authorized committee did not report any testing-the-waters activities that occurred before that time.¹⁹

The record clearly indicates that Santorum began testing the waters prior to April 2015, and thus his Committee failed to file reports of receipts and disbursements covering the testing-the-waters period with the Commission. Most significantly, the Commission should have investigated whether these testing-the-waters activities were supported by impermissible or excessive contributions. For these reasons, I voted to find reason to believe that Santorum, Santorum for President 2016, Patriot Voices PAC, Patriot Voices, Inc., and the committee treasurers violated the law.

March 22, 2019



Ellen L. Weintraub
Chair

¹⁶ *Id.* at 18.

¹⁷ Comp. at ¶¶ 12-13; *see also* First Gen. Counsel's Rpt. at 7, MUR 6928 (Santorum) (May 12, 2017).

¹⁸ First Gen. Counsel's Rpt. at 12, MUR 6928 (Santorum) (May 12, 2017).

¹⁹ Resp. at 2.