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FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6958

DATE COMPLAINT FILED: Aug. 19, 2015

DATE OF NOTIFICATION: Aug. 25, 2015

DATE SUPP. COMPLAINT FILED: Aug. 28, 2015

DATE OF NOTIFICATION: Sept. 1, 2015

DATE OF LAST RESPONSE: Nov. 11, 2015

DATE ACTIVATED: Dec. 2, 2015

ELECTION CYCLE: 2012

EARLIEST SOL: July 1, 2017

LATEST SOL: Aug. 7, 2017

COMPLAINANT:

Foundation for Accountability and Civic Trust

RESPONDENTS:

Senator Claire McCaskill

McCaskill for Missouri and Michelle Sherod in her
official capacity as treasurer

W. Todd Akin

Akin for Senate and W. Todd Akin in his official
capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)(i)

52 U.S.C. § 30102(e)(3)(B)

52 U.S.C. § 30104(a)(6)(A)

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)

52 U.S.C. § 30116(f)

11 C.F.R. § 100.52(d)

11 C.F.R. § 106.4(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

In the summer of 2015, U.S. Senator Claire McCaskill of Missouri published a memoir recounting her 2012 reelection campaign, including her efforts to secure then-U.S.

Representative W. Todd Akin as her general election opponent. According to the memoir,

1 McCaskill, a Democrat, paid \$40,000 for polling on the 2012 Missouri Republican Senate
2 primary and subsequently authorized her pollster to speak with Akin's campaign about the
3 findings. The Complaint alleges that in sharing such information, McCaskill and her principal
4 campaign committee, McCaskill for Missouri ("McCaskill Committee"), made an excessive in-
5 kind contribution, which Akin and his principal campaign committee, Akin for Senate ("Akin
6 Committee") accepted. The Complaint further alleges that the two committees failed to report
7 the transaction as the Act requires.¹ The McCaskill Committee, Akin, and the Akin Committee
8 deny the allegations.²

9 As discussed below, the available information shows that McCaskill and the McCaskill
10 Committee made, and the Akin Committee accepted, an excessive in-kind contribution in the
11 form of polling information, and that each committee failed to report the contribution. We
12 recommend, therefore, that the Commission find reason to believe that McCaskill violated
13 52 U.S.C. § 30102(e)(3)(B); that the McCaskill Committee violated 52 U.S.C. §§ 30102(e)(3)(B)
14 and 30104(b); and that the Akin Committee violated 52 U.S.C. §§ 30104(a)(6)(A), 30104(b), and
15 30116(f). Because we do not know the extent, if any, of Akin's personal involvement, we
16 recommend that the Commission take no action at this time with respect to him. We further
17 recommend that the Commission authorize an investigation about the polling results shared
18 between McCaskill and Akin's campaigns in order to assess the value of the contribution.

¹ See Compl. at 1 (Aug. 19, 2015); Supp. Compl. at 1 (Aug. 28, 2015).

² Akin and the Akin Committee filed a joint response ("Akin Comm. Resp."). The Commission did not receive a response from McCaskill.

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1 **II. FACTS**

2 On August 11, 2015, *Politico Magazine* published an article by McCaskill entitled "How
3 I Helped Todd Akin Win – So I Could Beat Him Later."³ The article, excerpted from
4 McCaskill's 2015 book, *Plenty Ladylike: A Memoir*, describes the 2012 Missouri Republican
5 primary for U.S. Senate, in which Akin competed with two other candidates for the opportunity
6 to challenge the incumbent McCaskill. McCaskill writes that, "Akin's track record made him
7 my ideal opponent" in the general election.⁴ Based on this assessment, she says she took steps to
8 promote Akin's nomination, concluding later that, "I had successfully manipulated the
9 Republican primary so that in the general election I would face the candidate I was most likely to
10 beat."⁵

