

MUR # 6958



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

August 13, 2015

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, D.C. 20463

OFFICE OF
GENERAL COUNSEL

2015 AUG 19 PM 1:06

RECEIVED
FEDERAL ELECTION COMMISSION
AUG 19 2015

Re: Complaint against Senator Claire McCaskill

Dear Counsel,

Pursuant to 52 U.S.C. § 30109(a)(1), the Foundation for Accountability and Civic Trust (FACT) submits this complaint to the Federal Election Commission (FEC or Commission) to address violations of the Federal Election Campaign Act of 1971 as amended (Act) and Commission Regulations by Senator Claire McCaskill. The information contained in this complaint is based upon information and belief, statements issued by Senator McCaskill, media reports, and public records. In an attempt to influence the Republican primary that would determine her opponent for the Senate race, Senator McCaskill gave valuable polling data and information to a Republican candidate. Senator McCaskill did not simply meddle in another party's primary, rather she crossed the legal line and made a prohibited donation in violation of federal law. The Commission must immediately investigate and enforce the law. See 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 111.4(a).

According to Senator McCaskill's own statements, she engaged in behavior that appears to be contrary to the Act. See Sen. Claire McCaskill, *How I Helped Todd Akin Win—So I Could Beat Him Later*, Politico Magazine, August 11, 2015 (attached as Exhibit A). During the 2012 Republican primary, Senator McCaskill determined that she would prefer Todd Akin as an opponent in the general election for her Senate seat and acted to help him win the primary election. *Id.* She spent \$40,000 to conduct a poll of Missouri Republicans. *Id.* Senator McCaskill's polling revealed one of Akin's advertisements "had been so effective," but later Akin had stopped running this commercial. *Id.* She further explained, "Akin didn't have money for polling, but we had been tracking the numbers carefully and concluded that he'd be in trouble if he didn't get the Huckabee ad back up." *Id.* Recognizing the value of the polling data and information, Senator McCaskill gave the information to Akin's campaign along with access to her pollster, and "three hours later the Huckabee ad was back up." *Id.*

By providing polling data and information, Senator McCaskill made an in-kind donation to a candidate that appears to be in violation of federal law. Under the Federal Election Campaign Act, an individual was prohibited from making a contribution to a candidate in

excess of \$2500. 52 U.S.C. § 30116. A contribution is not limited to cash donations, but includes in-kind contributions of "anything of value . . . for the purpose of influencing any election for Federal office. 52 U.S.C. § 30101(8)(A). Conducting polls, along with the data and information obtained from the polling, is valuable, and donating it to a candidate is an in-kind contribution. *See id.* As Senator McCaskill explained, the Akin campaign did not have the resources to conduct polling and the polling information was especially valuable—it ultimately changed the actions of the Akin campaign. There is no exception under the law that permits an individual to give unlimited donations to another party's candidate or to influence another party's primary. The Commission should conduct an immediate and thorough investigation into these allegations to determine if a Senator McCaskill made an illegal donation to a candidate in violation of the Act. If the Commission finds a violation of the Act occurred, it must hold Senator McCaskill accountable.

Respectfully submitted,



Matthew G. Whitaker, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

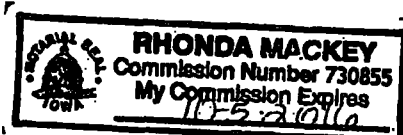
State of Iowa)

) ss.

County of Polk)

Subscribed and sworn to before me on August 13, 2015.

 Notary Public
My Commission Expires: 10-5-2016





PRIMARY SOURCE

How I Helped Todd Akin Win – So I Could Beat Him Later

By SEN. CLAIRE MCCASKILL | August 11, 2015

AP Photo.

It was August 7, 2012, and I was standing in my hotel room in Kansas City about to shotgun a beer for the first time in my life. I had just made the biggest gamble of my political career—a \$1.7 million gamble—and it had paid off. Running for reelection to the U.S. Senate as a Democrat from Missouri, I had successfully manipulated the Republican primary so that in the general election I would face the candidate I was most likely to beat. And this is how I had promised my daughters we would celebrate.

