



AGENDA DOCUMENT NO. 12-12
APPROVED FEBRUARY 16, 2012

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, FEBRUARY 2, 2012**

PRESENT:

Caroline C. Hunter, Chair, presiding

Ellen L. Weintraub, Vice Chair

Cynthia L. Bauerly, Commissioner

Donald F. McGahn II, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Alec Palmer, Staff Director

Anthony Herman, General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Caroline C. Hunter called the Federal Election Commission to order in an open meeting at 10:06 A.M. on Thursday, February 2, 2012 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for January 19, 2012
Agenda Document No. 12-08**

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve the minutes for the
January 19, 2012 meeting as set forth
in Agenda Document No. 12-08.**

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

Chair Hunter stated that the Commission will re-order the agenda to consider Item II (Advisory Opinion 2011-27), followed by Item IV (Advisory Opinion 2011-28). After a brief recess, the meeting will resume with Item III (Advisory Opinion 2011-24) and then return to Item II.

II. DRAFT ADVISORY OPINION 2011-27

**New Mexico Voices for Children
by Sara Berger, Counsel**

Agenda Document No. 12-05 – Drafts A and B

(Held over from the meeting of January 19, 2012)

Chair Hunter noted that Ms. Sara Berger, requestor’s counsel, and Mr. Troy Martinez, were available via telephone to answer Commissioners’ questions.

Chair Hunter recognized Ms. Esther Heiden 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 New Mexico Voices for Children’s proposed severance payment to its former Executive Director, who left the organization in October 2011 and became a candidate for the U.S. House of Representatives. The requestor asks whether a severance payment would violate the Act’s prohibition on contributions by corporations to candidates. Ms. Heiden summarized the differences between Drafts A and B.

Ms. Berger and Mr. Martinez participated in the discussion which followed.

Chair Hunter stated that the Commission will consider this request during the recess and vote on it after the meeting reconvenes. (See Page 7 for the continuation of Item II.)

III. DRAFT ADVISORY OPINION 2011-28

Western Representation PAC by Mr. Dan Backer, Esq.

(Held over from the meeting of January 19, 2012)

Agenda Document No. 12-06 – Drafts A and B

Agenda Document No. 12-06-A – Withdrawal and Resubmission of Draft A

**Agenda Document No. 12-06-B – Draft C
(Submitted Late)**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to suspend the rules on the timely submission of agenda documents so that the Commission may consider Agenda Document No. 12-06-B (Draft C).

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

Chair Hunter recognized Mr. Tony Buckley of the General Counsel's Office who summarized new Draft C which corrects certain statements in the previous two drafts and seeks to harmonize the analyses in these two drafts. Draft C concludes that the Committee: 1) may not exclude the cost

of placing each independent expenditure ad on Facebook from its aggregation of costs for independent expenditures made with respect to given elections; and 2) must attribute the costs of its independent expenditure Facebook ads to individual states' Presidential primary elections on its monthly reports.

Chair Hunter noted that Mr. Backer, the requestor's counsel, was present and available to answer Commissioners' questions.

Discussion followed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Draft C, a draft response to the request of Western Representation PAC.

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

The meeting recessed at 10:39 A.M. and reconvened at 11:47 A.M. with a quorum present.

IV. DRAFT ADVISORY OPINION 2011-24

**Louder Solutions, LLC d/b/a StandLouder.com
by James A. Kahl, Esq.**

(Held over from the meeting of January 19, 2012)

Agenda Document No. 12-01 – Drafts A and B

Agenda Document No. 12-01-A – Draft C

Chair Hunter recognized Ms. Jessica Selinkoff of the General Counsel's Office who noted that there are three drafts before the Commission for consideration.

Discussion followed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to direct the Office of General Counsel to prepare a draft response, circulate it on a tally vote basis, and include the following information in the draft:

- 1) The background section from Commissioner Petersen's draft.**
- 2) The answer for Question 4 from Draft B but delete the sentence on page 13, lines 2 to 4.**
- 3) A statement that the Commission could not agree on the answers for Questions 1 through 3.**

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

II. DRAFT ADVISORY OPINION 2011-27 (continued)

Chair Hunter noted that Ms. Debbie Tope would represent Ms. Berger, the requestor's counsel, via telephone during the Commission's discussion.

Discussion resumed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Draft B.

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 Hunter recognized Commissioner Petersen who

MOVED to approve Draft A.

The motion carried on a vote of 4-2 with Commissioners Hunter, McGahn, Petersen, and Walther voting affirmatively for the decision. Commissioners Bauerly and Weintraub dissented.

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

**There being no further business to come before the Commission,
the meeting adjourned at 12:24 P.M.**

Signed:



Caroline C. Hunter

Chair of the Commission

Attest:



Shawn Woodhead Werth

Secretary and Clerk of the Commission