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January 14, 2011

BY MESSENGER

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington DC 20463

AOR 2011-02

OFFICE OF GENERAL
COUNSEL

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FEDERAL ELECTION
COMMISSION

Re: Request for Advisory Opinion

Dear Members of the Commission:

We represent the Scott Brown for U.S. Senate Committee, Inc. ("Committee"). The Committee seeks guidance from the Commission to assure compliance with the Federal Election Campaign Act of 1971, as amended, and Commission regulations regarding the upcoming marketing and sale of Senator Brown's autobiography *Against All Odds*.

Facts

Senator Brown's book will be published on or about February 20, 2011 by Harper Collins, a major publisher, followed by a national book tour during the Senate's February recess. Senator Brown submitted his proposed agreement with the publisher for review and approval by the United States Senate Select Committee on Ethics. The Ethics Committee determined that the agreement adheres in all respects to the traditional standards and practices in the publishing industry and that it is permissible for Senator Brown personally to accept royalty payments pursuant to the agreement. The agreement provides for payment of advances by the publisher to Senator Brown, with additional advances if net sales of the hard cover edition in the United States exceed stated minimums within one year after initial publication. The agreement also provides for payments of royalties to the author of a stated percentage of net sales revenue from copies of the book sold in hardback, paperback, electronic format, audio, and downloadable recordings. The Ethics Committee also determined that the publisher was selected in accordance with a traditional arms-length publishing auction. The Ethics Committee further determined based on information provided on behalf of Senator Brown that the publishing agreement does not contain provisions that differ in any material respect from the usual and customary provisions typically prepared by the publisher in connection with similar non-fiction works.

In accordance with the Ethics Committee approval, Senator Brown may receive actual and necessary travel expenses from the publisher in connection with marketing or promotional appearances. Moreover, no Senate Rule would prohibit Senator Brown from engaging in promotional activities in connection with the book, so long as these activities are done on the Senator's own time, without use of Senate resources or facilities, and provided that the Senator has determined that they will not conflict or interfere with his duties as a Member of the Senate. To avoid combining or creating the perception of combining the Senator's promotional and officially-related duties, the book promotional activities will be limited, as a general matter, to publisher-sponsored book signing tours, private book signing parties, and other similar, commercial, or promotional settings. The Ethics Committee has determined that in the case of bulk sales of a Member's book to a state or federal political action committee, or to the Member's principal campaign committee, a Member must refuse or donate to charity all royalties derived in any way, from the sale of his book to such entities.

Opinions Requested

In view of these facts, together with additional facts described in each inquiry below, the Committee requests an Advisory Opinion from the Commission with respect to each of the following scenarios:

1. Committee Purchase or Bulk Purchase of Books: The Committee proposes to use campaign funds to purchase up to several thousand copies of the book to be used solely in campaign related activities, such as distributing signed and unsigned copies to financial contributors and other "political supporters" as "thank you" gifts. All such uses of the book by the Committee will be for the purpose of influencing a Federal election, and the quantity purchased will not exceed the number needed for those campaign purposes. The bulk rate the Committee will pay is the standard fair market price that the publisher, under normal industry practice, makes available on equal terms to large purchasers that are not political organizations or committees. If a bulk purchase is not made, the Committee will pay the usual retail price for the book. The publisher has informed us that it can either (a) refrain from crediting the Senator any royalties or applying such sales to escalate the royalty calculation or, alternatively, (b) make the royalty payment to Senator Brown for the sole purpose of his donating such proceeds to charity without escalating the royalty calculation. In the event Senator Brown donates all such proceeds to charity, he will not claim any charitable deduction. Please let me know if he must forego all proceeds entirely or whether he may receive and then donate such proceeds to charities of his choice without taking any charitable deduction benefit.
2. Use of Committee Web Site and Social Media Sites: The Committee hosts a website as well as other social media sites such as Twitter and Facebook. These

sites display a significant volume of information which are not related in any way to the book. The Committee proposes to post a relatively *de minimus* amount of material relating to promotion of the book at a *de minimus* cost to the Committee on the Committee's website and social media sites. We are mindful of AQ2006-7 (Hayworth) which permits such uses for websites but wish to have the Commission's guidance whether social media sites such as Twitter and Facebook similarly may contain such *de minimus* amounts of material posted on otherwise substantial sites.

