

BEFORE THE
FEDERAL ELECTION COMMISSION

American Democracy Legal Fund,

Complainant

v.

Republican National Committee et al.,

Respondents

MUR 6888

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COMMISSION

RESPONSE OF SANTORUM FOR PRESIDENT 2016
TO
COMPLAINT & SUPPLEMENTAL COMPLAINT(S) OF
AMERICAN DEMOCRACY LEGAL FUND

On October 14, 2014, the American Democracy Legal Fund ("ADLF" and/or "the Complainant"), filed a complaint against the Republican National Committee and other respondents in this matter, alleging that the respondents had violated the law governing Federal Election Campaigns, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I ("the Act"), specifically involving the law and the regulations of the Federal Election Commission ("FEC" or "the Commission") governing coordinated public communications. See Complaint, pp.1-2. A Supplemental Complaint was filed on August 28, 2015 against Santorum for President 2016 and its Treasurer Greg Rothman (the "Santorum Campaign"), naming it as an additional respondent in the MUR.

For any complaint to be considered by the Commission, certain elements are legally required. It must:

- contain facts that clearly identify as a respondent each person or entity who is alleged to have committed a violation;
- contain a clear and concise recitation of the facts which describe a violation of statute or regulation by the person or entity named as a respondent; and
- be accompanied by any documentation supporting the facts alleged.¹

¹ See 11. C.F.R. §111.4(d) and MUR 5878, SOR of McGahn, Hunter, and Peterson (available here: <http://efs.fec.gov/efsdocsMUR/13044342628.pdf>)

Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's good faith belief in the truth of such statements. Id.

Furthermore, in MUR 4960, the Commission stated the following:

"The Commission may find "reason to believe" *only if* a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge *must* identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented." (emphasis added) ²

By all accounts, the Complaint and Supplemental Complaints are wholly deficient and fail to meet the legally required standard.

The Supplement to the Complaint's sole evidentiary fact related to the Santorum Campaign is a news article that does not even *reference* the Santorum Campaign by name. The Supplement to the Complaint states:

"Additionally, according to press reports, eleven authorized committees of Republican Presidential candidates have also entered into agreements with the Data Trust, i360, or both.¹¹ These candidates are also named as Respondents."

Then, as the *source* for naming the Santorum Campaign as a Respondent, Complainant includes this footnote:

¹¹ See Sasha Issenberg, *Why Isn't Rand Paul Making a Data Deal with the GOP?*, Bloomberg Politics (July 24, 2015), available at <http://www.bloomberg.com/politics/articles/2015-07-24/why-isn-t-rand-paul-making-a-data-deal-with-the-gop->. According to RNC officials, eleven candidates have entered into data agreements with the GOP Data Trust. See id.; see also Gold, *supra* note 7. RNC officials identified Donald Trump, Senator Lindsey Graham, former New York Governor George Pataki, and former Virginia Governor Jim Gilmore as the major Republican candidates who have not entered into such agreements. The remaining candidates who have apparently retained the Data Trust and therefore are passing their critical voter data to i360 and i360's outside organization clients are named as Respondents.

That's it. Nothing else. A press release and a footnote. And the Santorum Campaign is not even mentioned in the news article referenced in the footnote to the Supplemental Complaint!

There is not a single factual assertion regarding the supposedly 'non-public' information the Santorum Campaign allegedly provided to i360 which were then ostensibly used in some third party public communication. And, in fact, there is not a single fact that would tie the Santorum Campaign to i360 in *any* way.

² See MUR 4960 (Hillary Rodham Clint For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom,, Bradley A. Smith and Scott E. Thomas at 1

There is no allegation that there were or have been any payments from the Santorum Campaign to i360 nor that there have been any public communications by a third party regarding the Santorum Campaign that somehow related to i360. And, in fact, there are no such facts in existence.

It is clear that i360 is not a "common vendor" as defined under 11 C.F.R. 109.21(d)(4) because it does not (and did not) "create, produce, or distribute" communications. Instead, the Complaint makes the following utterly baseless claim on page 6 of the complaint:

"Reports filed with the Commission have revealed the identities of the Republican state party committees and federal candidate committees that are using i360's voter database, and *therefore, passing on crucial non-public voter information* to i360's other "independent" clients, entities that are legally prohibited from coordinating with the party and candidate committees."... Page 6, ADLF Supplemental Complaint

The Complaint makes this assertion without identifying a single payment by the Santorum Campaign to i360, nor a payment by any entity for any public communication(s) involving the Santorum Campaign and with not a single fact or any evidence to support the bald conclusions in the Complaint or its Supplements.

There is no factual assertion whatsoever of how the Santorum Campaign supposedly provided 'proprietary, non-public information' to / through i360 which then resulted in a public communication regarding the Santorum Campaign, or which meets any of the prongs of the FEC's multi-prong test for ascertaining whether a coordinated public communication has occurred.

There are no facts of a public communication paid for by a third party, which communication would necessarily be required to meet the content and conduct standards of the FEC's regulations governing 'coordinated public communications'. See 11 C.F.R. §100.21. The Complaint fails to allege facts or a legal theory that would actually constitute a violation of the law.

In summary, the Supplemental Complaint utterly fails to meet any of the requirements necessary for the Commission to pursue further action against the Santorum Campaign and the Commission must dismiss the complaint against it.

THEREFORE, Santorum for President respectfully requests that it be dismissed from the Supplemental Complaint and that the Commission award it attorneys' fees incurred in responding to ADLF's frivolous and wholly baseless complaint.

Respectfully submitted this 12th day of November 2015.

BY:



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