



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BY U.S. MAIL AND FACSIMILE (202) 654-9126**

**DEC 20 2012**

Marc E. Elias, Esq.  
Perkins Coie  
700 13th Street, N.W., Suite 600  
Washington, D.C. 20005-3960

RE: MUR 6497  
Claire McCaskill  
McCaskill for Missouri  
and Michelle Sherod in her  
official capacity as treasurer  
McCaskill for Missouri 2012  
and Michelle Sherod in her  
official capacity as treasurer

Dear Mr. Elias:

On September 8, 2011, the Federal Election Commission ("Commission") notified your clients Claire McCaskill, McCaskill for Missouri and Michelle Sherod in her official capacity as treasurer ("2006 Committee"), and McCaskill for Missouri 2012 and Michelle Sherod in her official capacity as treasurer ("2012 Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 18, 2012, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Claire McCaskill violated 2 U.S.C. § 434(b). Also on this date, the Commission dismissed the allegations that the 2006 Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose its receipts and disbursements, and dismissed the allegations that the 2012 Committee violated 2 U.S.C. § 434(b) by failing to report in-kind contributions. Accordingly, on December 18, 2012, the Commission closed the file in this matter.

Based on the information before the Commission, it appears that the 2006 Committee may have violated 2 U.S.C. § 434(b) by failing to accurately disclose its receipts and disbursements. The Commission cautions the 2006 Committee to take steps to ensure that its conduct is in compliance with the Act and Commission regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's


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Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Margaret Ritzert Howell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:**      McCaskill for Missouri 2012                      MUR: 6497  
                                 and Michelle Sherod in her  
                                 official capacity as treasurer  
  
                                 McCaskill for Missouri and  
                                 Michelle Sherod in her  
                                 official capacity as treasurer  
  
                                 Claire McCaskill

**I.        GENERATION OF MATTER**

                 This matter was generated by a complaint filed with the Commission by Lloyd Smith as  
the Executive Director of the Missouri Republican State Committee.

**II.       FACTUAL AND LEGAL ANALYSIS**

                 Claire McCaskill was a successful candidate for U.S. Senate in Missouri in 2006 and is  
running for re-election in 2012. McCaskill for Missouri and Michelle Sherod in her official  
capacity as treasurer ("2006 Committee") filed its Statement of Organization on September 20,  
2005, and has filed disclosure reports with the Commission since that date. It has filed two  
reports requesting termination, on July 15, 2011, and October 14, 2011.

**A.       2006 Committee's Late Reported Activity**

                 As summarized in the chart below, on July 15, 2011, the 2006 Committee amended five  
of its disclosure reports from the 2006 election cycle to disclose previously unreported receipts  
of \$298,729.45 and previously unreported disbursements of \$313,211.03.

| Report                   | Date of Amendment | Amount of Increased Receipts | Amount of Increased Disbursements | Total Increased Activity |
|--------------------------|-------------------|------------------------------|-----------------------------------|--------------------------|
| 2006 Oct. Quarterly      | July 15, 2011     | \$16,860.57                  | N/A                               | \$16,860.57              |
| 2006 12 Day Pre-General  | July 15, 2011     | N/A                          | \$7,552.84                        | \$7,552.84               |
| 2006 30 Day Post-General | July 15, 2011     | \$256,521.75                 | \$305,658.19                      | \$562,179.94             |
| 2006 Year-End            | July 15, 2011     | \$11,444.91                  | N/A                               | \$11,444.91              |
| 2007 April Quarterly     | July 15, 2011     | \$13,902.22                  | N/A                               | \$13,902.22              |
|                          | <b>TOTAL</b>      | <b>\$298,729.45</b>          | <b>\$313,211.03</b>               | <b>\$611,940.48</b>      |

1 When it filed the amendments, the 2006 Committee simultaneously requested  
2 termination. In response to the 2006 Committee's request for termination, the Reports Analysis  
3 Division ("RAD") informed the 2006 Committee's treasurer that the request for termination  
4 would not be granted, and advised the treasurer to provide a detailed explanation for the large  
5 amount of increased activity disclosed by the amendments. In response, the 2006 Committee  
6 submitted a Miscellaneous Document (Form 99) explaining that, as a first-time Senate campaign  
7 spending over \$11.5 million, it faced compliance challenges that were compounded by the  
8 unexpected death of the Committee's compliance director in July 2006. *See* Form 99 (July 29,  
9 2011). Respondents also explained that a large portion of the unreported contributions was the  
10 result of technical errors: a number of bundled contributions were coded in such a way that they  
11 were not properly imparted into the reports, and a large portion of the unreported disbursements  
12 was the result of an inadvertently omitted wire transfer for a media buy. *Id.*

13 On September 2, 2011, the Commission received the Complaint in MUR 6497, alleging,  
14 *inter alia*, that the 2006 Committee failed to account for contributions totaling approximately  
15 \$277,000 during the 2006 election cycle.

