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January 23, 2008

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

Withdrawal  
AOR 2007-36

2008 JAN 23 P 5:04

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: AOR 2007-36 – People for Pete Domenici

Dear Ms. Duncan:

On behalf of our client, People for Pete Domenici, we are withdrawing our request for an Advisory Opinion that was submitted on November 15, 2007.

Given the current state of affairs, it is clear that the Commission as it now exists will be unable to rule on our request and the draft opinion prepared by the Office of General Counsel (a draft which is consistent with our own view on the applicable law).

Although the Commission has scheduled a “meeting” on the matter, the reality is that no “meeting” will occur, and the Commission will not be able to rule on our request and satisfy its statutory obligation to do so.<sup>1</sup> “Meeting” is defined to mean “the deliberation of at least four voting members of the Commission in collegia where such deliberations determine or result in the joint conduct or disposition of official Commission business” (emphasis added). 11 CFR § 2.2(d)(1).<sup>2</sup> Because this is a regulation, the Commission cannot simply ignore or change it, certainly not by way of press release.<sup>3</sup> Nor can a modification of internal Commission rules and policies trump 11 CFR § 2.2.<sup>4</sup>

<sup>1</sup> See 2 U.S.C. § 437f(a) (directing the Commission to issue an Advisory Opinion within 60 days); see also 11 CFR § 112.4(a).

<sup>2</sup> This rule was promulgated in 1985 in the wake of the Government in the Sunshine Act, 5 U.S.C. § 552b, regarding the Scope and Definitions of Meetings. See Federal Register, Vol. 90, No. 180 (10/1/85) (available at [www.fec.gov/law/cfr/ej\\_compilation/1985/1985-11.pdf](http://www.fec.gov/law/cfr/ej_compilation/1985/1985-11.pdf)).

<sup>3</sup> On January 8, 2008, a news release entitled “FEC to Meet on January 24” was issued, claiming that “[t]he procedural rules of the Commission have been modified to permit meetings when the Commission has

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Donald F. McGahn II S.C." The signature is written in a cursive style with a large, stylized "D" and "M".

Donald F. McGahn II

*Counsel, People for Pete Domenici*

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fewer than four Members . . . ." Since the release is couched in the elusive passive voice, it is unclear who modified the "procedural rules."

<sup>4</sup> By this, we are referring to the supposed modification to the Commission's Directive 10 (which, unlike Commission regulations and its press releases, is not available on-line), originally issued in 1978 (and prior to the Commission's restructuring as well as the promulgation of 11 C.F.R. § 2.2(d)). Without any sort of indication of authorship (except for a handwritten notation that it was "received from staff director" on January 7, 2008), this new document, which has had no public notice, comment, discussion or review, or any authority under law, now claims that a meeting can occur with only two voting Commissioners.