



AGENDA DOCUMENT NO. 12-50

APPROVED JUNE 21, 2012

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, JUNE 7, 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 10:15 A.M. on Thursday, June 7, 2012 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for May 24, 2012
Agenda Document No. 12-45**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the meeting of May 24, 2012 as set forth in Agenda Document No. 12-45.

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 Vice Chair Weintraub who

MOVED to waive the rules on the timely submission of agenda documents so that the Commission may consider Agenda Document Nos. 12-39-A, 12-42-A and 12-46-A.

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 2012-17

**Red Blue T LLC, Armour Media, Inc., and m-Qube, Inc.
by Craig Engle, Esq. and Brett G. Kappel, Esq.**

**Agenda Document No. 12-39 (Drafts A and B)
(Held over from the meeting of May 24, 2012)**

**Agenda Document No. 12-39-A (Draft C)
(Submitted Late)**

**Chair Hunter noted that Mr. Engle and Mr. Kappel, requestor's
counsel, were available to answer Commissioners' questions.**

**Chair Hunter noted that this matter was discussed at the last meeting
and held over for further consideration. She thanked the requestor for the
supplemental comments.**

**Mr. Engle, Mr. Kappel and Mr. Tom Hintermister of the Audit Division
participated in the discussion which followed.**

**Chair Hunter noted that the response deadline falls on Sunday, June
10; therefore, the deadline would be Monday, June 11. She indicated that
requestor's counsel will provide additional information to address questions
raised during the meeting and the Commission will decide this matter either
today, at the end of the meeting, or on a tally vote basis.**

**The agenda was re-ordered and Item III (Draft Advisory Opinion 2012-18)
was discussed at the end of the meeting (See page 12).**

IV. DRAFT ADVISORY OPINION 2012-19

**American Future Fund by Jason Torchinsky, Esq.
and Michael Bayes, Esq.**

Agenda Document No. 12-44 (Drafts A and B)

Chair Hunter noted that Mr. Torchinsky and Mr. Bayes, requestor's counsel, were available to answer Commissioners' questions.

Chair Hunter recognized Ms. Erin Chlopak 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 requestor's proposed plan to produce and distribute a series of broadcast television advertisements within 30 days of upcoming primary elections and within 60 days of the November general election on both local broadcast television stations and national cable outlets. The requestor asks whether any of its eight proposed advertisements includes a reference to a clearly identified candidate for Federal office and is subject to the Act's requirements for electioneering communications. Ms. Chlopak summarized the conclusions reached in each draft and stated that the response deadline is June 25, 2012.

Mr. Torchinsky and General Counsel Anthony Herman participated in the discussion which followed.

**The meeting recessed at 12:10 P.M. and reconvened at 12:41 P.M.
with a quorum present.**

Discussion resumed on Draft Advisory Opinion 2012-19.

Chair Hunter recognized Commissioner McGahn who

MOVED to approve Draft A subject to the following edits:

- 1) On Page 5, Line 16, strike “would lead” and substitute “could lead,” and strike the word “absurd.”**
- 2) On Page 7, Lines 18 – 21, strike the entire sentence beginning with “The inclusion.”**

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

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Draft B as an answer to Advisory Opinion Request 2012-19.

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 Hunter recognized Commissioner Petersen who

MOVED to approve Draft A with respect to the answer to Advertisements 1 through 6 subject to the following edits:

- 1) On Page 5, Line 16, strike “would lead” and substitute “could lead,” and strike the word “absurd.”**
- 2) On Page 7, Lines 18 – 21, strike the entire sentence beginning with “The inclusion.”**

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 Hunter recognized Vice Chair Weintraub who

MOVED to take the following actions:

- 1) Approve that, when the Office of General Counsel prepares the answer to the requestor, the answer includes answers to the questions for Advertisements 7 and 8 that states that these are electioneering communications.**
- 2) Circulate appropriate language for the Commission to agree upon.**

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

Chair Hunter recognized Vice Chair Weintraub who

MOVED to take the following actions:

Approve that, when the Office of General Counsel prepares the answer for the requestor, the answer includes the following:

- 1) With respect to Advertisement 4, it states that this Advertisement is not an electioneering communication.**
- 2) With respect to Advertisements 1, 2, 3, 5 and 6, it states that the Commission could not reach an answer on these Advertisements by the required four votes.**

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 noted that the Office of General Counsel will prepare the draft response and circulate it to the Commission for approval.