11 Among the steps McCaskill took was a poll she commissioned roughly one month before
12 the August 7, 2012 primary election. McCaskill writes that in July 2012, she paid pollster Tom
13 Kiley \$40,000 to survey Missouri Republicans on the three candidates running in the Republican
14 primary.⁶ The poll appears to have sought the status of the race, the effect of candidates'
15 messaging on the race, and voters' positions on various issues.⁷ The memoir suggests that
16 polling continued as the primary election grew closer.⁸

³ Compl. Ex. A (Claire McCaskill, *How I Helped Todd Akin Win – So I Could Beat Him Later*, POLITICO MAGAZINE (Aug. 11, 2015), <http://www.politico.com/magazine/story/2015/08/todd-akin-missouri-claire-mccaskill-2012-121262> ("McCaskill, *How I Helped Todd Akin Win*")).

⁴ McCaskill, *How I Helped Todd Akin Win* at 2-3.

⁵ *Id.* at 1.

⁶ *Id.* at 1-2.

⁷ *Id.*

⁸ *Id.* at 5 ("A *Post-Dispatch* poll conducted July 23-25 showed [primary candidate John] Brunner leading the race at 33 percent, followed by [primary candidate Sarah] Steelman at 27, and Akin at 17. But our poll showed the race was tightening, with Brunner up by a point or two and Steelman solidly in third.")

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1 During the primary campaign, the Akin Committee aired an advertisement featuring
2 former Arkansas governor Mike Huckabee.⁹ McCaskill believed this ad was highly effective but
3 the Akin Committee stopped airing it shortly before the election.¹⁰ She writes: "What were they
4 thinking? Akin didn't have money for polling, but we had been tracking the numbers carefully
5 and concluded that he'd be in trouble if he didn't get the Huckabee ad back up."¹¹ Consequently,
6 five days before the election, McCaskill asked two individuals with connections to the Akin
7 campaign to relay the message that Akin needed to re-air the Huckabee ad.¹² She writes:

8 On the Thursday before the election, I called Ron Gladney, the
9 husband of Rep. Jo Ann Emerson, a Republican from Missouri. I
10 asked him if he could get a message to the Akin camp to put the
11 Huckabee ad back up. Of course Gladney started laughing and
12 asked "Are you kidding?" "No," I replied. "If he gets the
13 Huckabee ad back up by Friday, he's going to win." I also placed
14 a call to Michael Kelley, a Democratic Party and labor operative
15 who was friends with a former Akin staffer, and asked him to
16 convey the same message to the Akin camp.¹³

17 Shortly thereafter, McCaskill says, her campaign manager, Adrienne Marsh, received a
18 call from an unidentified individual with the Akin Committee, wanting to talk to McCaskill's
19 pollster.¹⁴ McCaskill writes that she gave clearance to the pollster "to speak in broad
20 generalities" with the Akin Committee.¹⁵ Three hours later, she says, the Huckabee ad was back
21 on television.¹⁶ Akin went on to win the Republican primary but was defeated by McCaskill in

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* The Akin Committee disputes the assertion that it did not have money to conduct its own polling. Akin Comm. Resp. at 2 (Nov. 11, 2015).

¹² McCaskill, *How I Helped Todd Akin Win at 5*.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

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1 the general election.¹⁷ Neither committee denies that a conversation took place between the
2 McCaskill pollster and a representative of the Akin Committee. However, Akin and his
3 committee assert that there is no information to suggest that the Akin Committee “actually
4 received polling data from Senator McCaskill” and that “[a]t no time was Akin aware that
5 anyone connected with the McCaskill campaign was in contact with his Committee.”¹⁸

6 III. LEGAL ANALYSIS

7 Relying on McCaskill’s memoir, the Complaint alleges that McCaskill and the McCaskill
8 Committee made an excessive in-kind contribution in violation of the Act when they conveyed
9 their polling information to the Akin Committee.¹⁹ A Supplemental Complaint alleges that the
10 Akin Committee violated the Act by accepting the contribution, and that the two committees
11 violated the Act by failing to disclose the transaction.²⁰

