



AGENDA DOCUMENT NO. 11-71

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, DECEMBER 1, 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, Staff Director

Anthony Herman, General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Cynthia L. Bauerly called the Federal Election Commission to order in an open meeting at 10:05 A.M. on Thursday, December 1, 2011 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for November 17, 2011
Agenda Document No. 11-69**

Chair Bauerly recognized Vice Chair Hunter who

**MOVED to approve Agenda Document No. 11-69,
minutes for the open session of November 17, 2011.**

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

**II. AGENCY PROCEDURE FOR NOTICE TO NAMED RESPONDENTS
IN ENFORCEMENT MATTERS OF ADDITIONAL MATERIAL FACTS
AND/OR ADDITIONAL POTENTIAL VIOLATIONS**

**Memorandum from Commissioner Steven T. Walther
dated November 10, 2011
Agenda Document No. 11-65**

(Held over from the meeting of November 17, 2011)

Chair Bauerly recognized Commissioner Walther who summarized his proposal to provide guidance to the Office of General Counsel on how to handle new information obtained by the Commission after notification of a complaint, but prior to a reason to believe finding. It affords respondents

with the opportunity to review and respond to that information before any recommendation is made to the Commission.

Commissioner Petersen thanked Commissioner Walther for his efforts in developing a policy to add greater procedural due process to ensure respondents have access to all information the Commission relies on when making a finding. Commissioner Weintraub complemented Commissioner Walther for his efforts to codify the Commission's ongoing practice. Commissioner McGahn noted his appreciation for Commissioner Walther's work in this area and suggested that the Commission review Directive 6 as part of this process.

Discussion occurred.

Chair Bauerly stated that this procedure would be held over to a future meeting.

III. DRAFT ADVISORY OPINION 2011-21

**Constitutional Conservatives Fund PAC by
Dan Backer, Esq.**

Agenda Document No. 11-67

Chair Bauerly recognized Mr. David Adkins 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 Commission regulations to the Constitutional Conservatives Fund PAC's

plans to receive unlimited contributions from individuals, corporations and labor organizations for the purpose of financing independent expenditures.

Chair Bauerly recognized Mr. Dan Backer, requestor's counsel, and invited him to the table to answer Commissioners' questions.

Discussion followed.

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-67.

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 ADVISORY OPINION 2011-23

American Crossroads by Thomas J. Josefiak, Esq., and Michael Bayes, Esq.

**Agenda Document No. 11-68
Alternative Drafts A, B, C and D**

**Agenda Document No. 11-68-A
Revised Draft D
(Submitted Late)**

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 No. 11-68-A.

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

Chair Bauerly recognized Ms. Jessica Selinkoff 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 Commission regulations to American Crossroads, an independent expenditure-only committee, and its production of three different types of advertisements featuring incumbent Members of Congress who are candidates in the 2012 election. American Crossroads asks whether the advertisements would be coordinated communications or coordinated expenditures. She summarized the similarities and differences among the drafts.

Chair Bauerly recognized Vice Chair Hunter who noted that Mr. Thomas Josefiak, the requestor's counsel, was present and asked if he would be available to answer questions. Mr. Josefiak said he was and Chair Bauerly invited him to the table to answer Commissioners' questions.

General Counsel, Mr. Anthony Herman, also participated in the discussion which followed.

Chair Bauerly recognized Commissioner Weintraub who

**MOVED to approve Revised Draft D as set forth
in Agenda Document No. 11-68-A.**

**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 directed Counsel to inform the requestor that the
Commission was unable to reach a conclusion on its request.**

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

**There being no further business to come before the Commission,
the meeting adjourned at 12:14 P.M.**

Signed:

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

Attest:

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