3. Use of Committee Email and Mailing Lists: The Committee database includes email and mailing addresses for thousands of persons who have contributed to the Committee from across the United States. The Committee would like to know whether and on what terms it properly may allow use of its email and mailing lists to promote Senator Brown's book in three instances:
 - (a) If Senator Brown personally reimburses the Committee for the fair market value of its email and mailing lists, based on an independent list appraisal, may he use email and mailing lists to promote the sale of his book;
 - (b) If Senator Brown is not permitted to reimburse the Committee for such lists, may the Committee send an email alert to its supporters who reside in or near any city or town where Senator Brown will appear for a book signing for promotional activity, inviting them to meet Senator Brown, while he is in the area but without directly soliciting or linking to sale of the book;
 - (c) If neither (a) nor (b) is permitted, the publisher has informed us that it can deduct from Senator Brown's royalties without escalating the royalty calculation any sales that are generated in response to emails sent by the Committee to its supporters. In such circumstance, may the Committee alert by email its supporters that Senator Brown will be visiting their area and include a link to promote sale of the book?
4. Political and Fundraising Events During Book Promotional Tour: The publisher will pay the actual and necessary travel expenses in connection with marketing or promotional appearances. All of Senator Brown's air travel is planned to occur on commercial airlines at ordinary commercial rates. During visits to some cities on the tour, the Committee would like to host campaign fundraising events. The principal reason for Senator Brown to travel to a particular city is to promote the book and any attendance at a fundraiser would merely be ancillary to his presence in that area. In the circumstances, and assuming that participation in fundraising events adds zero cost to the costs that otherwise would be incurred by the



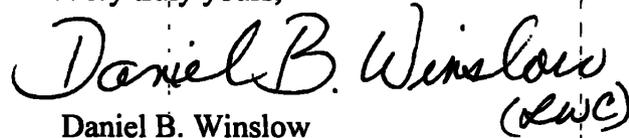
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publisher for travel, is there any restriction on Senator Brown's ability to host fundraiser events while he is present in a particular city for the book tour? If there is such a restriction, may the Committee pay the cost of the round-trip air travel for any leg (i.e., city to city) of the book tour that involves any fundraising activities to assure compliance?

5. Collection of Email Data at Book Signing Events: May the Committee collect email addresses from people who attend the book signing events, for purposes of future solicitation? If not, is there any step that the Committee may undertake to allow it lawfully to collect such email addresses?

Please do not hesitate to call me if you need any additional information to consider this request. Given the short time remaining before the tour is scheduled to commence, we invite the Commission to bifurcate this request as needed so that we may have the benefit of the Commission's earliest guidance where possible even if additional consideration is required for other portions of this request. Thank you in advance for your assistance regarding this matter.

Very truly yours,


Daniel B. Winslow (dwc)

DBW/svm

cc: Amy Pike, FEC Congressional Liaison



"Winslow, Daniel B."
<dwinslow@proskauer.com>
01/21/2011 11:14 PM

To jselinkoff@fec.gov
cc
bcc

Subject FEC Additional Information

History:

This message has been forwarded.

Dear Ms. Selinkoff,

Thank you for calling my office in connection with our pending request for an Advisory Opinion from the Commission. As we discussed, this email will confirm the following additional information for the Commission's consideration in rendering its decision, in supplementation of our letter already on file:

1. Proskauer has dual representation of Senator Brown personally as well as his political committee, the Scott Brown for US Senate Committee, Inc. Please consider the AO request as a request made both by Senator Brown individually as well as his Committee. For ease of reference, both will be referred to in our request as the "Committee" unless otherwise noted.

2. The Committee would like to utilize social media to promote the Senator's book as described in our request. By way of background, the principal social media capabilities involve Facebook (www.facebook.com), Twitter (www.twitter.com), LinkedIn (www.linkedin.com), and the Committee's website at www.scottbrown.com. Because those social media outlets involve new technology never squarely addressed by the Commission in the past, and with apologies for offering basic information if the Commissioners already are familiar with these means of communication, we will describe each outlet in a bit more detail to allow the Commission to consider application of the *de minimus* test that has been applied in website advisories in the past:

--Website: The Committee's website is available to the general public at www.scottbrown.com. The site displays information by tabs indicating more detailed information on News, Events, Issues, Contribute, Joining the Brown Brigade field team, and links to other social media sites such as Facebook and Twitter. There are dozens pages on the site and the site occupies more than a single screen size on most computers. The site is updated daily as needed. Any post regarding the book promotion would display on the home page with a link to jump interested readers to more information about the book. The home page post would be a fraction of the size of the home page, certainly no more than 1/4 of the page or smaller if so required by the Commission, and the link would direct interested readers to information regarding the book, how to purchase the book (if permitted by the Commission), where to meet Senator Brown while he is on the book tour, and the like.