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1 In its Response, Respondents restate the information they submitted in the July 29, 2011,  
2 Form 99, *see supra* p. 2, regarding the death of their compliance director and a technical error  
3 relating to certain bundled contributions. *See* MUR 6497 Resp. at 2. Respondents also argue  
4 that the Commission should dismiss the reporting violations for several reasons: (1) the 2006  
5 Committee filed the self-correcting amendments on its own volition; (2) the previously  
6 undisclosed receipts and disbursements constituted less than a ten percent increase in activity;  
7 and (3) any violations arising from the 2006 Reports are time-barred under 28 U.S.C. § 2462.  
8 *See* MUR 6497 Resp. at 3.

9 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
10 treasurers to file reports of receipts and disbursements in accordance with the provisions of  
11 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include,  
12 *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R.  
13 § 104.3. Committees are also required to disclose itemized breakdowns of receipts and  
14 disbursements and disclose the name and address of each person who has made any contribution  
15 or received any disbursement in an aggregate amount or value in excess of \$200 within the  
16 calendar year, together with the date and amount of any such contribution or disbursement. *See*  
17 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(3)-(4), (b)(2), (b)(4). In addition to complete and  
18 accurate disclosure of receipts and disbursements, the Act also requires accurate disclosure of the  
19 amount of cash on hand at the beginning and end of the reporting period. *See* 2 U.S.C.  
20 § 434(b)(1); 11 C.F.R. § 104.3(a)(1).

21 The 2006 Committee did not comply with the Act's reporting requirements when it failed  
22 to disclose an aggregate of \$298,729.45 in receipts and \$313,211.03 in disbursements on its  
23 original 2006 reports filed with the Commission. But the initial obligation to report the 2006

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1 cycle receipts and disbursements is now outside the five-year statute of limitations period. *See*  
2 28 U.S.C. § 2462. Accordingly, the Commission dismissed the allegations that the 2006  
3 Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose its receipts and  
4 disbursements, and sent a cautionary letter.

5 As there is no information in the record to suggest that McCaskill had any personal  
6 responsibility for the 2006 Committee's apparent reporting violations, the Commission also  
7 found no reason to believe that McCaskill violated 2 U.S.C. § 434(b).

8 **B. 2012 Committee's Non-Commercial Flights**

9 The second allegation in the MUR 6497 Complaint involves McCaskill for Missouri  
10 2012 and Michelle Sherod in her official capacity as treasurer ("2012 Committee").<sup>1</sup>  
11 Complainant alleges that McCaskill and her 2012 Committee failed to report in-kind  
12 contributions resulting from two non-commercial flights for political events that the Senator took  
13 on an aircraft she co-owned with her husband. Compl. at 2. Complainant cites several  
14 newspaper articles reporting that, in early 2011, McCaskill reimbursed the Treasury Department  
15 in the amount of \$88,000 for 89 flights on her aircraft that had been inappropriately billed to her  
16 Senate account as official business. *See* Compl., Ex. B. Following this reimbursement, the 2012  
17 Committee amended several of its disclosure reports to reflect some of these reimbursed non-  
18 commercial flights as in-kind contributions from the Senator to her campaign. *See* Compl., Ex.  
19 A; *see also* Amended 2008 Year-End, 2009 July Quarterly, and 2009 Year-End Reports.  
20 Complainant alleges, however, that two additional reimbursed flights should have been disclosed  
21 as in-kind contributions: a March 3, 2007, flight to Hannibal, Missouri; and a May 19, 2007,  
22 flight to Kansas City, Missouri. A news article attached to the Complaint identifies the March 3,

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<sup>1</sup> The Senator filed her Statement of Candidacy for re-election on the same day that the 2012 Committee filed its Statement of Organization: January 8, 2007. *See* FEC Forms 1 and 2.

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1 2007, flight as a “purely political round trip,” for McCaskill to attend the local Democratic  
2 Party’s annual “Hannibal Days” and give a speech in recollection of dying former Senator Tom  
3 Eagleton. Ben Smith, *McCaskill Billed, Repaid Taxpayers for Political Flights*, POLITICO,  
4 Mar. 10, 2011. Another article attached to the Complaint refers to a 2007 flight to attend  
5 “Democratic events” in Kansas City. Scott Wong, *GOP to McCaskill: Release “Damn  
6 Records,”* POLITICO, Mar. 22, 2011. In response to this allegation, Respondents did not  
7 specifically address whether the two flights were taken in connection with McCaskill’s 2012  
8 campaign. Instead, they stated only that “the Complaint’s factual allegations do not support its  
9 legal conclusion” and that the complaint “does not allege that the two trips were taken ‘on behalf  
10 of the 2012 Committee.” MUR 6497 Resp. at 1-2.<sup>2</sup>

