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By Electronic Mail and Facsimile

Thomasenia P. Duncan, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 6216

Dear Attorney Duncan:

On behalf of the Martha Coakley for Senate Committee and its Treasurer, Nathaniel C. Stinnett, I write to respond to the complaint filed with the FEC by the Massachusetts Republican Party. I should note at the outset that this complaint is utterly baseless and without any merit whatsoever. This is the second attempt by the Massachusetts Republican Party to use state and federal agencies to gain leverage and score political points in a crassly partisan and unfortunate manner. As the complaint acknowledges, the Party first filed a complaint with the Massachusetts Office of Campaign & Political Finance. After that agency immediately rebuffed the transparent efforts to use its administrative processes for political gain by advising the Republicans that the Attorney General was in full compliance with the campaign finance law, the Republican Party then turned its attention to the Federal Election Commission. We understand that because the complaint met certain technical requirements, the FEC was required by law to notify the Respondents of its receipt by the FEC. We appreciate the opportunity to respond to this obvious political tactic by the Massachusetts Republican Party.

Testing the waters, or exploratory, expenditures are those made "to determine whether an individual should become a candidate. . ." 11 CFR100.131. "Before deciding to campaign for federal office, an individual may first want to 'test the waters' – that is, explore the feasibility of becoming a candidate. For example, the individual may want to travel around the state or district to see if there is sufficient support for his candidacy." Campaign Guide for Congressional Candidates, January 2009, Federal Election Commission. None of the expenditures in question were being used for testing the waters activities as that term is used in Regulations, Guides and Advisory Opinions issued by the Federal Election Commission.

The Martha Coakley Committee (the state political committee organized pursuant to Massachusetts General Laws C. 55) was not making these expenditures to test the waters, and these expenditures were made prior to the time she decided to become a federal candidate. Indeed, these expenditures covered a period of time when no vacancy even existed for which she might run. She was not, at that time, "an individual who seeks nomination for election, or election, to federal office . . . ." 2 U.S.C s. 431(2). This matter is clearly distinguishable from those matters where the Commission has concluded that an individual was a federal candidate. For example, unlike the facts set forth in FEC Advisory Opinion 2006-22, the Attorney General's website at that time did not remotely suggest she was a candidate for federal office. She had not made any media buys related to federal activity. She was not soliciting precinct captains or other such supporters. She was not attacking possible opponents. In short, she was not a candidate for federal office at that time.

Even individuals subject to FECA, because they are clearly candidates for federal office, enjoy a safe harbor from the application of the federal law when their activities are related to their state office. "Specifically, the restrictions of 2 U.S.C. 441i (e) (1) do not apply to any federal candidate or officeholder who is also a candidate for a state or local office so long as the solicitation, receipt or spending of funds: (1) is solely in connection with his state or local campaign; (2) refers only to him as a state or local candidate . . . and (3) is permitted under state law." 2 U.S.C. 441i (e) (2); 11 CFR 300.63; FEC Advisory Opinion 2005-12.

The expenditures made by The Martha Coakley Committee were consistent with all provisions of the Massachusetts campaign finance law, as would be expected of a Massachusetts statewide officeholder. "Such constitutional candidate committees may pay and expend money or other things of value for reasonable and necessary expenses directly related to the campaign of the candidate on whose behalf the committee is organized, provided that such expenditures are not primarily for the candidate's or any other person's personal use, and subject to any other prohibitions and limitations contained in M.G.L. c. 55 and 970 C.M.R. 2.00." 970 C.M.R. 2.05(2). "Reasonable and necessary expenses means those expenses which are not extreme or excessive and which are integral and central to the political campaign *for that public office* (emphasis supplied)." 970 C.M.R. 2.02.

The Complainant in this matter, the Massachusetts Republican Party, acknowledges that the Massachusetts Office of Campaign & Political Finance, which administers and enforces M.G.L. c. 55, the state campaign finance law, "cited A.G. Coakley's compliance with state election laws." The expenditures in question are appropriate expenditures under the state

campaign finance law because they are reasonable and necessary as well as integral and central to her campaign for Attorney General, the constitutional office which she holds.

The activities of The Martha Coakley Committee at that time were still within the framework of her Massachusetts public office and the relevant state campaign finance law. The activities did not trigger the application of the test the waters doctrine, or the registration and reporting requirements of FECA. Absent some evidence that an expenditure by a candidate's political committee is related to some other public office, it is reasonable to presume that such an expenditure is related to the elected public office which the individual currently holds.

Once Martha Coakley decided to run for the now vacant U.S. Senate seat, she immediately set to work to ensure that her activities were in full compliance with all provisions of FECA. For that reason, the Martha Coakley for Senate Committee immediately purchased from The Martha Coakley Committee a number of assets which would be used for the senate campaign, so that no unlawful contribution would occur should the federal committee utilize the website, database, fundraising, printing and other materials. If these goods were transferred to the Martha Coakley for Senate Committee without the committee paying the usual and normal charge, an unlawful contribution would have occurred. A federal campaign committee may not receive transfers of funds or assets from that candidate's nonfederal campaign committee. See 2 U.S.C. 100.52(d). 11 CFR 110.3(d). In making payments to The Martha Coakley Committee for these assets, the Martha Coakley for Senate Committee was doing precisely what the law required.

The Martha Coakley for Senate Committee has at all times complied with the provisions of the Federal Election Campaign Act, and regulations promulgated thereunder. The Martha Coakley Committee, established under state law, has at all times complied with the provisions of M.G.L. c. 55, the Commonwealth's campaign finance law. For the reasons stated above, the Martha Coakley for Senate Committee and its Treasurer, Nathaniel Stinnett, respectfully request that the Commission find No Reason to Believe that the Complaint sets forth a possible violation of the Federal Election Campaign Act, and accordingly, terminate the matter.

Very truly yours,

/s/

Cheryl M. Cronin