



AGENDA DOCUMENT NO. 08-22

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, AUGUST 21, 2008**

PRESENT:

Donald F. McGahn II, Chairman, presiding

Steven T. Walther, Vice Chairman

Cynthia L. Bauerly, Commissioner

Caroline C. Hunter, Commissioner

Matthew S. Petersen, Commissioner

Ellen L. Weintraub, Commissioner

Joseph F. Stoltz, Acting Staff Director

**Christopher Hughey, Deputy General Counsel,
representing Thomasenia P. Duncan,
General Counsel**

Mary W. Dove, Secretary

Chairman Donald F. McGahn II called the Federal Election Commission to order in an open meeting at 10:05 A.M. on Thursday, August 21, 2008, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for July 28, 2008
Agenda Document No. 08-16**

Chairman McGahn recognized Vice Chairman Walther, who

MOVED to approve the minutes for the Open Meeting of Monday, July 28, 2008, as set forth in Agenda Document No. 08-16.

The motion carried on the vote of 6-0 with Commissioners

Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively.

II. DRAFT ADVISORY OPINIONS

**A. Draft Advisory Opinion 2008-04
Chris Dodd for President, Inc. by Marc E. Elias, Esq. and Brian G. Svoboda, Esq.**

Agenda Document Nos. 08-19 and 08-19-A (submitted late)

Chairman McGahn recognized Vice Chairman Walther, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document Nos. 08-19 and 08-19-A.

The motion carried on the vote of 6-0.

II. DRAFT ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2008-04 (continued)

The Chairman recognized Ms. Joanna Waldstreicher of the General Counsel's Office who presented the two drafts of Advisory Opinion 2008-04, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. 431 et seq., the Presidential Primary Matching Payment Account Act (the "Matching Payment Act"), and Commission regulations to the redesignation and refund of general election contributions received by the Chris Dodd for President, Inc. Presidential Committee during the primary campaign.

Chairman McGahn recognized Commissioner Hunter, who reviewed her proposed draft (Draft B), as set forth in Agenda Document No. 08-19-A, and

**MOVED to approve Draft B, as contained in
Agenda Document No. 08-19-A.**

The motion failed by a vote of 3-3 with Commissioners Hunter, McGahn, and Petersen voting affirmatively. Commissioners Bauerly, Walther, and Weintraub dissented.

The Chairman recognized Vice Chairman Walther, who

II. DRAFT ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2008-04 (continued)

**MOVED to approve his proposed draft (Draft A),
as set forth in Agenda Document No. 08-19.**

The motion failed by a vote of 3-3 with Commissioners Bauerly,

Walther, and Weintraub voting affirmatively. Commissioners Hunter,

McGahn, and Petersen dissented.

Chairman McGahn recognized Vice Chairman Walther, who

**MOVED to return Drafts A and B of Advisory
Opinion 2008-04 to the General Counsel's
Office for redrafting, pursuant to the meeting
discussion, and to circulate the revised draft
on a tally vote basis.**

The motion carried on the vote of 6-0.

**B. Draft Advisory Opinion 2008-06
Democratic Party of Virginia by Marc E. Elias, Esq.
and Caroline P. Goodson, Esq.**

Agenda Document Nos. 08-21 and 08-21-A (submitted late)

The Chairman recognized the Vice Chairman, who

**MOVED to suspend the rules on the timely
submission of agenda documents in order
to consider Agenda Document Nos. 08-21
and 08-21-A.**

The motion carried on the vote of 6-0.

II. DRAFT ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2008-06 (continued)

Chairman McGahn recognized Mr. David Adkins of the General Counsel's Office who presented Drafts A and B of Advisory Opinion 2008-06, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the preparation and distribution of publications by the Democratic Party of Virginia (the "Committee") in connection with the 2008 general election.

Following discussion, Chairman McGahn recognized Commissioner Hunter, who

MOVED to approve Draft B of Advisory Opinion 2008-06, as set forth in Agenda Document No. 08-21-A, subject to the amendment on Page 2, line 7, by deleting the words "fresh-faced."

The motion carried on the vote of 4-2 with Commissioners Hunter, McGahn, Petersen, and Weintraub voting affirmatively.

Commissioners Bauerly and Walther dissented.