11 As noted above, the Act requires political committees to file reports disclosing the total  
12 amount of all receipts in a reporting period, including contributions from the candidate to her  
13 authorized committee. 2 U.S.C. § 434(b)(2)(B). A contribution is any gift, subscription, loan,  
14 advance, or anything of value made by any person for the purpose of influencing any election for  
15 federal office. 2 U.S.C. § 431(8)(a)(1). Commission regulations define “anything of value” to  
16 include in-kind contributions: the provision of goods or services without charge or at a charge  
17 that is less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1). Commission regulations  
18 further provide that a candidate is a “campaign traveler,” in the context of use of non-commercial  
19 travel, when traveling in connection with an election for Federal office. 11 C.F.R.

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<sup>2</sup> Respondents were invited to clarify whether McCaskill had engaged in any campaign activity on these trips. See Letter from Kathleen Guith, Acting Associate General Counsel, FEC, to Marc Elias, Counsel, Perkins Coie (Feb. 6, 2012). In response, Respondents stated: “The complaint asserts that McCaskill for Missouri 2012 (the “Committee”) should have reported as in-kind contributions certain payments that Senator McCaskill made for political travel in 2007. But it fails to allege that this travel was made on behalf of Senator McCaskill’s campaign, nor does it include any evidence to suggest that it was.” Supp. Resp. (Feb. 17, 2012).

1 § 100.93(a)(3)(i)(A).<sup>3</sup> The unreimbursed value of transportation provided to a campaign  
2 traveler, including the value of transportation on an aircraft owned or leased by the candidate,  
3 must be reported as an in-kind contribution to the candidate or political committee on whose  
4 behalf the campaign traveler traveled. 11 C.F.R. § 100.93(b)(2).

5 McCaskill was a candidate for re-election at the time of the March 3 and May 19, 2007,  
6 flights, but the 2012 Committee did not reimburse any amounts in connection with the flights.  
7 *See supra* fn. 1. If her travel was in connection with an election and she did not report the  
8 appropriate amount as an in-kind contribution to the 2012 Committee, as alleged by  
9 Complainant, it would violate the reporting provisions of the Act.

10 While the information contained in the Complaint apparently shows that McCaskill flew  
11 to Hannibal and Kansas City for events that were “political,” neither the Complaint nor the  
12 attached press reports suggest that the trips were in connection with an election for Federal  
13 office. Moreover, the 2012 Committee’s disclosure reports do not indicate that the Senator  
14 received contributions from contributors living in either Hannibal or Kansas City on the dates of  
15 the flights.

16 There is not enough information to make a definitive determination of whether McCaskill  
17 was a campaign traveler on those flights. In order to gather the additional facts necessary to  
18 make such a determination, the Commission would need to authorize an investigation. However,

<sup>3</sup> On September 14, 2007, Congress signed into law the “Honest Leadership and Open Government Act of 2007,” section 601 of Pub. L. 110-81, 121 Stat. 735, which amended the Act by prohibiting House candidates from using campaign funds for non-commercial air travel and specifying new reimbursement rates for Presidential and Senate candidates for such travel. *See* 2 U.S.C. § 439a(c). On November 20, 2009, the Commission approved final rules to implement the new statutory provision, though the regulations did not take effect until January 6, 2010. *See* Explanation and Justification, Campaign Travel, 74 Fed. Reg. 63,951, 63,951 (Dec. 7, 2009). Neither the statutory provision nor the corresponding regulations were in effect at the time of the two flights at issue in this matter; therefore, we are applying the regulations in effect prior to September 2007. *See* Explanation and Justification, Travel on Behalf of Candidates and Political Committees, 68 Fed. Reg. 69,583 (Dec. 15, 2003). The new regulations, however, maintain many elements of the Commission’s previous travel regulations.

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1 investigating this allegation would not be a prudent use of the Commission's limited resources.  
2 See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the  
3 Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) ("Pursuant to the exercise of  
4 its prosecutorial discretion, the Commission will dismiss a matter when it does not merit the  
5 further use of Commission resources, due to factors such as the small amount of the alleged  
6 violation, the vagueness or weakness of the evidence, or likely difficulties with an  
7 investigation.").

8 McCaskill reportedly reimbursed the U.S. Treasury in the amount of \$88,000 for 89  
9 flights, at an average cost of \$989 per flight. With only two of these flights at issue, the amount  
10 involved is likely *de minimis*. Further, the applicable statute of limitations has likely run for both  
11 of these flights. See 28 U.S.C. § 2462. Therefore, the Commission dismissed the allegation that  
12 the 2012 Committee and McCaskill violated 2 U.S.C. § 434(b)(2) by failing to report these  
13 flights as in-kind contributions.

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