12 The committees challenge the Complaint on three grounds. First, each committee argues
13 that a contribution results from shared polling information only when a committee receives
14 access to the raw polling data, not when committees merely have a conversation about the results
15 of a poll.²¹ Second, the McCaskill Committee argues that it did not make a contribution because
16 it did not provide the information for the purpose of influencing Akin’s primary election, but

¹⁷ McCaskill writes that her committee “spent more money for Todd Akin in the last two weeks of the primary than he spent on his whole primary campaign.” *Id.* at 4. In addition to the poll, her committee spent approximately \$1.67 million on television advertisements to promote Akin’s nomination. *Id.* at 3-5. She writes that her committee “came up with the idea for a ‘dog whistle’ ad, a message that was pitched in such a way that it would be heard by only a certain group of people.” *Id.* at 4. She states, “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 that “[t]his 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.” *Id.* According to McCaskill, the advertisement, dubbed “A Cup of Tea,” included an appropriate disclaimer, *see id.*, and the Complaint makes no allegation that this advertisement resulted in a violation of the Act.

¹⁸ Akin Comm. Resp. at 2.

¹⁹ Compl. at 1.

²⁰ Supp. Compl. at 1-2.

²¹ McCaskill Comm. Resp. at 3 (Oct. 23, 2015); Akin Comm. Resp. at 2-3.

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1 rather for the purpose of increasing McCaskill's own chances of winning the general election.²²
2 Finally, the Akin Committee asserts that, even if McCaskill made a contribution, the Akin
3 Committee did not accept it, because they chose to re-air the Huckabee ad to finish the campaign
4 with a positive endorsement, not because of McCaskill's polling information.²³

5 **A. There is Reason to Believe that the McCaskill Committee Made and the Akin**
6 **Committee Accepted an Excessive In-Kind Contribution**

7 The Act permits an authorized committee to contribute up to \$2,000 to the authorized
8 committee of another candidate.²⁴ Under the Act, a "contribution" is "anything of value made by
9 any person for the purpose of influencing an election for Federal office."²⁵ "Anything of value"
10 includes all in-kind contributions, such as the provision of goods or services without charge, or at
11 a charge less than the usual and normal charge.²⁶ In the context of polling, Commission
12 regulations specify that the purchase of opinion poll results by a political committee, and the
13 subsequent acceptance of the poll results by a candidate or a candidate's authorized committee or
14 agent, is a contribution in-kind by the purchaser to the candidate.²⁷ Poll results are "accepted"
15 when the candidate, his committee, or his agent (1) requests the poll results; (2) uses the poll
16 results; or (3) does not notify the contributor that the results are refused.²⁸

²² McCaskill Comm. Resp. at 2.

²³ Akin Comm. Resp. at 2. They further argue that it is not possible to change "ad traffic" within three hours, as McCaskill describes, so any decision to put the Huckabee ad back on television would have had to occur prior to any conversation with the pollster. *Id.* Akin and his committee dismiss the idea that "a sitting U.S. Congressman who had won re-election six previous times would base such a decision on the political opinion of an unknown pollster associated with his presumed Democratic opponent . . ." *Id.*

²⁴ 52 U.S.C. § 30102(e)(3)(B). The Complaint alleges that the Respondents violated the limits set forth in 52 U.S.C. § 30116(a); however, the contribution limit between authorized committees is at 52 U.S.C. § 30102(e)(3)(B).

²⁵ 52 U.S.C. § 30101(8)(A)(i).

²⁶ 11 C.F.R. § 100.52(d).

²⁷ 11 C.F.R. § 106.4(b).

²⁸ 11 C.F.R. § 106.4(b)(1)-(3).

