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February 26, 2008

AOR 2008-04

Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

**Re: Advisory Opinion Request
Chris Dodd for President, Inc.**

Dear Ms. Duncan:

On behalf of Chris Dodd for President, Inc. ("the Committee"), we write to seek an advisory opinion from the Federal Election Commission pursuant to 2 U.S.C. §437f.

FACTUAL DISCUSSION

The Committee is the principal campaign committee of Senator Christopher J. Dodd, who was a candidate for the nomination of the Democratic Party for President of the United States. Senator Dodd filed a Statement of Candidacy with the Commission to that effect on January 11, 2007. Having been a candidate for Senate in Connecticut in the 2010 election, he stopped seeking Senate re-election to run for President. Through counsel, he filed a letter with the Secretary of Senate and the Commission, serving notice that he was no longer a Senate candidate.

When Senator Dodd became a Presidential candidate, he had not determined finally whether he would seek or accept public funds for the primary or general elections. Accordingly, his Committee began accepting private contributions for the general election, under the conditions set forth by Advisory Opinion 2007-3. The Committee has kept its general election contributions in a separate account, and has tracked them separately in its accounting database. See 11 C.F.R. §§ 102.9(e)(1)-(2) (2007).

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On November 13, 2007, the Committee applied for federal matching funds. The Commission voted to find the Committee eligible on November 27, 2007. The Committee has since made multiple matching fund submissions. On January 3, 2008, Senator Dodd stopped actively seeking the Democratic nomination.

On January 11, 2008, Senator Dodd filed another Statement of Candidacy – this time with the Secretary of the Senate, indicating that he again had become a candidate for U.S. Senate in Connecticut in the 2010 election. He designated Friends of Chris Dodd as his principal campaign committee for that election.

The Committee has \$1,706,420.30 in general election funds on hand. It writes to seek Commission permission to refund its general election contributions to the original donors or obtain written redesignations to Friends of Chris Dodd for the 2010 Senate primary and/or general elections. Friends of Chris Dodd would treat the redesignated contributions in accord with § 102.9(e).

To the best of the Committee's knowledge and belief, no presidential candidate has ever before applied for public funds in the primary election, raised private funds for the general election into the primary committee, and lost the nomination.¹ Unlike any past committee, the Committee must comply not only with 11 C.F.R. § 102.9(e)'s refund/redesignation requirement, but also with 11 C.F.R. §9034.4(b)(3)'s limitations on post-ineligibility spending.

The Committee seeks affirmation that it can comply with both rules at the same time, making refunds and obtaining redesignations under § 102.9(e)(3) while awaiting the audit and repayment processes.²

LEGAL DISCUSSION

Commission rules provide that, if a candidate loses his bid for nomination, "any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 C.F.R. 110.1(b)(5) or 110.2(b)(5), or reattributed in

¹ 11 C.F.R. § 9003.3 allows a Presidential primary candidate, under certain conditions, to raise funds into a general election legal and accounting compliance fund. However, such funds are established under special rules as separate reporting entities.

² The Committee has refunded \$36,800 in general election contributions in response to direct, unsolicited donor requests. The Committee has also begun to seek written redesignations, to facilitate timely compliance with § 102.9(e)(3). However, the Committee will continue to escrow its general election contributions and will not transfer any portion of them to Friends of Chris Dodd until receipt of the Commission's response to this request.

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accordance with 11 C.F.R. 110.1(k)(3), as appropriate." 11 C.F.R. § 102.9(e)(3). The Commission has specifically interpreted this regulation to permit the written redesignation of general election contributions by a losing primary candidate to a future election for federal office. *See* Advisory Opinion 1992-15.

At the same time, however, Commission rules allow publicly funded Presidential candidates to spend their funds solely for qualified campaign expenses. *See* 11 C.F.R. § 9034.4(a). After the date of ineligibility, the rules specifically limit campaigns to paying for winding-down costs and certain convention-related expenses. *See id.* § 9034.4(b)(3). Winding-down costs are defined to include "costs associated with the termination of political activity related to a candidate's seeking his or her nomination for election ..." *Id.* § 9034.11(a).

Logic suggests that refund or redesignation under § 102.9(e)(3) should be allowed, notwithstanding § 9034.4(b)(3)'s limitations. In the past, the Commission has tolerated the refund of contributions post-ineligibility, but before the audit is over. For example, committees have often made refunds to comply with findings made by audit staff during field work. *See, e.g.,* Final Audit Report on McCain 2000, Inc. and McCain 2000 Compliance Committee, Inc., at 13-14 (noting reissuance of stale-dated refund checks). There is no reason why redesignations ought not be allowed in the same manner, so long as they comply with § 102.9(e)(3).

Assuming refund or redesignation under § 102.9(e)(3) is permissible, there remains the question of when the refund must be made or redesignation obtained. In Advisory Opinion 1992-15, the request was made 37 days after the primary; the Commission allowed 23 days after the date of the requestor's receipt of the opinion to obtain written redesignations. This situation is different. While Advisory Opinion 1992-15 involved the straightforward application of an existing regulation, here the Committee faces an entirely novel situation. Accordingly, the Committee would ask for 60 days upon receipt of the Commission's opinion to make the necessary refunds or to obtain the necessary redesignations, since it will be the Commission's opinion that provides "actual notice" of the Committee's options in this situation. Advisory Opinion 1992-15.

