



AGENDA DOCUMENT NO. 11-39

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
WEDNESDAY, JUNE 15, 2011**

PRESENT:

Cynthia L. Bauerly, Chair, presiding

Caroline C. Hunter, Vice Chair

Donald F. McGahn II, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Acting Staff Director

Christopher Hughey, Acting General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Cynthia L. Bauerly called the Federal Election Commission to order in an open meeting at 10:07 A.M. on Wednesday, June 15, 2011 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for May 26, 2011
Agenda Document No. 11-34**

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-34, minutes for the Open Session held on May 26, 2011.

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

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

Chair Bauerly recognized Vice Chair Hunter who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider the late submission of Agenda Document Nos. 11-33, 11-33-A, 11-35, 11-36, 11-32, 11-32-A, and 11-32-B.

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

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

II. DRAFT NOTICE OF PROPOSED RULEMAKING ON INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS BY CORPORATIONS AND LABOR ORGANIZATIONS

Draft Notice from Chair Bauerly and Commissioner Weintraub dated June 9, 2011

**Agenda Document No. 11-33
(Submitted Late)**

Draft Notice (Draft B) from Vice Chair Hunter dated June 9, 2011

**Agenda Document No. 11-33-A
(Submitted Late)**

Chair Bauerly noted that this matter was initially considered at the January 2011 meeting but the Commission was not able to agree on a notice of proposed rulemaking to put out for public comment. This matter is on today's agenda in an attempt to move forward to respond to the Court's decision. She highlighted similarities and differences between Agenda Document Nos. 11-33 and 11-33-A. She also noted that Items III and IV are on the agenda for consideration if the Commission is not able to adopt a notice of proposed rulemaking. Discussion followed.

Chair Bauerly recognized Commissioner Weintraub who

MOVED to approve Agenda Document No. 11-33.

The motion failed on a vote of 2-4 with Commissioners

Bauerly and Weintraub voting affirmatively for the motion.

Commissioners Hunter, McGahn, Petersen, and Walther dissented.

Chair Bauerly recognized Vice Chair Hunter who

**MOVED to approve Agenda Document No. 11-33-A,
referred to as Draft B.**

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

Hunter, McGahn, and Petersen voting affirmatively for the motion.

Commissioners Bauerly, Walther, and Weintraub dissented.

**III. DRAFT NOTICE OF AVAILABILITY FOR RULEMAKING
PETITION SUBMITTED BY THE JAMES MADISON CENTER
FOR FREE SPEECH**

**Notice of Availability - Petition for Rulemaking on
Independent Expenditures and Electioneering
Communications by Corporations and Labor Organizations
submitted by the James Madison Center for Free Speech**

**Agenda Document No. 11-35
(Submitted Late)**

**Chair Bauerly recognized Ms. Cheryl Hemsley of the General
Counsel's Office who presented Agenda Document Nos. 11-35 and 11-36
(Item IV). Discussion followed.**

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-35.

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

**Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting
affirmatively for the decision.**

**IV. DRAFT NOTICE OF AVAILABILITY FOR RULEMAKING
PETITION FILED BY REPRESENTATIVE CHRIS VAN HOLLEN**

**Notice of Availability - Petition for Rulemaking on
Independent Expenditure Reporting filed by
Representative Chris Van Hollen**

**Agenda Document No. 11-36
(Submitted Late)**

Chair Bauerly recognized Commissioner Weintraub who

**MOVED to approve Agenda Document No. 11-36, and
direct the Office of General Counsel to publish the
Notice in the Federal Register, and make whatever
technical and conforming changes are required.**

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

**Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting
affirmatively for the decision.**

V. DRAFT ADVISORY OPINION 2011-09

**Facebook by Marc E. Elias, Esq., Jonathan S. Berkon,
Esq., and Rebecca H. Gordon, Esq.**

**Agenda Document No. 11-32
(Submitted Late)**

**Agenda Document No. 11-32-A (Draft B)
(Submitted Late)**

**Agenda Document No. 11-32-B (Draft C)
(Submitted Late)**

**Chair Bauerly noted that requestors' counsel were present to
answer any questions the Commission may have during the**

discussion.