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1 Here, the available information provides reason to believe that McCaskill made an in-
2 kind contribution to the Akin Committee in the form of poll results, and that the Akin Committee
3 accepted the in-kind contribution. McCaskill states that she conducted polling regarding, *inter*
4 *alia*, the effect of the Akin Committee's previously run Huckabee ad, which McCaskill says
5 showed that the ad was working favorably for Akin in the primary election.²⁹ McCaskill states
6 that she conveyed the polling information through her intermediaries because she believed it
7 would assist Akin in his campaign.³⁰ Specifically, she directed her agents to convey the advice that
8 the Huckabee ad was working and that if Akin re-aired the Huckabee ad, he would win.³¹ According
9 to McCaskill, her campaign manager subsequently received a call from an unidentified
10 individual with the Akin Committee, wanting to talk to McCaskill's pollster, and McCaskill gave
11 clearance to the pollster "to speak in broad generalities" with the Akin Committee.³² The
12 Respondents do not deny that they discussed the poll; indeed, each committee appears to confirm
13 that discussions about the polling took place as each makes legal arguments that such
14 conversations did not result in a contribution from McCaskill to Akin.³³ Thus, whether or not the
15 Akin Committee used the polling information when it subsequently re-aired the Huckabee ad, the
16 Committee did not refuse it and, according to McCaskill, requested it by contacting her
17 campaign manager.

²⁹ McCaskill, *How I Helped Todd Akin Win* at 5 ("[W]e had been tracking the numbers carefully and concluded that [Akin would] be in trouble if he didn't get the Huckabee ad back up.").

³⁰ *Id.* ("I asked [Gladney] if he could get a message to the Akin camp to put the Huckabee ad back up. . . . If he gets the Huckabee ad back up by Friday, he's going to win.").

³¹ *Id.*

³² *Id.*

³³ McCaskill Comm. Resp. at 2-4; Akin Comm. Resp. at 2-3.

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1 Further, there is reason to believe that the in-kind contribution exceeded the applicable
2 \$2,000 contribution limit. McCaskill states that she paid \$40,000 for the poll.³⁴ Based on the
3 available information at this stage, it is not possible to calculate the portion of the poll's cost that this
4 advice reflects.³⁵ Nevertheless, the cost of the poll suggests that the shared portion would have to be
5 of truly marginal value to *not* constitute an excessive contribution. The \$2,000 limit represents just 5
6 percent of the total \$40,000 that McCaskill paid for the poll. Given McCaskill's statement that the
7 poll examined the status of the race and the effect of Akin's messaging, there is reason to believe the
8 apparent contribution exceeded the applicable contribution limit in violation of the Act.

9 The McCaskill and Akin committees assert that in order for polling results to constitute a
10 contribution, one committee must provide a second committee with access to the polling data
11 itself.³⁶ The Commission, however, has not confined the term "poll results" as used in 11 C.F.R.
12 § 106.4(b) to polling data alone, and has recognized that the term also includes non-public analyses
13 and applications of polling data.³⁷

³⁴ McCaskill, *How I Helped Todd Akin Win* at 2.

³⁵ Recognizing that a contribution may not include the full results of a poll, Commission regulations provide the means of calculating the allocable portion of the cost. The allocable share may be based on a formula used by the polling firm; the number of candidates receiving the results; the number of question results a candidate receives compared to the total number of question results; or any other reasonable method. *Id.* § 106.4(e)(1)-(4). Drawing from these provisions, the Commission stated in Advisory Opinion 1990-12 (Strub) that when an individual with knowledge of a poll shares data or analysis, the "amount of such contribution will be determined by calculating the share of the overall cost of the poll allocable to that particular information." Advisory Op. 1990-12 (Strub) at 2 ("AO 1990-12" or "Strub Opinion").

