



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Kristin E. Gillibrand

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MUR 5935

**STATEMENT OF REASONS OF VICE CHAIR CAROLINE C. HUNTER AND
COMMISSIONER MATTHEW S. PETERSEN**

This matter involves the alleged solicitation of non-Federal funds by then-Representative Gillibrand. The complaint alleges that she impermissibly solicited soft money due to her name being listed as a "special guest" on an invitation that included a solicitation of non-Federal funds by a local candidate. The Office of General Counsel ("OGC") recommended that we find reason to believe Representative Gillibrand violated Federal Election Campaign Act of 1971, as amended (the "Act"). We voted against OGC's recommendation to find reason to believe that Kristen Gillibrand violated then-2 U.S.C. § 441i(e) and 11 C.F.R. § 300.62.

There are a number of reasons why this matter did not warrant the use of Commission resources. The law regarding these issues lacked clarity at the time of this activity. The Bipartisan Campaign Reform Act of 2002 established that Federal candidates and officeholders may not solicit, receive, direct, transfer, or spend funds in connection with Federal or non-Federal elections unless the funds comply with the contribution limits and prohibitions of Federal law.¹ Between 2002 and the time the Commission issued new rules, the Commission had attempted to interpret this issue through a series of advisory opinions and MURs. As we have argued, however, those matters did not provide clear guidance.²

Furthermore, the Commission subsequently adopted revised regulations at 11 C.F.R. § 300.64 governing, *inter alia*, Federal candidates' and officeholders' participation at non-Federal fundraising events for local candidates, such as the event at issue in this matter. Under the revised regulations, where, as here, pre-event publicity contains a solicitation for non-Federal funds and identifies a Federal candidate or officeholder as a "special guest," the publicity must contain a disclaimer stating expressly that the Federal candidate or officeholder is not making the solicitation. Although these regulations were not in effect at the time of the activity in question, an enforcement matter in this context would lack merit, given the lack of clarity and the subsequently changed legal landscape.³

¹ See 52 U.S.C. § 30125(e); 11 C.F.R. §§ 300.61, 300.62.

² See MURs 5712 and 5799 (Senator John McCain) Statement of Reasons of Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Donald F. McGahn at 10.

³ *Heckler v. Chaney*, 470 U.S. 821 (1985).

Finally, the individual amounts apparently raised as a result of this solicitation were not significant. For example, the local candidate received one contribution from an individual in the amount of \$2,500—less than the total amount Gillibrand could solicit for her own primary and general elections combined (which at the relevant time was \$4,600). In light of this consideration and those noted above, we voted not to find reason to believe that Gillibrand violated the Act or Commission regulations in this matter.⁴

2/16/2017
Date

Carole C. Hunter
Caroline C. Hunter
Vice Chair

FEB. 16, 2017
Date

Matthew S. Petersen
Matthew S. Petersen
Commissioner

⁴ *Id.*