



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
	)	MUR 5837
Missouri Democratic State Committee and	)	
Rod Anderson, in his official capacity as Treasurer;	)	
McCaskill for Missouri and	)	
Sandra Querry, in her official capacity as Treasurer	)	

**STATEMENT OF REASONS**

**I. INTRODUCTION**

This matter concerns allegations that Missouri Democratic State Committee and Rod Anderson, in his official capacity as treasurer (“MDSC”), and McCaskill for Missouri and Sandra Querry, in her official capacity as treasurer (“McCaskill Committee”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”) According to the complaint, the MDSC sent three mail pieces during the 2006 election cycle that either supported Claire McCaskill’s candidacy for United States Senate or attacked her opponent, Jim Talent See Complaint, Exhibits A, B, and C The complaint alleges that the MDSC improperly funded the mailings under the “volunteer activity for party committees” exemption because the mailers were commercially produced and bore commercially printed labels and commercial postage stamps The complaint thus claims that they were not distributed in accordance with the volunteer exemption requirements of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and corresponding regulations 11 C F R. §§ 100.87 and 100.147 Further, the complaint alleges that because the mailers do not satisfy the volunteer exemption, the mailers were either a contribution to the McCaskill Committee under 2 U S C § 441a or a coordinated party expenditure under § 441a(d) and should have been allocated and reported accordingly. Although the complaint does not provide information regarding the amount of money spent on the mailers, it claims that the MDSC made an excessive contribution to the McCaskill Committee.

In response, the MDSC contends that the mailers qualified for the “volunteer materials exemption” under 2 U S C §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C F R. §§ 100.87, 100.147, and that, therefore, they were not contributions or expenditures under 2 U.S.C. § 441a In its reply, supplemented by the declarations of its Executive Director, an employee who oversaw volunteer activity, and a volunteer, the MDSC attests to facts that satisfy the requirements of the

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volunteer exemption regulations. The available information supports the MDSC's contention that the volunteers' involvement in the distribution of the mailing was sufficient to satisfy the exemption's requirements.

The complaint also alleges that the MDSC violated the disclaimer requirements of the Act, 2 U.S.C. § 441d and 11 C.F.R. § 110.11(b), by failing to include an "authorized by" statement in the three mailers and/or failing to include "the permanent street address, telephone number, or World Wide Web address" of the MDSC if the mailers were not authorized by a candidate. The MDSC contends that the disclaimer on each of the mail pieces complied with the requirements for exempt mail set forth at 11 C.F.R. § 110.11(e).

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Volunteer Materials Exemption

The Act limits the amount that a state party committee may contribute to, or spend on behalf of, a Federal candidate. *See* 2 U.S.C. §§ 441a(a)(2)(A), 441a(d). However, the Act exempts the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) from the definitions of "contribution" and "expenditure" when the materials are used by a state or local political party committee in connection with volunteer activities on behalf of a federal candidate of that party. *See* 2 U.S.C. § 431(8)(B)(ix) and (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

To qualify for the volunteer materials exemption, a state or local party committee must satisfy six<sup>1</sup> requirements set forth in Commission regulations:

- (1) The committee's payment for campaign materials is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;
- (2) The portion of the cost of materials allocable to Federal candidates must be paid with Federal funds,
- (3) The committee's payment must not be made from contributions designated by the donor to be spent on behalf of a particular Federal candidate,
- (4) Campaign materials must be distributed by volunteers and not by commercial or for-profit operations,
- (5) The committee's payment must be reported as disbursements in accordance with 11 CFR 104.3, but need not be allocated to specific candidates in the committee's reports, and

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<sup>1</sup> There is a seventh requirement not relevant to this matter. 11 C.F.R. §§ 100.87(f) and 100.147(f) concern payments by state candidates and their campaign committees for their allocable share of expenses.

(6) Campaign materials purchased by the national committee of a political party and delivered to a state or local party committee, or materials purchased with funds donated by the national committee to the state or local committee for the purchase of the materials, do not qualify for the exemption 11 C F R §§ 100 87(a)-(e), (g) and 100 147(a)-(e), (g)

For purposes of sections 100 87(a) and 100 147(a), "direct mail" is defined as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists."