³⁶ McCaskill Comm. Resp. at 3. The Akin Committee explains its position in the following way: "[o]pinion polls generally provide a topline, which is a list of the questions asked and the overall response broken down by percentage, followed by crosstabs, that break down responses to the questions in greater detail . . . Only providing 'broad generalities' about a poll without the corresponding crosstabs does not result in an 'acceptance of poll results.'" Akin Comm. Resp. at 3.

³⁷ In the Strub Opinion, the Commission considered whether an individual with knowledge of a non-public poll makes a contribution by volunteering on a campaign. AO 1990-12. The individual, who had previously considered becoming a candidate in the race, had commissioned a poll for his own benefit, but ultimately decided not to run and wanted to volunteer for a declared candidate instead. *Id.* The Commission opined that the individual's mere possession of the polling results did not render his volunteer work a contribution, but advised the requestor candidate: "[If the volunteer] imparts poll result information to you or anyone else working for your campaign, including any data or any analysis of the results, or if he uses the poll information to advise your campaign on matters such as campaign strategy or creating media messages, such poll information will constitute an

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1 The McCaskill Committee also argues that its conversation with the Akin Committee was
2 not a contribution because it was not for the purpose of influencing Akin's election; rather, it was
3 for the purpose of promoting McCaskill's own success in the general election.³⁸ However, it is
4 apparent that in conducting a poll on the Republican primary and sharing the findings with the
5 Akin Committee, McCaskill sought to influence the 2012 Missouri Republican primary. She
6 admits as much in her memoir when she explains that her goal was to "... maneuver Akin into
7 the GOP driver's seat ..."³⁹ Further, in its response, the McCaskill Committee states that, as part
8 of a "deliberate effort to ensure that she would face her preferred opponent," the campaign
9 "spent a significant amount of money to ensure that [Akin] would be her opponent in the general

in-kind contribution to your campaign The amount of such contribution will be determined by calculating the share of the overall cost of the poll allocable to that particular information." *Id.* at 2 (emphasis added). The McCaskill Committee cites Advisory Opinion 2006-04 (Tancredo), in which the Commission determined that providing access to "polling data" constitutes a contribution within the meaning of the Act. Advisory Op. 2006-04 at 6 ("AO 2006-04") ("Because Representative Tancredo [and Tancredo for Congress ('TFC')] will 'have access' to [another committee's] polling data, and because TFC will use this data in creating advertisements it will run, TFC's acceptance of [the] poll results is an in-kind contribution.") However, the requestor asked about the receipt of "polling data" specifically, and the Commission did not have occasion to consider the meaning of the broader term "poll results" as used in 11 C.F.R. § 106.4(b). Advisory Op. Req. at 7, AO 2006-04.

³⁸ McCaskill Comm. Resp. at 2. In support of its arguments, the committee relies upon the Commission's Explanation and Justification ("E&J") of its Coordinated Communications regulations for the proposition that Commission regulations "recognize that a candidate's activities in connection with the opposing party's primary are intended to bolster that candidate's standing in the general election." *Id.* at 3 (citing Coordinated Communications, 71 Fed. Reg. 33,190, 33,198-99 (June 8, 2006) (explanation and justification) ("Coordinated Communications E&J")). In that E&J, the Commission offered a hypothetical in which a Democratic candidate coordinated with a third-party organization on the latter's advertisement to oppose the frontrunner in the Republican primary. The Commission concluded that the ad was an in-kind contribution from the organization to the Democratic candidate. Coordinated Communications E&J at 33,198-99. The McCaskill Committee argues that the treatment of the ad as an in-kind contribution to the Democratic candidate — and *not* the primary opponents of the Republican targeted in the ad — demonstrates that McCaskill's spending should not be considered a contribution to Akin, but an expenditure to support her own election. McCaskill Comm. Resp. at 3. This application, however, misconstrues the hypothetical. The Commission's regulations stipulate that such a coordinated communication is necessarily an in-kind contribution to the coordinating candidate and the hypothetical did not address the present situation in which a candidate spends money to promote a potential general election opponent in that opponent's primary election. Nevertheless, the fact that a coordinated communication is an in-kind contribution to the candidate with whom it is coordinated is premised on the fact that the payor has given the coordinating candidate something of value. Thus, just as the Democratic candidate in the hypothetical was the recipient of something of value (the foregone cost of running an advertisement against a potential opponent) from the third-party organization, so too here is Akin the recipient of something of value (polling information) from the McCaskill Committee.

