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BY ELECTRONIC AND U.S. MAIL

Mr. Thomas Hintermister
Acting Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

**Re: Chris Dodd for President, Inc.
Response to Final Audit Report**

Dear Mr. Hintermister:

We write in response to the Draft Final Audit Report of the Audit Division on Chris Dodd for President, Inc. ("the Committee"). We appreciate the review of the Committee's response to the Preliminary Audit Report, and the changes that resulted. But the Draft Final Audit Report persists in erroneously contending that the Committee received a prohibited union treasury contribution; that it failed to resolve its general election contributions appropriately; and that it misstated receipts through use of a brokerage account. We ask the Commission to correct those findings, and we request the opportunity to discuss these matters in a hearing.

A. There Is No Sound Basis for a Finding of a Union Treasury Contribution

Finding 2 continues to allege that the Committee received a prohibited union treasury contribution of \$15,423 from the International Association of Firefighters – even though the union's *separate segregated fund*, FIREPAC, billed the Committee a lesser amount of \$12,088; even though the Committee overpaid FIREPAC in an abundance of caution; and even though FIREPAC disclosed the Committee's debt and later deposited the funds into its own account. See Draft Final Audit Report at 16-12. While the Committee paid its debt to FIREPAC later than

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Mr. Thomas Hintermister
July 26, 2011
Page 2

it would have preferred, there is no sound basis for finding that it received a contribution from the union itself.¹

B. The Committee Timely Resolved the Overwhelming Majority of Its Individual Contributions

Echoing the Preliminary Audit Report, the Draft Final Audit Report claims:

During audit fieldwork, the Audit staff identified contributions designated for the General election totaling \$244,050 ... for which [the Committee] did not provide the required redesignation letters necessary to transfer the funds to [the Senate campaign].

Draft Final Audit Report at 13. Later, however, the Draft Final Audit Report acknowledges that all but \$7,100 of these contributions have been resolved. The final audit report should make clear that – for the bulk of these contributions – the Committee timely obtained redesignations and issued refunds.

The finding of excessive individual contributions arose from audit error. The Committee raised funds for the general election and kept them in an investment account. When the Committee received permission to redesignate its general election contributions to the candidate's Senate campaign, *see* Advisory Opinion 2008-04, it transferred the timely redesignated contributions from its brokerage account to the Senate campaign's brokerage account. This transfer was done by journal entry.

The auditors initially claimed that, because the fair market value of the Committee's brokerage account at the time of transfer fell below the total amount of general election contributions, the Committee was unable to transfer all of the redesignated funds. To identify the excessive contributions that supposedly resulted, the auditors do not appear to have looked to the actual written redesignations. Instead, they used an accounting method. This is why – in language removed from the Draft Final Audit Report, at the General Counsel's urging – the Preliminary Audit Report said that the "loss and subsequent losses are the basis for the excessive contributions of \$244,050 identified during audit fieldwork discussed in finding 2." Preliminary Audit Report at 7.

¹ The Draft Final Audit Report presents no factual basis for its gratuitous claim that the Committee "did not consider resolution of the contribution a high-priority obligation" – and there is none. Draft Final Audit Report at 12.

When the Committee reviewed the list of excessive contributions provided by the auditors, it quickly verified that it had obtained written redesignations for \$74,800 of them.² The Committee produced copies of these letters to the auditors in its response to the Preliminary Audit Report. The Committee also showed that another contribution on the list had been refunded in September 2007; that still another had been returned for nonsufficient funds; and that refund checks for the bulk of the remainder were issued before the Advisory Opinion 2008-04 deadline. *See* Draft Final Audit Report at 14.

Thus, the Draft Final Audit Report confirms that – of the \$244,050 in individual contributions that were supposedly excessive – only \$7,100 remain unresolved. *See id.* Yet the Final Audit Report persists in its claim of excessive contributions. It says incorrectly that the Committee "did not provide the required redesignation letters," *id.* at 13; that "[e]xcessive contributions totaling \$160,050 were resolved in an untimely manner," *id.* at 14; and that "there are contributions of \$173,210" that the Committee "has not transferred to" the Senate campaign. This continued claim is mistaken and should be changed.

C. The Draft Misstatement Finding Errs in Its Treatment of Brokerage Account Losses

This audit began before the Commission considered the Audit Report on Friends of Weiner, the principal campaign committee of Anthony Weiner's 2004 House campaign. In that audit, the Audit Division ultimately retreated from an initial contention that a committee must report unrealized gains and losses. A similar misunderstanding of the law initially shaped this audit. It drove the auditors' now-discarded finding of excessive contributions that was supposed to have resulted from the brokerage account's drop in value. *See* Legal Analysis Draft Final Audit Report (May 24, 2011), at 3. It also drove the remaining finding of misstatement that was based on losses in the brokerage account. *See* Draft Final Audit Report at 17.

At the Exit Conference, the auditors presented the misstatement owing to the brokerage account as "Net Investment Adjustments ... Monthly Profit/Loss." As the Committee noted in its response to the Exit Conference, the auditors' supporting schedules indicated that these amounts were calculated based on fluctuations in value. The Preliminary Audit Report was the first time the auditors referred to "realized losses." Preliminary Audit Report at 12.

² The Committee disputes the Draft Final Audit Report's contention that the redesignation letters were "not previously available" before the response to the Preliminary Audit Report. Draft Final Audit Report at 14. The Draft Final Audit Report acknowledges that the Committee's records "were materially complete" at the start of fieldwork. *Id.* at 1.

Mr. Thomas Hintermister
July 26, 2011
Page 4

Yet even assuming that the current misstatement finding reflects the sum of realized losses – in other words, the accumulation of losses from actual sales of stock, as opposed to mere fluctuations in value – the statute and regulations still provide no explicit guidance on how these must be reported. The statute requires disclosure of, *inter alia*, "dividends, interest and other forms of receipts" and " ... any other disbursements." 2 U.S.C. §§ 434(b)(2)(J), (4)(G). Yet neither the statute nor the regulations explicitly refers to the disclosure of losses, especially within a brokerage account.

Even the Draft Final Audit Report shows the lack of clarity on this issue. The auditors say that the undisclosed losses resulted in an "**understatement of receipts.**" See Draft Final Audit Report at 16 (emphasis added). But the General Counsel's legal analysis says that "[r]ealized capital losses must be reported as '**other disbursements**' in the reporting period in which they are realized" – which is inconsistent with the auditors' proposed finding of misstated *receipts*. See Legal Analysis Draft Final Audit Report (May 24, 2011), at 4 (emphasis added).

The Commission should not find that the Committee violated the law on such an ambiguous question, when the auditors changed the legal standard in the middle of the audit, and when there is still no clear agreement about how the Committee specifically should have reported this activity. This is especially true here, where the invested funds were segregated so as not to be used in the primary election. One could easily tell from the Committee's reports how much Senator Dodd had raised for the general election – and how much he would have available when nominated, or would have to dispose of when he lost.

We appreciate the Commission's attention to these matters.

Very truly yours,



Marc E. Elias
Brian G. Svoboda