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Very truly yours,



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VIA EMAIL AND U.S. MAIL

April 22, 2008

Amy Rothstein, Esq.
Eric Hallstrom, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

**Re: Advisory Opinion Request
Chris Dodd for President, Inc.**

Dear Ms. Rothstein and Mr. Hallstrom:

I write to respond to the questions you raised in our telephone conference of Friday, March 7, 2008, regarding the above-referenced advisory opinion request. Please accept this letter as a supplement to our request that would allow it to be qualified for Commission consideration under 11 C.F.R. § 112.1 (2008).

When Senator Dodd withdrew from the presidential race on January 3, he was in an unprecedented situation. Into the same committee, he accepted public funds for the primary election, and raised private funds for the general election. The Committee has maintained and continues to maintain a bank account that contains its primary election funds, and a separate bank account containing its general election funds.¹

¹ The Committee's practice was to deposit the first \$2,300 of each individual's contribution into the primary election account, unless the contribution was excessive or expressly designated for the general election account. The Committee's Treasurer, Kathy Damato, had access to the general election account.

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Commission rules require the Committee to refund or redesignate its general election contributions. *See* 11 C.F.R. § 102.9(e). But they also allow a committee that receives public funds to spend its funds – including private funds – only for specifically enumerated purposes. *See* 11 C.F.R. §§ 9034.4(a), (b)(3). The enumerated purposes do not expressly include refunds, or transfers resulting from redesignations. *See id.* § 9034.4(b)(3).

The Committee had to figure out how to meet these seemingly inconsistent obligations while having to immediately wind down its activities to comply with the public financing restrictions. *See* FEC, Financial Control and Compliance Manual 198 (2000) ("Committees are expected to wind up their activities and reduce staffing as quickly as possible after the last day of eligibility ..."). Moreover, a week after Senator Dodd withdrew from the presidential race, he qualified again as a candidate for the United States Senate in the 2010 Connecticut elections. *See* Christopher J. Dodd, Statement of Candidacy (filed Jan. 11, 2008).

The Committee could have begun refunding general election contributions immediately after the January 3 withdrawal. But it would have forfeited the ability to redesignate the funds to a future election. It could have immediately started seeking redesignations, but the Commission had not prescribed exactly how this could be done under the present circumstances.

Thus, the Committee prepared the instant advisory opinion request. While the request was being prepared, but before it was submitted, the Committee decided that it might be helpful to begin the process of seeking written redesignations. It did so upon review of Advisory Opinion 1992-15. In that opinion, the Commission gave the requestor only 23 days after receipt of the opinion to obtain redesignations for a future election, reasoning that 37 days had passed between the date of the requestor's primary defeat and the submission of his request. (The reference to "escrow" in the original request meant simply that the general election funds would be kept in a separate account and on hand until the Commission issues an opinion.)

The Committee asked the Commission for sixty days upon receipt of an opinion to obtain redesignations, so that it might have the full period allowed under the regulations. But without knowing the timetable on which the Commission might allow redesignations to be obtained, the Committee did not want to risk forfeiting its ability to seek them altogether. Thus, the Committee began sending redesignation requests on February 28

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and stopped sending requests on February 29.² It sent these requests via U.S. Mail asking donors to respond to these requests via facsimile or U.S. Mail. It anticipates sending no further requests. The Committee paid the minimal costs of sending the redesignation requests with funds received for the presidential primary election; it saw no reason why these costs would not qualify as costs associated with the termination of political activity, and thus as "winding down costs" under 11 C.F.R. § 9034.11(a).³

Also, after Senator Dodd's January 3 withdrawal, the Committee had begun to receive direct, unsolicited requests for refunds from some of its general election donors. Under the circumstances, the Committee felt it had no practical alternative but to honor such direct requests. To date, the Committee has refunded \$ 462,762.00 in general election contributions.

The Committee does not ask the Commission to ratify the refunds that have already occurred. It understands that the Commission may only issue advisory opinions to approve transactions in advance. Nonetheless, the Committee still would like Commission approval for those refunds that might be made after issuance of the opinion, along with permission for the Senate campaign committee to receive and retain redesignated contributions.

In the weeks after January 3, the Committee faced a novel legal situation amidst the pressures of winddown, a new candidacy and incoming refund requests. It ultimately decided to seek an advisory opinion as the most prudent way to bring clarity to the situation. It sent written redesignation requests solely to facilitate timely compliance with whatever opinion the Commission ultimately issues. And it has made refunds solely to meet the express requests of its donors.

² The requests were sent to all general election contributors, except for those who had already requested refunds.

³ As of today, the Committee has received signed redesignation letters for general election contributions totaling \$67,800.

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I hope these additional facts address your questions, and permit the consideration of our request.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. G. Svoboda", with a long horizontal flourish extending to the right.

Brian G. Svoboda
Counsel to Chris Dodd for President, Inc.