Based on the information provided in the MDSC's response and the declarations of the MDSC staff and volunteers, it appears that the three mailers at issue satisfied the regulatory requirements of the volunteer materials exemption. The MDSC's response, supplemented by the declarations, states that the information for the mailers was not obtained from commercial mailing lists, and that the mailers were paid for with Federal funds. The complaint provides no information to the contrary. Thus, the mailers satisfy sections 100.87(a), (b) and 100.147(a), (b). With respect to sections 100.87(c) and 100 147(c), the complaint makes no allegations that the MDSC paid for these mailers with funds designated for a particular Federal candidate. The responses provide no further information on the issue, and there is no other available information suggesting that the MDSC paid the mailers with designated funds. With respect to sections 100.87(e) and 100.147(e), the MDSC's disclosure reports show three separate disbursements for "direct mailing" totaling \$358,500, on September 21, 22, and 29, 2006 to AMS Communications, Inc., which were identified by the respondent as reflecting payment for the three mailings at issue. See Kavanaugh Declaration; DeForest Declaration.

With respect to the remaining requirements, two issues merit further discussion.

1 Distribution by Volunteers

The complaint contends that the mailers do not satisfy the volunteer materials exemption requirements of 11 C F R. §§ 100.87(d) and 100.147(d) because they "show no evidence of volunteer involvement [and] were commercially produced, bear commercially printed labels, and have commercial postage stamps." Complaint at 2. The MDSC acknowledges that the address labels and postage were laser-printed onto the mail pieces by a commercial printer, but contends that the "bundling, bagging, tagging, and loading of the mail pieces [onto United States Postal Service trucks]" by volunteers was sufficient for the activity to qualify for the exemption. MDSC Response at 1. One volunteer for the MDSC declared that on October 2, 2006, she and one other volunteer bundled, bagged, tagged, and loaded two of the mail pieces, "Teresa Missouri Teacher and Parent" and "Jim Talent/Exxon," onto United States Postal Service trucks.<sup>2</sup> See DeForest Declaration. An employee for the MDSC who supervised volunteers separately attests that the same functions were performed by five volunteers for the "Claire B10" mailer on September 25, 2006. See Kavanaugh Declaration. The MDSC also accurately notes in

<sup>2</sup> The United States Postal Service can arrange for a special pick up of bulk mail at the request of a patron, such that delivery can be made to the Postal Service without bringing mail pieces to the Post Office itself. United States Postal Service, USPS Domestic Mail Manual at 507 5 4 2

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its response that neither the Act nor the corresponding regulations require that the campaign materials bear evidence of volunteer involvement on their face. See MDSC Response at 2.

In past matters, the Commission has emphasized that a “substantial volunteer involvement” is required by the volunteer materials exemption to apply. The amount of volunteer activity involved in bundling, bagging, tagging, and loading the mailers onto a USPS truck constitutes “substantial volunteer involvement” in the distribution of the mailers, and that activity is sufficient to meet the requirements of a volunteer exempt mailing under sections 100.87(d) and 100.147(d). Even though the postage and labels were printed commercially, that does not diminish the work done with respect to the most important tasks related to “distribution” – separation and delivery. Although the declaration does not specify whether “bundling, bagging, and tagging” includes the “sorting by zip code” that was performed in many of the previous matters in which the Commission upheld the exemption’s applicability,<sup>3</sup> the “distribution” activities performed by the MDSC’s volunteers are nonetheless sufficient and further investigation is not warranted. Taken as a whole, the degree of volunteer involvement in this matter is comparable to that exhibited in matters in which the Commission upheld the exemption’s applicability. See, e.g., MUR 4471 (Montana State Democratic Central Committee) (exemption applied where volunteers sorted, bundled, and delivered mailers to the post office); MUR 3218 (Blackwell) (exemption applied where volunteers stamped, sorted, and brought mailers to the post office); MUR 2377 (Texas Republican Congressional Committee) (exemption applied where volunteers unpacked, labeled, sorted, bundled, and delivered mailers to the post office)

## 2 Payment of Mailers with National Party Committee Funds

To qualify for the volunteer materials exemption, a state committee cannot pay for campaign materials with funds it received from a national party committee. See 11 C.F.R. §§ 100.87(g) and 100.147(g). In its response, the MDSC provided a declaration from its Executive Director, Corey Dillon, asserting that “[t]he Party paid for the three mailings at issue ... using federal funds that did not include any funds transferred down from any national party committee.” Dillon Declaration. While the MDSC did not provide any documentation to support this claim, an examination of the MDSC’s disclosure reports shows that it had sufficient Federal funds that were not received from a national party to pay for the mailers at issue.

