



**AGENDA DOCUMENT NO. 09-16**

**MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION  
THURSDAY, MARCH 19, 2009**

**PRESENT:**

**Steven T. Walther, Chairman, presiding**

**Matthew S. Petersen, Vice Chairman**

**Cynthia L. Bauerly, Commissioner**

**Caroline C. Hunter, Commissioner**

**Donald F. McGahn II, Commissioner**

**Ellen L. Weintraub, Commissioner**

**Robert A. Hickey, Staff Director**

**Thomasenia P. Duncan, General Counsel**

**Mary W. Dove, Secretary**

**Chairman Steven T. Walther called the Federal Election Commission to order in an open meeting at 11:05 A.M. on Thursday, March 19, 2009, with a quorum present.**

**The Chairman introduced and welcomed the new Staff Director, Robert A. Hickey.**

**I. CORRECTION AND APPROVAL OF MINUTES**

**Minutes for Thursday, February 12, 2009**

**Agenda Document No. 09-11**

**Chairman Walther recognized Vice Chairman Petersen, who**

**MOVED to approve the minutes for the Open Meeting of Thursday, February 12, 2009, as set forth in Agenda Document No. 09-11.**

**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 2009-01**

**Socialist Workers Party, by counsel, Michael Krinsky, Esq. and Lindsey Frank, Esq.**

**Agenda Document No. 09-12**

**II. DRAFT ADVISORY OPINIONS (continued)**

**A. Draft Advisory Opinion 2009-01 (continued)**

**Chairman Walther recognized Mr. Jonathan Levin of the General Counsel's Office who presented the draft opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the continuation of a partial reporting exemption for the Socialist Workers Party.**

**A discussion followed.**

**The Chairman recognized Commissioner Bauerly, who**

**MOVED to approve draft Advisory Opinion 2009-01, as set forth in Agenda Document No. 09-12, and to instruct the General Counsel's Office to make any necessary technical and conforming amendments.**

**The motion carried on the vote of 5-1 with Commissioners Bauerly, Hunter, McGahn, Petersen, and Weintraub voting affirmatively.**

**Commissioner Walther dissented.**

**The agenda was reordered, and Item IV was presented.**

**IV. 2009 LEGISLATIVE RECOMMENDATIONS**

**Agenda Document No. 09-15**

**IV. 2009 LEGISLATIVE RECOMMENDATIONS (continued)**

**The Chairman recognized Mr. Duane Pugh, Congressional, Legislative and Intergovernmental Affairs Director, who presented the four proposed Legislative Recommendations for 2009:**

- **Electronic Filing of Senate Reports**
- **Fraudulent Misrepresentation of Campaign Authority**
- **Conversion of Campaign Funds**
- **Senior Executive Service.**

**Chairman Walther recognized Vice Chairman Petersen, who**

**MOVED to approve the draft Legislative Recommendations, as set forth in Agenda Document No. 09-15, for transmittal to the President and Congress.**

**The motion carried on the vote of 6-0.**

**III. ELECTRONIC DISTRIBUTION OF FEC RECORD**

**(Placed on the agenda pursuant to the filing of an objection by Chairman Walther following circulation on a tally vote basis.)**

**Agenda Document No. 09-14**

**Chairman Walther recognized Mr. Greg Scott of the Information Division who presented the subject document.**

**A discussion followed.**

**III. ELECTRONIC DISTRIBUTION OF FEC RECORD (continued)**

**The Chairman recognized Commissioner Weintraub, who**

**MOVED to approve the plan to transition to  
electronic delivery of the agency's monthly  
*Record* newsletter, as set forth in Agenda  
Document No. 09-14.**

**The motion carried on the vote of 5-1 with Commissioners**

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

**Commissioner Walther dissented.**

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**The meeting recessed at 12:05 P.M. and reconvened at 1:35 P.M.**

**with a quorum present.**

**\* \* \* \* \***

**II. DRAFT ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2009-04 (Drafts A, B, and C)**

**Al Franken for U.S. Senate and the Democratic Senatorial  
Campaign Committee, by Marc E. Elias, Esq.**

**Agenda Documents No. 09-13, 09-13-A, and 09-13-B  
(submitted late)**

**(Commissioner Weintraub recused herself with  
respect to this matter, and she was not present  
during the discussion.)**

