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December 27, 2006

**BY HAND DELIVERY**

Lawrence H. Norton, Esq.  
Office of General Counsel  
Federal Election Commission  
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AOR 2007-01

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FEDERAL ELECTION  
COMMISSION  
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COUNSEL

2006 DEC 27 P 12:34

**Re: Advisory Opinion Request**

Dear Mr. Norton:

We are writing on behalf of Senator-Elect Claire McCaskill and McCaskill for Auditor.<sup>1</sup> Pursuant to 2 U.S.C. § 437f, we seek an advisory opinion on whether the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations permit McCaskill for Auditor and its agents (including Senator-Elect McCaskill) to raise funds in accordance with Missouri law for the sole purpose of retiring the existing debt of McCaskill for Auditor, including debt that is owed to Senator-Elect McCaskill.

As a federal candidate or officeholder, Senator-Elect McCaskill, McCaskill for Auditor, and their agents are potentially subject to the restrictions of Section 441i(e)(1) of the Act, which states:

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<sup>1</sup> McCaskill for Auditor is a committee established under Missouri state law. It was established in preparation for a re-election campaign for state auditor. Debt previously held by Friends of McCaskill, which was the principal campaign committee for Senator-Elect McCaskill's previous candidacy for governor and state auditor, was transferred to it.

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A candidate, individual holding Federal office . . . or an entity established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not . . . solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds (i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of [2 U.S.C. § 441a(a)]; and (ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

2 U.S.C. § 441i(e).

Section 441i(e)(1) does not apply, under certain conditions, to federal candidates or officeholders who are also current or former state or local candidates:

Paragraph (1) [section 441i(e)(1)] does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

2 U.S.C. § 441i(e)(2).

Because Senator-Elect McCaskill was a candidate for state office, and the funds will be solicited, received, and spent solely in connection with retiring debt that remains from her candidacy for election to state office, Senator-Elect McCaskill and McCaskill for Auditor seek confirmation from the Commission on the following:

1. May McCaskill for Auditor and its agents (including Senator-Elect McCaskill) raise, receive and spend funds in accordance with Missouri state law for the sole purpose of retiring debt to McCaskill for Auditor which remains from her candidacy for state office?

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2. In the alternative, may McCaskill for Auditor and its agents raise funds from federally permissible sources in amounts of up to \$2100?
3. What restrictions apply to the content of solicitations for McCaskill for Auditor's debt retirement?
  - (a) Assuming that the answer to question 1 is yes, would solicitations that refer to "Senator-Elect McCaskill" or eventually "Senator McCaskill" meet the requirements of section 441i(e)(2), provided that there was no reference to her as a federal candidate?
  - (b) Will the solicitations be subject to 2 U.S.C. § 441i(f)'s restrictions on promoting or supporting Senator-Elect McCaskill? If so, would references to Senator-Elect McCaskill's successful candidacy as state auditor be permissible, provided that no references to her federal candidacy were made?
  - (c) Given the timing of the solicitations, it is unlikely that any solicitations referring to Senator-Elect McCaskill would meet the definition of "coordinated communication" under 11 C.F.R. § 109.21. Nonetheless, would the safe harbor for fundraising under 11 C.F.R. § 109.21(g) be available, even though the fundraising would not be for another individual?
  - (d) What other restrictions, if any, would apply to the way that the solicitations refer to Senator-Elect McCaskill?

Thank you for your consideration of this matter.

Very truly yours



Marc E. Elias  
Caroline P. Goodson  
Counsel to the Committee



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 m>

01/09/2007 06:45 PM

To <dpugh@fec.gov>  
 cc "Elias, Marc \Perkins Coie)" <MElias@perkinscoie.com>, <SShin@fec.gov>, <rknop@fec.gov>  
 bcc  
 Subject RE: Advisory opinion request from Sen. McCaskill and McCaskill for Auditor

Duane,  
 Yes, that's correct. Senator McCaskill's next election is in 2012, and the debt retirement should be completed long before then, so there is no plan to solicit for McCaskill for Auditor's debt retirement within 90 days of any election in which Senator McCaskill will be a candidate.  
 Thanks,  
 Caroline

Caroline Goodson  
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**From:** dpugh@fec.gov [mailto:dpugh@fec.gov]  
**Sent:** Tuesday, January 09, 2007 6:36 PM  
**To:** Goodson, Caroline (Perkins Coie)  
**Cc:** Elias, Marc (Perkins Coie); SShin@fec.gov; rknop@fec.gov  
**Subject:** Advisory opinion request from Sen. McCaskill and McCaskill for Auditor

Dear Caroline,

This email is to confirm our conversation today in which we clarified the anticipated timing of the McCaskill for Auditor solicitations. Specifically, you confirmed that the McCaskill for Auditor committee does not plan to issue the solicitations within 90 days or fewer before an election in which Senator McCaskill is a candidate.

Please contact me if I have misunderstood our conversation, or if you have questions about the advisory opinion request.

Thank you,

**Duane**

**J. Duane Pugh Jr.  
Acting Assistant General Counsel  
Policy Division—Office of General Counsel**

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