

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 5937  
Romney for President, Inc. and Darrell )  
Crate, in his official capacity as treasurer, )  
Kem Gardner )

CERTIFICATION

I, Darlene Harris, recording secretary of the Federal Election Commission executive session, do hereby certify that on January 28, 2009, the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 3-3 to pass a motion to:

- a) Find reason to believe that Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive in-kind contribution.
- b) Find reason to believe that Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose an excessive in-kind contribution.
- c) Find reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a) by making an excessive in-kind contribution to Romney for President, Inc.
- d) Enter into pre-probable cause conciliation with Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, and Kem Gardner, prior to a finding of probable cause to believe.
- e) Approve the Conciliation Agreements, as recommended in the First General Counsel's Report dated February 29, 2008, as amended by the General Counsel's Errata Memorandum dated March 6, 2008; subject to a revised civil penalty amount of                      for Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer.
- f) Approve the Factual and Legal Analyses, as recommended in the First General Counsel's Report dated February 29, 2008, as amended by the General Counsel's Errata Memorandum dated March 6, 2008.
- g) Approve the appropriate letters.

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Commissioners Bauerly, Walther and Weintraub voted affirmatively  
for the motion. Commissioners Hunter, McGahn II and Petersen dissented.

2. Failed by a vote of 3-3 to pass a motion to:

- a) Reject the recommendation to find reason to believe that Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive in-kind contribution.
- b) Reject the recommendation to find reason to believe that Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose an excessive in-kind contribution.
- c) Find reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a) by making an excessive in-kind contribution to Romney for President, Inc.
- d) Enter into pre-probable cause conciliation with Kem Gardner, prior to a finding of probable cause to believe.
- e) Approve the Conciliation Agreement for Kem Gardner, as recommended in the First General Counsel's Report dated February 29, 2008, as amended by the General Counsel's Errata Memorandum dated March 6, 2008; subject to revision pursuant to the meeting discussion and any necessary technical and conforming amendments.
- f) Approve the Factual and Legal Analysis for Kem Gardner, as recommended in the First General Counsel's Report dated February 29, 2008, as amended by the General Counsel's Errata Memorandum dated March 6, 2008; subject to revision pursuant to the meeting discussion and any necessary technical and conforming amendments.
- g) Approve the appropriate letters.

Commissioners Bauerly, Walther and Weintraub voted affirmatively  
for the motion. Commissioners Hunter, McGahn II and Petersen dissented.

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3. Failed by a vote of 3-3 to pass a motion to:

- a) Find reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a) by making an excessive in-kind contribution to Romney for President, Inc.
- b) Authorize the Office of General Counsel to conduct a limited scope investigation.
- c) Approve the appropriate letters.

Commissioners Bauerly, Walther and Weintraub voted affirmatively for the motion. Commissioners Hunter, McGahn II and Petersen dissented.

4. Failed by a vote of 3-3 to pass a motion to:

Take no further action with respect to MUR 5937.

Commissioners Hunter, McGahn II and Petersen voted affirmatively for the motion. Commissioners Bauerly, Walther and Weintraub dissented.

5. Decided by a vote of 5-1 to:

Close the file in MUR 5937 and send the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Petersen, and Weintraub voted affirmatively for the decision. Commissioner Walther dissented.

Attest:

January 29, 2009  
Date

Darlene Harris  
Darlene Harris  
Deputy Secretary of the Commission

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