But first let me go back to the beginning.

During the first week of July 2012, one month before Republicans nominated

their candidate for the U.S. Senate, I directed my campaign to go into the field to take a poll of Republicans in Missouri. This was a first for me; never before had I paid \$40,000 to a pollster to find out what was on the minds of voters who were never going to vote for me. But this election called for an unusual strategy.

Our poll questioned Republicans about the three people seeking to run against me. At the onset, businessman John Brunner led at 39 percent, with Rep. Todd Akin at 17, and former state treasurer and senator Sarah Steelman at 15. Then we gave the people we were polling a synopsis of each candidate's message. The results were fascinating.

Akin's message essentially stated that he was one of the most conservative members of Congress; had consistently voted against government spending and debt; had opposed the Wall Street bailout, the federal stimulus, and the rescue of the automobile companies; had voted no on Obamacare; and was a founding member of the Tea Party Caucus. Akin also promised to restore faith in God as the center of public life in America and had consistently voted to defend the sanctity of human life. The other candidates' campaign themes were also fairly and fully described: Brunner was a job creator and an ex-Marine, while Steelman was fighting to end the "status quo."

The sample of Republican voters was then polled again, and we saw that the candidates' messages drastically changed the complexion of the contest: Akin now came in at 38 percent and Brunner at 36, while Steelman was still at 15. Akin's narrative could make him the winner among the people most likely to vote in the Republican primary—and maybe, just maybe, a loser among moderate Missourians.

Tom Kiley, my pollster, turned up some findings that seemed crazy to me. For example, less than one quarter of the likely Republican primary voters believed that Barack Obama had been born in the United States. These were the voters who could help tip a Republican primary to an archconservative, but that conservative would have a hard time winning the state. Yes, it was a three-way primary of equally viable candidates, but a subset of energized people with strong religious convictions and serious aversion to gay people, public schools, immigrants and reproductive choice could help elect someone like Akin.

I began to consider whether it would be useful to help Akin spread his message, keeping in mind that he was the weakest fundraiser out of the three potential nominees.

Akin's track record made him my ideal opponent. Many of his votes in Congress contradicted his claim of being a fiscal conservative. While he opposed President Barack Obama's authority to raise the debt limit, during the Bush administration, in 2004, he had voted to raise the limit by \$800 billion. A vocal opponent of the Obama administration's stimulus efforts, in 2001 Akin had voted in favor of a \$25 billion stimulus package that mostly benefited large corporations and the wealthy. And he was a big earmarker: in one fiscal year he sponsored or cosponsored \$14 million worth of pork and once sought \$3.3 million in a special appropriation for a highway near nine acres he owned and was planning to develop. While opposing spending money for child nutrition programs, veterans' health benefits, and disaster relief, he repeatedly voted to raise his own salary.

His extreme positions on social issues and ridiculous public statements made him anathema to many independent voters. He sponsored an amendment that would define life as beginning at conception, thereby outlawing common forms of birth control. He voted against repeal of the military's "don't ask, don't tell" legislation. When the Affordable Care Act was being debated, he stood on the House floor and asked for God's help in keeping the nation from "socialized medicine." In 2008, he claimed in a House floor speech that it was "common practice" for doctors to conduct abortions on women "who were not actually pregnant." He had made speeches calling for America to pull out of the United Nations and claiming the government had "a bunch of socialists in the Senate" and a "commie" in the White House.

So how could we maneuver Akin into the GOP driver's seat?

Using the guidance of my campaign staff and consultants, we came up with the idea for a "dog whistle" ad, a message that was pitched in such a way that it would be heard only by a certain group of people. I told my team we needed to put Akin's uber-conservative bona fides in an ad—and then, using reverse psychology, tell voters *not* to vote for him. And we needed to run the hell out of that ad.