Although the MDSC does not directly mention specific disbursements in its response or declarations, disclosure reports filed with the Commission show three separate disbursements totaling \$358,500, on September 21, 22, and 29, 2006, to AMS Communications, Inc., for “direct mailing.” These expenditures are most likely for the three mailings at issue, as the mailings were

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<sup>3</sup> In previous matters, the Commission has considered the totality of volunteer involvement in evaluating whether a mailer was “distributed” by volunteers or was commercial “direct mail.” For example, the fact that a commercial vendor performed some tasks, such as printing and folding, has not, by itself, disqualified a mailing where volunteers were otherwise substantially involved. See MUR 4471 (Montana State Democratic Central Committee). Additionally, while sorting the mail by zip code has been performed by volunteers in many cases in which the Commission upheld the exemption’s applicability, that step has not been categorically required. See, e.g., MUR 4851 (Michigan Republicans) (exemption applied where volunteers affixed postal indicia and labels and delivered to the post office, but apparently did not sort the mailers).

sent on September 25 (“Claire Bio”) and October 2 (“Teresa Missouri Teacher and Parent” and “Jim Talent/Exxon”) of the same year. See Kavanaugh Declaration, DeForest Declaration. Disclosure reports further show that although the MDSC received \$2.8 million from national committees of political parties from January 1, 2006 through September 30, 2006, the MDSC also had approximately \$500,000 in funds that could have been spent on the mailers at issue. Thus, the available information supports the conclusion that the MDSC had sufficient, eligible Federal funds to pay for the mailers.

Based on the information available as set forth above, the volunteer exemption of 2 U S C §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C F R §§ 100 87 and 100 147 applies to the three mailers at issue in this matter.

**B. Disclaimer Requirements for Exempt Activities under 11 C.F.R. § 110.11(e)**

The Complainant also alleges that the disclaimers on the three mailers at issue were incomplete because they failed to include an authorization statement and the MDSC’s contact/address information. The MDSC contends that the mailers were subject to the requirements for “exempt mail,” and that a legally sufficient disclaimer consisted solely of the statement “Paid for by the Missouri State Democratic Party [sic],” in a printed box. MDSC Response <sup>4</sup>

Under the Act, when a political committee distributes a mass mailing or conducts other “public political advertising,” it must include an appropriate disclaimer. See 2 U.S.C. § 441d; 11 C.F.R. § 110.11(a). A “mass mailing” is defined as a “mailing . . . of more than 500 pieces of mail within any 30-day period.” 2 U.S.C. § 431(23). Though there is no direct information regarding the volume of the mailings at issue, the MDSC appears to acknowledge that a disclaimer was required through its inclusion of one on each mail piece, and it does not challenge the application of the disclaimer requirements in its response. Additionally, the cost thought to be associated with the mailing (over \$350,000) was substantial and most likely paid for more than 1,500 pieces. Thus, the available information indicates that the mailers were part of a “mass mailing” and were therefore required to carry appropriate disclaimers.

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<sup>4</sup> MDSC also indicates that according to the Commission’s advice in the *Campaign Guide for Political Party Committees*, MDSC’s disclaimers were not required to state whether the mailings were authorized since the mailings constitute exempt activities under 2 U.S.C. § 431(8)(B)(ix) and 11 C.F.R. § 100 147. See *Federal Election Commission Campaign Guide Political Party Committees*, 2004 ed., available at <http://www.fec.gov/pdf/partygui.pdf>. In pertinent part, the *Campaign Guide* states, “Exempt state and local party activities are required to carry a ‘paid for by’ disclaimer. Being exempt from the contribution and expenditure limits does not exempt these communications from the disclaimer requirement. However, the disclaimer does not need to state whether the communication is authorized by a candidate, or any authorized committee or agent of any candidate. See further discussion of the disclaimer rules at 48 110 11(e).” *Id.* at 38. “On exempt activity communication such as campaign materials, the disclaimer notice must identify the committee that paid for the message, but need not state whether the communication is authorized by a candidate. Example ‘Paid for by the XYZ State Party Committee.’” *Id.* at 48. The Commission acknowledges that this language is inconsistent with Commission regulations to the extent it indicates that a communication that is not authorized by a candidate or candidate’s committee does not require the street address, telephone number, or web address of the paying party committee.