Chair Bauerly recognized Ms. Jessica Selinkoff of the General Counsel's Office who presented the advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to Facebook's proposal to sell small, character limited ads to candidate's authorized committees, party committees, and other political committees. Facebook asks whether its ads qualify for the "small item" or "impracticable" exception and thus do not require disclaimers under the Act or Commission regulations. She summarized the conclusion in each of the three drafts.

Mr. Marc Elias and Mr. Corey Owens, the representative of the requestor, participated in the discussion which followed.

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The meeting recessed at 12:34 P.M. and reconvened at 12:47 P.M. with a quorum present.

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Discussion resumed on Item V (Advisory Opinion 2011-09).

Chair Bauerly recognized Commissioner Weintraub who

MOVED to approve Draft C.

The motion failed on a vote of 3-3 with Commissioners Bauerly, Walther, and Weintraub voting affirmatively for the

motion. Commissioners Hunter, McGahn, and Petersen dissented.

Chair Bauerly recognized Vice Chair Hunter who

**MOVED to approve Agenda Document No. 11-32-A,
referred to as Draft B.**

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

Hunter, McGahn, and Petersen voting affirmatively for the

motion. Commissioners Bauerly, Walther, and Weintraub dissented.

**Chair Bauerly asked the Office of General Counsel to send a
letter to the requestor, indicating that the Commission is not able
to provide an answer to the request.**

VI. DRAFT ADVISORY OPINION 2011-08

**American Society of Anesthesiologists by Glenn
Willard, Esq.**

Agenda Document No. 11-30

**Chair Bauerly noted that Commissioner McGahn was recused
from this matter and not present for the discussion.**

**Chair Bauerly recognized Ms. Cheryl Hemsley of the General
Counsel's Office who presented the draft advisory opinion
concerning the application of the Federal Election Campaign Act of
1971, as amended, and the Commission regulations to the status of
the American Society of Anesthesiologists' Retired Members and Life
Members.**

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-30.

The motion carried on a vote of 5-0 with Commissioners

Bauerly, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision. Commissioner McGahn was recused and did not vote.

VII. DRAFT ADVISORY OPINION 2011-10

POET, LLC, POET PAC, and Sioux River Ethanol, LLC (d/b/a POET Biorefining-Hudson) by Michael E. Toner, Esq.

Agenda Document No. 11-31

Chair Bauerly noted that requestors' counsel was present to answer any questions the Commission may have during the discussion.

Chair Bauerly recognized Mr. Joshua Blume of the General Counsel's Office who presented the advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the requestors' proposed fundraising program for POET PAC. Mr. Blume also explained proposed modifications to the draft advisory opinion based on a comment received from the requestor.

Mr. Michael Toner and Mr. Jonathan Corbis, a representative

of the requestors, participated in the discussion which followed.

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-31 with the edits as described by the Office of General Counsel.

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

Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

VIII. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE UNITED ASSOCIATION POLITICAL EDUCATION COMMITTEE (UAPEC) (A09-27)

Memorandum from the Audit Division dated May 6, 2011

Agenda Document No. 11-28

Chair Bauerly recognized Mr. Joe Stoltz of the Audit Division who presented the subject document. Mr. Tom Nurthen of the Audit Division participated in the discussion which followed.

Chair Bauerly recognized Commissioner Weintraub who

MOVED to approve the Recommendation Memorandum and request that, in the next draft of this report, the Audit Division include a statement that the Commission intends to consider these issues with respect to independent expenditure reporting and make a public statement regarding these issues.

Commissioner Weintraub noted that Mr. Joseph Stoltz, the Director of the Audit Division, is retiring and thanked him for his

extraordinary service. Commissioner Walther expressed his appreciation for Mr. Stoltz's service as an overseas ambassador of the Commission.

Chair Bauerly called for the vote on the motion. The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

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Chair Bauerly also thanked Mr. Stoltz for his long service to the Commission.

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IX. FUTURE MEETING DATES

Agenda Document No. 11-29

Chair Bauerly recognized Commissioner Walther who

MOVED to approve Agenda Document No. 11-29.

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther and Weintraub voting affirmatively for the decision.

X. MANAGEMENT AND ADMINISTRATIVE MATTERS

**There being no further business to come before the
Commission, the meeting adjourned at 1:33 P.M.**

Signed:

**Cynthia L. Bauerly
Chair of the Commission**

Attest:

**Shawn Woodhead Werth
Secretary and Clerk of the Commission**