³⁹ McCaskill, *How I Helped Todd Akin Win* at 5. We further note that McCaskill named the relevant chapter of her memoir "How I Helped Todd Akin Win . . ." and stated that she had "successfully *manipulated* the Republican primary." *Id.* at 3 (emphasis added).

1 election.”⁴⁰ These statements demonstrate that McCaskill and her committee provided the
2 polling information to Akin for the purpose of influencing the primary election. That McCaskill
3 may have aided Akin as a means of indirectly influencing the general election does not vitiate the
4 influence on the Republican primary election. Indeed, all efforts to influence a primary election
5 have an indirect influence on the subsequent general election, and by Respondents’ argument,
6 any direct or in-kind contribution to Akin could be construed as a contribution to McCaskill
7 because they made it more likely she would face a weaker general election candidate.

8 Finally, the Akin Committee asserts that no evidence exists to show that Akin or the Akin
9 Committee actually received the polling data from the McCaskill Committee and argue that they
10 could not and would not have *used* the polling information.⁴¹ It argues that the memoir does not
11 identify the individual with whom the McCaskill Committee allegedly spoke and asserts that
12 “[a]t no time was Akin aware that anyone connected with the McCaskill campaign was in contact
13 with his Committee.”⁴² A candidate’s agent, however, may accept poll results on behalf of the
14 candidate and committee, so even if Akin was not personally aware of contact with the McCaskill
15 Committee that fact does not shelter his committee from liability. In addition, the memoir names a
16 source — McCaskill’s campaign manager, Adrienne Marsh — for the statement that a representative
17 of the Akin Committee called to speak with the pollster.⁴³ Further, the Akin Committee does not
18 deny that a conversation about the poll occurred and implicitly acknowledges that it did in its
19 arguments that a mere conversation about polling results is not a contribution. Thus, the memoir’s
20 specific information, in conjunction with the Respondents’ acknowledgment that discussions of the

⁴⁰ McCaskill Comm. Resp. at 2.

⁴¹ Akin Comm. Resp. at 1, 2.

⁴² *Id.*

⁴³ McCaskill, *How I Helped Todd Akin Win* at 5.

1 poll took place, provides a reasonable basis to believe that a representative of the Akin Committee
2 received the polling information, notwithstanding that the memoir did not identify the representative.
3 The Akin Committee's assertion that it wished to end the primary campaign with the Huckabee ad
4 because it was a "positive ad" and that they would not have been able to change the ad traffic in three
5 hours' time as McCaskill says occurred is not mutually exclusive of the possibility that McCaskill's
6 polling advice provided additional impetus to do so. And even if the Akin Committee did not use the
7 polling information, Commission regulations also deem results accepted if the recipient either solicits
8 them or fails to notify the contributor that they are refused.⁴⁴ While it is possible that the Akin
9 Committee contacted Marsh only after McCaskill's intermediaries reached out, there is no
10 information to suggest that the Akin Committee ever refused the polling information from the
11 McCaskill Committee. To the contrary, after receiving the intermediaries' messages, the available
12 information indicates that someone from the Akin Committee followed up to speak with McCaskill's
13 pollster. Accordingly, the Complaint provides sufficient information to investigate the Akin
14 Committee's knowing acceptance of the polling information.

⁴⁴ See 11 C.F.R. § 106.4(b).