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The MDSC mailers fall within the scope of 11 C F R. § 110 11(a) because, as noted above, it appears they were “mass mailings” qualifying as “public communications” See 2 U.S.C. § 431(22); 11 C F.R § 100.26, 110 11(a)(1). The general content requirements of section 110 11(b) require

(1) if the communication is authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, but is paid for by any other person (e.g., a State or local party committee), the disclaimer must clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee, or agent; and

(2) if the communication is *not* authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication (e.g., a State or local party committee), and that the communication is not authorized by any candidate or candidate’s committee See 11 CFR 110.11(b)(2), (3).

The specific disclaimer requirements of 11 CFR 110.11(c) require that the disclaimer on printed materials be clear and conspicuous, of sufficient size, contained in a set-apart printed box, and printed with a reasonable degree of color contrast See 2 U.S.C. § 441d(c), 11 C.F.R. § 110 11(c)(1)–(2)

If a mailer qualifies for the volunteer materials exemption, however, it is subject to the specific disclaimer requirements for exempt materials set forth in 11 C.F.R. § 110.11(e). Under this provision, disclaimers on exempt communications must satisfy the other requirements of § 110.11(a), (b), (c)(1), and (c)(2), but do not require an authorization statement (*i.e.*, “authorized by” or “not authorized by”) See 11 C.F.R § 110.11(e). In other words, for communications that qualify for the volunteer materials exemption, the general disclaimer requirements of 11 CFR 110 11(b) apply, as set forth above, *but without the authorization statement*. If a mailer distributed under the volunteer materials exemption is authorized by a candidate, an authorized committee of the candidate, or an agent of either of the foregoing, the mailer’s disclaimer is only required to include a “paid for by” statement, and is not required to include either the permanent street address, telephone number, or world wide web address of the person who paid for the communication, or an “authorized by” statement See 11 CFR 110.11(b)(2), 110.11(e). Alternatively, if a mailer distributed under the volunteer materials exemption is not authorized by a candidate, an authorized committee of the candidate, or an agent of either of the foregoing, the mailer’s disclaimer must include a “paid for by” statement, and the permanent street address, telephone number, or world wide web address of the person who paid for the communication, but it is not required to include a “not authorized by” statement See 11 C.F.R § 110 11(b)(3), 110 11(e)

As explained above, the Commission concludes that the MDSC mailers at issue satisfy the requirements for the volunteer materials exemption and are subject to the disclaimer requirements of 11 C F R. § 110 11(e). Each of the mailers at issue contains the phrase “Paid for by Missouri State Democratic Committee” [sic] in a separate box in the address and postage portion of the pamphlet The type-face of this disclaimer is sufficiently large and the color contrast is acceptable (black type on white background) See Complaint, Exhibits A, B, and C.

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The return address, containing MDSC's P.O. Box address, is near this disclaimer. The disclaimer does not include any language as to the authorization or non-authorization of the communication.

Because the MDSC's mailers fall within the volunteer exemption, *see supra* Section II A., the mailers are an exempt activity and do not require an authorization statement. However, the authorization statement notwithstanding, the MDSC would *still* have been required to include its mailing address, phone number, or web address in its disclaimers if the mailers were not authorized by McCaskill or the McCaskill Committee. Compare 2 U.S.C. § 441d(a)(2) and 11 C.F.R. § 110.11(b)(2) with 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). In contrast, if the mailers were authorized, then the disclaimers in the MDSC's mailers are fully compliant with the requirements of 11 CFR 110.11(e).

Here, there is insufficient information to establish conclusively that the matters were or were not authorized, and the Commission will not presume that a State or local party committee's volunteer exempt materials are unauthorized absent evidence to the contrary. Furthermore, the MDSC appears to have complied with the Commission's disclaimer guidance as set forth in the *Federal Election Commission Campaign Guide. Political Party Committees*<sup>5</sup>. In light of the foregoing, the Commission does not believe it would be a prudent use of limited resources to further pursue this aspect of the matter, and accordingly, dismisses the matter pursuant to its authority under *Heckler v. Chaney*, 470 U.S. 821 (1985).

12/19/07

Date



Robert D. Lenhard  
Chairman

12/19/07

Date



David M. Mason  
Vice Chairman

12-19-07

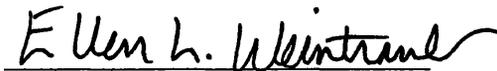
Date



Hans A. von Spakovsky  
Commissioner

12-20-07

Date



Ellen L. Weintraub  
Commissioner

<sup>5</sup> See *supra* footnote 4

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