**C. Draft Advisory Opinion 2008-07
Senator David Vitter and Vitter for U.S. Senate by
Jan Witold Baran, Esq. and Caleb P. Burns, Esq.**

**Agenda Document Nos. 08-20 and 08-20-A
(submitted late)**

II. DRAFT ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2008-07 (continued)

The Chairman recognized Vice Chairman Walther, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document Nos. 08-20 and 08-20-A.

The motion carried on the vote of 6-0.

Chairman McGahn recognized Ms. Jessica Selinkoff of the General Counsel's Office who presented the two alternative drafts of Advisory Opinion 2008-07, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of campaign funds for the payment of certain legal fees and expenses incurred by Senator Vitter.

Following a discussion of the alternative drafts, the Chairman recognized Commissioner Petersen, who

MOVED to approve Draft B of Advisory Opinion 2008-07, as set forth in Agenda Document No. 08-20-A.

The motion failed by a vote of 3-3 with Commissioners Hunter, McGahn, and Petersen voting affirmatively. Commissioners Bauerly, Walther, and Weintraub dissented.

II. DRAFT ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2008-07 (continued)

The Chairman recognized Vice Chairman Walther, who

**MOVED to approve Draft A of Advisory Opinion
2008-07, as set forth in Agenda Document
No. 08-20.**

The motion failed by a vote of 3-3 with Commissioners

**Bauerly, Walther, and Weintraub voting affirmatively. Commissioners
Hunter, McGahn, and Petersen dissented.**

Chairman McGahn recognized Vice Chairman Walther, who

**MOVED to return Drafts A and B of Advisory
Opinion 2008-07, as set forth in Agenda
Document Nos. 08-20 and 08-20-A, respectively,
to the General Counsel's Office for redrafting,
pursuant to the meeting discussion, and to
circulate the redraft on a tally vote basis.**

The motion carried on the vote of 6-0.

**D. Draft Advisory Opinion 2008-09
Senator Frank Lautenberg and Lautenberg for
Senate by Marc Elias, Esq.**

Agenda Document No. 08-18 (submitted late)

**Without objection, the Commission agreed to accept the late
submitted document.**

II. DRAFT ADVISORY OPINIONS (continued)

D. Draft Advisory Opinion 2008-09 (continued)

Chairman McGahn recognized Ms. Joanna Waldstreicher of the General Counsel's Office who presented draft Advisory Opinion 2008-09, concerning the severability of a provision of the Bipartisan Campaign Reform Act of 2002 ("BCRA") dealing with the repayment of personal loans made by a candidate to his or her authorized campaign committee.

The Chairman recognized the Vice Chairman, who

MOVED to approve draft Advisory Opinion 2008-09, as set forth in Agenda Document No. 08-18.

The motion carried on the vote of 6-0.

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The meeting recessed at 11:10 A.M. and reconvened at 11:25 A.M. with a quorum present.

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**III. JOHN MCCAIN 2008, INC. – PRESIDENTIAL PRIMARY
MATCHING PAYMENT PROGRAM (LRA 731)**

Agenda Document Nos. 08-17 and 08-17-A
Agenda Document Nos. 08-17-B and 08-17-C
(submitted late)

Without objection, the Commission agreed to accept the late submitted documents.

Chairman McGahn recognized Ms. Danita Lee of the General Counsel's Office and Mr. Lawrence Calvert, Associate General Counsel for General Law and Advice, who presented an overview of the Presidential Primary Matching Payment Program.

A discussion followed.

Chairman McGahn recognized Commissioner Bauerly, who

MOVED to take the following actions in the above-captioned matter:

- 1. Grant Senator John McCain's request to be released from his obligations under the Presidential Primary Matching Payment Account Act.**
- 2. Withdraw the certification to the Secretary of the Treasury that Senator McCain and John McCain 2008, Inc. are entitled to payment from the Matching Payment Account.**
- 3. Approve the letters, as contained in Agenda Document No. 08-17-C.**

The motion carried on the vote of 6-0.

IV. MANAGEMENT AND ADMINISTRATIVE MATTERS

Following announcements, the meeting adjourned at 12:40 P.M.

Signed,

**Donald F. McGahn II
Chairman of the Commission**

Attest:

**Mary W. Dove
Secretary of the Commission**