

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Michael Sanders  
Chairman  
Missouri Democratic State Committee  
P.O. Box 719  
Jefferson City, MO 65102,

Complainant,

v.

W. Todd Akin  
P.O. Box 31222  
St. Louis, MO 63131,

Akin for Senate  
P.O. Box 31222  
St. Louis, MO 63131,

Senate Conservatives Fund  
228 S. Washington St., Ste. 115  
Alexandria, VA 22314,

Respondents.

**COMPLAINT**

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4(a) against W. Todd Akin, Akin for Senate, and the Senate Conservatives Fund (Respondents). According to public news reports, Respondents are about to violate multiple provisions of the Federal Election Campaign Act of 1971, as amended ("Act"), as described herein.

**A. FACTS**

W. Todd Akin is a candidate for the United States Senate in Missouri. Akin for Senate is his principal campaign committee. Senate Conservatives Fund ("SCF") is a PAC that is registered with the Federal Election Commission. According to public records and recent articles, SCF used to be the leadership PAC of Senator Jim DeMint. In July 2012, SCF amended

its statement of organization to remove its affiliation with Senator DeMint so that it could operate as a so-called "super PAC." *See* Senate Conservatives Fund Form 1 (amended 7/1/2012); *Politico*, 7/2/2012.

On Sunday, August 19, 2012, Mr. Akin shocked the nation when he made comments distinguishing between "legitimate rape," which he claimed did not result in pregnancy, and other forms of rape. *See New York Times*, 8/20/2012. Following his outrageous remarks, Republicans and their affiliates, from the National Republican Senatorial Committee to American Crossroads, stated publicly that they would not support Mr. Akin's election efforts.

Not so with SCF. Desperate for reinforcements to aid his failing campaign, Akin began conversations with SCF to win over its support. SCF only supports candidates who support a ban on earmarks. Though Akin has long championed earmarks – indeed, he has touted them in his recent advertisements -- he specifically agreed to SCF's earmark ban in order to receive fundraising support from SCF.

This agreement followed after some back-and-forth between Akin and SCF. According to the *St. Louis Post-Dispatch*, SCF "asked for the agreement in return for possible fundraising." *St. Louis Post-Dispatch*, 9/21/2012. Akin's own aid stated that Akin "has agreed to their earmark ban." *Id.*

In a press conference on September 24, Akin revealed more about his dealings with the super PAC:

PRESS: Congressman? Did you talk to DeMint? I mean was there a conversation where he just wanted to make sure he knew what your interpretation of earmarks was? Can you walk through that...?

AKIN: That discussion has taken place at the staff level where people talk and ok give us a definition, well this is the one we are using and we said well no difference we are on the same page.

PRESS: Ok so then did they say well you know since we are all on the same page that DeMint will help you in the campaign?

AKIN: There's been nothing official on that. The conversation has been going on but there's nothing official.

Akin Press Conference with Newt Gingrich in Kirkwood, Missouri, 9/24/2012.

Recent reports have noted that the agreement may result in SCF running independent expenditures supporting Akin. *Springfield News-Leader*, 9/21/2012; *St. Louis Beacon*, 9/22/12.

## **B. LEGAL ARGUMENT:**

### **1. Legal Background**

The Act limits the amount of money that any person may contribute to Federal candidates and political committees. 2 U.S.C. § 441a(a). It is illegal for anybody to contribute, and for any candidate to receive, contributions to candidates in excess of \$2,500 per election. *Id.*

Federal campaign finance law treats coordinated expenditures by a non-party, non-candidate sponsor as in-kind contributions to the candidate or political party with whom they were coordinated. *See* 2 U.S.C. § 441a(a)(7)(B)(i)-(ii); 11 C.F.R. § 109.21(b). An ad is a "coordinated communication" if it is paid for by a person other than the candidate and it satisfies a content standard and a conduct standard. The conduct standard is met if, among other things, the candidate or his agents *requested or suggested the ad*; the person paying for the ad suggested the ad and the candidate or his agents *asset*; if the candidate or his agents were *materially involved in decisions* about it; or if the candidate or his agents and the sponsor had *substantial discussions* in which information material to the ad was conveyed. *See id.* § 109.21(d).

### **2. SCF Is About to Make, and Akin Is About to Receive Illegal In-Kind Contributions**

As the press reports make clear, Akin and SCF have engaged in conduct that would trigger the conduct prong of the coordinated communication analysis. Akin and SCF has back-

and-forth discussions over whether SCF would support Akin. SCF required that, as a condition of supporting Akin, Akin would agree to an earmark ban, and Akin agreed to those terms. Thus, Akin plainly requested and suggested that SCF support him, and assented to SCF's support.

Assuming that they have coordinated, should SCF sponsor communications in connection with the Missouri Senate election, Akin and SCF would violate 2 U.S.C. § 441a and 441b: SCF would knowingly made, and Akin knowingly accept, prohibited contributions well in excess of \$2,500. The FEC should intervene to enjoin this impending violation.

### **3. Akin Solicited Soft Money**

In addition to the above, federal law prohibits federal candidates and officeholders from soliciting funds outside of the federal limits, source restrictions and reporting requirements in connection with a federal election. 2 U.S.C. § 441i(e). If Akin asked SCF to make expenditures in connection with his campaign, Akin would have solicited contributions in excess of the federal limits.

### **C. REQUESTED ACTION**

As we have shown, there is substantial evidence that Respondents are about to violate the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations, including whether they were knowing and willful. Should the Commission determine that Respondents are about to violate FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

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SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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