My consultants put together a \$1.7 million plan. Four weeks out we would begin with

As it turned out, we spent more money for Todd Akin in the last two weeks of the primary than he spent on his whole primary campaign.

If we were going to spend that kind of money on ads for Akin, I wanted to get him nominated and start disqualifying him with independent voters at the same time. By that prescription, our ad would have to include Akin's statement that Obama was a "menace to civilization" and that Akin had said of himself that he was "too conservative" for Missouri. This presentation made it look as though I was trying to disqualify him, though, as we know, when you call someone "too conservative" in a Republican primary, that's giving him or her a badge of honor. At the end of the ad, my voice was heard saying, "I'm Claire McCaskill, and I approve this message."

It started to work. Our telephones were ringing off the hook with people saying, “Just because she’s telling me not to vote for him, I’m voting for him. That’s the best ad for Akin I’ve ever seen!” A man wrote a letter to the editor of the *Springfield News Leader*: “I think it’s time for someone who may be too conservative. Thank you, Senator McCaskill, for running that ad. You have helped me determine that my vote needs to go to Akin.” The editorial page of the *St. Louis Post-Dispatch* advised those who were going to vote in the Republican primary to cast their ballot for Akin since he was “the most honest candidate. We suggest Mr. Akin because with him at least you’re sure of what you’re getting. He isn’t faking it when he endorses the worst of the GOP agenda. He actually believes it. What you see is what you get.”

A *Post-Dispatch* poll conducted July 23–25 showed Brunner leading the race at 33 percent, followed by Steelman at 27, and Akin at 17. But our polling showed the race was tightening, with Brunner still up by a point or two and Steelman solidly in third. Then, unexpectedly, the Akin camp took down one of his own ads that had been so effective. In it Mike Huckabee, the former governor of Arkansas and a leading voice in the conservative movement, endorsed Akin and explained his reasoning looking straight into the camera. It was powerful, but Akin's camp replaced it with Akin talking about "flames of freedom." What were they thinking? Akin didn't have money for polling, but we had been tracking the numbers carefully and concluded that he'd be in trouble if he didn't get the Huckabee ad back up.

On the Thursday before the election, I called Ron Gladney, the husband of Rep. Jo Ann Emerson, a Republican from Missouri. I asked him if he could get a message to the Akin camp to put the Huckabee ad back up. Of course Gladney started laughing and asked, "Are you kidding?" "No," I replied. "If he gets the Huckabee ad back up by Friday, he's going to win." I also placed a call to Michael Kelley, a Democratic Party and labor operative who was friends with a former Akin staffer, and asked him to convey the same message to the Akin camp. A short time later my campaign manager, Adrienne Marsh, got a call from the Akin campaign. The person on the line wanted to talk to our pollster. Adrienne called me, and I gave clearance, allowing Kiley to speak in broad generalities. Three hours later the Huckabee ad was back up.

This was the most fun I'd had in a long time. Akin had moved into a dead heat with Brunner.

I had a feeling it was going to work after my stepson and his family came over to our house after church on the Sunday before the primary election. He showed us what they'd found on their car's windshield after the services: a campaign folder containing information about Todd Akin, James Dobson and his Focus on the Family, as well as pictures of Todd and his wife, Lulli, on their wedding day. The brochure, aimed specifically at churchgoers, was entitled "The Story of a Sinner Saved by Grace." In it Akin described how he accepted Christ as his savior, gave up career ambitions as an engineer to attend seminary, and served on the board of Missouri Right to Life.

There was an issue on the ballot that promised to attract like-minded people to the

polls: an amendment to the Missouri Constitution that expanded the existing right to worship God with a more explicit guarantee of public prayer and a new privilege allowing students to opt out of assignments that ran contrary to their religious beliefs. While not everyone in the Republican primary who voted for that amendment also voted for Akin, I believe the churches urging people to vote for the prayer amendment helped drive up voter turnout that naturally favored Akin.