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1 **B. There is Reason to Believe that the McCaskill and Akin Committees Did Not**
2 **Properly Disclose the Contribution**

3 The Act requires all principal campaign committees to file reports disclosing all of their
4 receipts and disbursements.⁴⁵ In addition to scheduled quarterly and pre- and post-election
5 reports,⁴⁶ principal campaign committees must disclose any “last-minute” contributions of
6 \$1,000 or more received less than 20 days but more than 48 hours before the day of any election
7 in which the candidate is running.⁴⁷ Committees must notify the Commission of such
8 contributions within 48 hours of receipt.⁴⁸

9 Neither the McCaskill Committee nor the Akin Committee reported the in-kind contribution
10 at issue here in their scheduled disclosure reports to the Commission. In addition, because the
11 contribution occurred five days before the primary election, the Akin Committee appears to have
12 been required to file a notice that it received a contribution of \$1,000 or more after the 20th day, but
13 more than 48 hours before the August 7, 2012 Republican primary election, which it did not do.

14 **C. Conclusion**

15 Based on the foregoing, we recommend that the Commission find reason to believe Senator
16 McCaskill and the McCaskill Committee violated 52 U.S.C. § 30102(e)(3)(B) by making an
17 excessive in-kind contribution of polling information. We also recommend that the Commission find
18 reason to believe the McCaskill Committee violated 52 U.S.C. § 30104(b) by failing to report this
19 excessive in-kind contribution. In addition, we recommend the that Commission find reason to
20 believe that the Akin Committee and W. Todd Akin in his official capacity as treasurer violated 52
21 U.S.C. §§ 30116(f) and 30104(b) by accepting and failing to report the excessive in-kind contribution

⁴⁵ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

⁴⁶ See 52 U.S.C. § 30104(a)(2); 11 C.F.R. § 104.5(a).

⁴⁷ 52 U.S.C. § 30104(a)(6)(A); 11 C.F.R. § 104.5(f).

⁴⁸ 52 U.S.C. § 30104(a)(6)(A); 11 C.F.R. § 104.5(f).

1 of polling information and violated 52 U.S.C. § 30104(a)(6)(A) by failing to file a 48-hour notice of
2 the contribution. Finally, because there is no information at this time to show that Akin was
3 personally aware of or involved in the acceptance of the contribution, we recommend that the
4 Commission take no action at this time as to W. Todd Akin in his individual capacity.

5 **IV. PROPOSED INVESTIGATION**

6 If the Commission approves an investigation, we intend to seek further information
7 concerning the poll commissioned by McCaskill and the McCaskill Committee, as well as the
8 full scope of the communications that took place between the Akin Committee and the
9 McCaskill Committee, including those involving the campaign manager, pollster, and the two
10 intermediaries through whom McCaskill relayed messages about the Huckabee ad, for the
11 purpose of assessing the value of the apparent contribution. We will attempt to conduct our
12 investigation through voluntary means but recommend that the Commission authorize the use of
13 compulsory process as necessary.

14 **V. RECOMMENDATIONS**

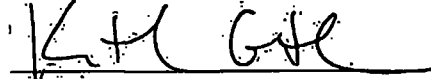
- 15 1. Find reason to believe Senator Claire McCaskill violated 52 U.S.C.
16 § 30102(e)(3)(B).
- 17
- 18 2. Find reason to believe McCaskill for Missouri and Michelle Sherod in her official
19 capacity as treasurer violated 52 U.S.C. §§ 30102(e)(3)(B) and 30104(b).
- 20
- 21 3. Find reason to believe Akin for Senate and W. Todd Akin in his official capacity as
22 treasurer violated 52 U.S.C. §§ 30104(a)(6)(A), 30104(b), and 30116(f).
- 23
- 24 4. Take no action at this time as to W. Todd Akin in his individual capacity.
- 25
- 26 5. Approve the attached Factual and Legal Analyses.
- 27
- 28 6. Approve the use of compulsory process as necessary.
- 29
- 30 7. Approve the appropriate letters.

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Date

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