**II. DRAFT ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2009-04 (Drafts A, B, and C)  
(continued)**

**Chairman Walther recognized Commissioner Petersen, who**

**MOVED to suspend the rules on the timely  
submission of agenda documents in order  
to consider Agenda Document No. 09-13.**

**The motion carried on the vote of 5-0.**

**Chairman Walther recognized Ms. Joanna Waldstreicher of the  
General Counsel's Office who presented the three draft opinions  
concerning the application of the Federal Election Campaign Act of 1971,  
as amended (the "Act"), and Commission regulations to the establishment  
of recount and/or election contest funds by the two political committees,  
Al Franken for U.S. Senate and the Democratic Senatorial Campaign  
Committee.**

**A discussion followed.**

**Chairman Walther MOVED to approve the draft which he had  
submitted as Draft A of Agenda Document No. 09-13. The motion failed by  
a vote of 2-3 with Commissioners Bauerly and Walther voting affirmatively.  
Commissioners Hunter, McGahn, and Petersen dissented. Commissioner  
Weintraub recused herself with respect to this matter and did not vote.**

**There was further discussion.**

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**The meeting recessed at 2:00 P.M. and reconvened at 2:20 P.M.  
with a quorum present.**

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**II. DRAFT ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2009-04 (Drafts A, B, and C)  
(continued)**

**Agenda Documents No. 09-13-A and No. 09-13-B were presented,  
and Vice Chairman Petersen and Commissioner Hunter, respectively,  
moved to suspend the rules on the timely submission of agenda  
documents in order to consider the late documents. The two motions  
carried on votes of 5-0.**

**The discussion resumed.**

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**The meeting recessed at 2:50 P.M. and reconvened at 3:00 P.M.  
with a quorum present.**

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**II. DRAFT ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2009-04 (Drafts A, B, and C)  
(continued)**

**Chairman Walther recognized Vice Chairman Petersen, who**

II. **DRAFT ADVISORY OPINIONS** (continued)

B. **Draft Advisory Opinion 2009-04 (Drafts A, B, and C)**  
(continued)

**MOVED to strike Footnote 1, in Agenda Document No. 09-13-A; accept the analysis in the opinion which references AO 2006-24; accept the proposed amendments on Page 3, beginning on Line 21 after the word “here;” and approve Agenda Document No. 09-13-A, as amended.**

**The motion failed by a vote of 2-1 with Commissioners McGahn II and Petersen voting affirmatively. Commissioner Bauerly dissented. Commissioners Hunter and Walther abstained. Commissioner Weintraub recused herself with respect to this matter and did not vote.**

**Chairman Walther recognized Vice Chairman Petersen, who**

**MOVED to take the following actions in Agenda Document No. 09-13-A:**

**a. approve the answer to Question 1, as set forth in Agenda Document No. 09-13-A, subject to the following amendment:**

**On Page 3, Line 21, after the word “here.” delete the period, insert a comma, and insert the following new language:**

**“..and concluded that ‘because election recount activities are in connection with a Federal election, any recount fund established by either a Federal candidate or the State Party must comply with the amount limitations, source prohibitions, and reporting requirements of the Act.’ In that Advisory Opinion, the Commission explicitly stated that the national party committees ‘must pay for all of the recount activities they conduct using**



**II. DRAFT ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2009-04 (Drafts A, B, and C)  
(continued)**

**entirely [funds subject to the limitations, prohibitions and reporting requirements of the Act].’ Advisory Opinion 2006-24 (answer to question 3). The Commission further concluded that donations to such recount funds would not be aggregated with contributions from the same persons for purposes of the calendar year and aggregate biennial contribution limits.”**

**b. to authorize the General Counsel’s Office to make any necessary technical and conforming amendments.**

**c. to inform the requester that the Commission could not reach a conclusion on Question 2.**

**The motion carried on the vote of 5-0 with Commissioners**

**Bauerly, Hunter, McGahn II, Petersen, and Walther voting affirmatively.**

**Commissioner Weintraub recused herself with respect to this matter and did not vote.**

**V. MANAGEMENT AND ADMINISTRATIVE MATTERS**

**There being no further business to come before the Commission,  
the meeting adjourned at 3:15 P.M.**

**Signed:**

**Steven T. Walther  
Chairman of the Commission**

**Attest:**

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