I promised my two daughters, Lily and Maddie, that I would shotgun a beer if Akin won the primary. Although I had never shotgunned a beer in my life, I was more than ready for a celebration. That day—August 7, 2012—felt like my own election, even though I had no opponent in the Democratic primary. Never before had I been so engaged and so committed to another's race.

I decided to call it quits early. After leaving a room of enthusiastic volunteers north of the river in Kansas City, my daughters, Joseph, and I headed to the hotel suite where we planned to monitor the election results. We were in a car while most of the key staff followed in "Big Blue," the recreational vehicle we used for our mobile campaign headquarters. There was some nervous chatter as we pulled out of the parking lot, but I was pensive. I didn't feel like talking. I distinctly remember being surprised that my palms were sweaty. All of a sudden I understood the enormous risk I had taken: I had spent millions trying to control the outcome of the Republican primary. If it worked, some would call it political genius; if it failed, and especially if I went on to lose in November, it would be called the stupidest thing I had ever done.

I was fully aware of the risk and would have felt terrible if Todd Akin had become a United States senator. On the other hand, if you went down the list of issues, there was not a dime's worth of difference among the three primary candidates on how they would have voted if they had become senators. Getting Todd Akin as the opponent in the long run made it more likely that Missourians would not be represented by someone who held those extreme views.

As the polls closed at seven o'clock, the mood seemed artificially festive. People were trying to joke around, but everyone was anxious. It was weird behavior for a campaign team awaiting the results of a primary election. Here I was in sloppy sweat pants, my top team members in jeans, everyone on cell phones, with a laptop on every lap and every surface. A lot of untouched beer and liquor sat on tables as we

watched the clock, refreshed the page, and waited for the phone to ring.

Maddie and Lily understood the stakes. That's why all evening, as we waited for results, they were squeezing my hand or quietly sitting next to me, why, as I walked away from the buzzing expectation in the living room to find quiet in the adjoining bedroom, one or both would follow and give me a hug. Those moments were some of my best as a parent.

Akin ended up receiving 217,468 votes, compared to 180,821 for Brunner and 176,189 for Steelman. In the privacy of our suite, all I could do was celebrate privately and send an email to my team congratulating them on the work they had done.

After hugging my husband and calling my son in St. Louis, it was time for me to keep my promise. My daughters had to show me how to shotgun a beer. You punch a hole in the side of a beer can while holding it horizontally. Then you invert the can upside down over your mouth and pull the aluminum tab. Beer gushes into your mouth and you have to swallow quickly to avoid a big mess. I did it. And we laughed until we cried.

How much did "Operation Dog Whistle" contribute to Akin's victory? I do believe his nomination reaffirmed more than ever his conviction that a higher power had chosen him for this race. For Akin, government service is defined and guided by his religious faith. He was known to start committee meetings with prayers that included "in Jesus's name." He'd made religion a centerpiece of his campaign, saying his faith got him into politics and directed the things he did once in office. In my opinion his belief that he is a "holy warrior" doing battle with the forces of evil liberalism blinded him to the realities of political life and what might be best for his party. In the first lines of his election-night speech, he thanked God for hearing the prayers of his supporters and granting him victory. He probably didn't realize that we had also been praying for his victory.

While I got the opponent I wanted, polls showed I was still the underdog. But I knew Akin had said things that could disqualify him with a wide swath of Missouri voters. Just a year earlier he had said, "At the heart of liberalism really is a hatred for God." We knew we'd be able to use his own words to show that he was against Social Security, Medicare, and student loans. Right after the primary election, during a visit

to the State Fair, Akin criticized the federal school lunch program. Then he was interviewed on a Kansas City radio station and said the morning-after pill should be illegal for rape victims.

Akin said so many controversial things that we began calling him “the gift that keeps on giving.” Little did we know what he would say next.



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Claire McCaskill is a U.S. senator from Missouri. This article has been excerpted from her latest book, Plenty Ladylike: A Memoir.

Additional credits:



Lead image by AP Photo.