--Facebook is a well-known social networking site where users can post information on a personal website to share with selected "friends" or "fans" rather than the general public. Senator Brown's Facebook fan page has over 297,000 fans and the site features more than 2,500 links to other websites, 7 tabs to direct the reader to more specific information such as the site's Wall (essentially a bulletin board where fans and friends can post notes), Info, Sign Up, Donate, Photos, Events and Video links. There are thousands of entries on the site's Wall and any post by the Committee would be displayed as a portion of the Wall or on the Info page, again constituting a fraction of no more than 1/4 of the page size of the Facebook page. In all other respects, the Facebook page would look and function as a website, with links for interested users to the Committee's website information regarding the book.

--Twitter is a bulletin board that allows users to post short messages and links of no more than 140 characters. The posts available to the general public who search for posts by @ScottBrownMA (the Committee's "handle" or designated user name) but more freely by persons who sign up to "follow" the Committee's posts. Each post is described as a "tweet". The @ScottBrownMA Twitter page includes

basic profile information and links, much like a website, and includes more than 27,000 followers and more than 950 tweets that can be viewed by followers (or by the general public upon a specific search for the name). Any post regarding the book would be in the form of a tweet or tweets (or retweets by any of Senator Brown's followers to their own network of followers) regarding Senator Brown's activities on the book tour (for example, if permitted by the Commission) "I'm at the bookstore in LA, come see me and say hello" as well as a link to the website information regarding the book. The tweets regarding the book would constitute less than 10% of the content of the Committee's Twitter page.

--LinkedIn is a networking site, primarily geared to persons in their businesses or jobs, while Facebook is more social in nature. The site appears as a webpage, with information about Scott Brown, his professional background, contact information, links to his website, recommendations regarding people, and his network of more than 500 persons to whom he is connected. Unlike the website, which is visible to the general public, the LinkedIn site only is available to users who have elected to participate in LinkedIn. Any post regarding the book would be small relative to the other content of the site, certainly less than 1/4 of a page of content, and any link would lead back to the authorized content on the Committee's website.

The Committee would like to maximize the political benefits of promoting Senator Brown's book by leveraging these social media sites, always with a *de minimus* amount of content related to the book in comparison with other site content. The substantive content of the posts/links depends on what the Commission will allow. In order of preference, the Committee would like to include content that (1) directs the reader to a website and/or physical location where the reader may purchase a book, for which Senator Brown would receive the ordinary and customary royalties and credit against royalties per his agreement with the publisher, or if that is not permissible; (2) directs the reader to a website where the reader may purchase a book, for which Senator Brown would donate any sales derived from that site to charity, forego any credits against royalties, and claim a charitable deduction if allowed or forego the charitable deduction if not allowed; or (3) directs the reader to a website/physical location with information regarding the book or book signing, but provides no explicit information regarding how to purchase the book, and Senator Brown would receive the ordinary and customary royalties per his agreement with the publisher. The publisher has advised the Committee that we can track the number of books sold via a website/URL and either abstain from royalties/credits or to make a like amount as charitable contributions if required. Unless there is a URL for such purposes, the Committee cannot otherwise track the number of books sold via Committee efforts.

3. The publisher will pay all costs ordinarily associated with a book tour, including travel costs and non-travel costs such as any facilities rental.

4. The Committee would like to collect email addresses from anyone who attends a book signing. To accomplish this data collection, the Committee could task a campaign staffer for that purpose to solicit voluntary collection of emails for any persons who wish to be kept apprised of the latest Committee news and activities. The Committee would not rely on the publisher to collect such data for disclosure to the Committee.

5. In addition to our question regarding email blasts, the Committee owns more than 8,000 cellphone numbers to which text messages can be sent to promote book sales, book signing events, and the like. When considering the Committee's pending request to blast emails to supporters, please also consider whether text message blasts also would be allowed.

Please do not hesitate to call me if you need any further information or we can be of any assistance. As we mentioned, given the need for Senator Brown to conduct his book tour when the Senate is on February recess, we request an expedited decision on these requests from the Commission.

Thank you in advance for your assistance.

Kindest regards,

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