V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE LEGACY COMMITTEE POLITICAL ACTION COMMITTEE (A09-22)

Memorandum from the Audit Division dated March 8, 2012

Agenda Document No. 12-30

(Held over from the meeting of May 10, 2012)

Chair Hunter recognized Mr. Alex Boniewicz of the Audit Division who introduced this matter.

Discussion followed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the Audit Division Recommendation Memorandum on The Legacy Committee Political Action Committee (A09-22), as set forth in Agenda Document No. 12-30, with the amendment to Finding 1 pursuant to the meeting discussion.

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 Hunter recognized Commissioner Petersen who

MOVED to approve the Audit Division Recommendation Memorandum on The Legacy Committee Political Action Committee (A09-22) except that the following communications be considered those that contain express advocacy: 11, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 44, 45, 46, 47, 49, 50, 51, 52, 53, 55, 56, 57, 59 and 60.

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

VI. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE DEMOCRATIC EXECUTIVE COMMITTEE OF FLORIDA (DECF) (A08-03)

Memorandum from the Audit Division dated April 25, 2012

Agenda Document No. 12-41

Chair Hunter recognized Mr. Robert Morcomb of the Audit Division who summarized the Audit Division Recommendation Memorandum with respect to Finding 1 (Excessive Coordinated Party Expenditures), Finding 2 (Failure to Itemize Coordinated Party Expenditures), Finding 3 (Allocation of Expenditures), Finding 4 (Misstatement of Financial Activity – Levin Fund) and Finding 5 (Disclosure of Disbursements). Mr. Hintermister clarified that

Finding 4 in the Proposed Final Audit Report will state that this activity was for the 2007-2008 election cycle.

Mr. Hintermister and Ms. Danita Lee of the General Counsel's Office participated in the discussion which followed.

Chair Hunter recognized Commissioner McGahn who

MOVED to approve Agenda Document No. 12-41, the Audit Division Recommendation Memorandum on the Democratic Executive Committee of Florida, subject to the following amendments:

- 1) Consistent with the discussion at the table, acknowledge that the Party Committee did not spend money that would have otherwise been in excess of the coordinated limits on behalf of the candidate.**
- 2) Regarding Finding 3, Allocation of Expenditures, \$17,240 for consulting fees for translators is not "Get Out The Vote" because, according to the Committee's response, the translators merely provided their services to voters already at the polls.**
- 3) The Committee's payments for its rent were not improperly allocated notwithstanding state law as to the operation of the legislative caucus committees and their autonomy and purposes.**

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 Hunter recognized Commissioner McGahn who

MOVED to approve Agenda Document No. 12-41, the Audit Division Recommendation Memorandum on the Democratic Executive Committee of Florida, subject to the following amendments:

- 1) Consistent with the discussion at the table, acknowledge that the Party Committee did not spend money that would have otherwise been in excess of the coordinated limits on behalf of the candidate.**

- 2) Regarding Finding 3, Allocation of Expenditures, \$17,240 for consulting fees for translators is not "Get Out The Vote" because, according to the Committee's response, the translators merely provided their services to voters already at the polls.**

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

VII. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE (A09-07)

Memorandum from the Audit Division dated June 6, 2012

**Agenda Document No. 12-42-A
(Submitted Late)**

Chair Hunter recognized Mr. Bill Antosz of the Audit Division who summarized the Audit Division Recommendation Memorandum with respect to Finding 1 (Misstatement of Financial Activity) and Finding 2

(Misstatement of Levin Financial Activity). Mr. Antosz explained that the Audit Hearing provided the Committee with an opportunity to describe the embezzlement of the former treasurer and how her illegal activity affected the audit findings; and that the Proposed Final Audit Report will address these unique circumstances.

Mr. Hintermister participated in the discussion which followed.

Chair Hunter recognized Commissioner McGahn who

MOVED to approve Agenda Document No. 12-42-A, the Audit Division Recommendation Memorandum on the Los Angeles County Democratic Central Committee, subject to the appropriate amendments pursuant to the meeting discussion to reflect the representations provided by the Committee during the Audit Hearing and in its letters regarding the arrest of Kinde Durkee, the former treasurer.

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

VIII. 2012 MEETING DATES (SECOND HALF)

**Memorandum from Chair Caroline C. Hunter
dated June 7, 2012**

**Agenda Document No. 12-46-A
(Submitted Late)**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Agenda Document No. 12-46-A.

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 1:27 P.M. and reconvened at 1:31 P.M. with a quorum present.

III. DRAFT ADVISORY OPINION 2012-18

**National Right to Life Committee, Inc.
by James Bopp, Jr., Esq.**

Agenda Document No. 12-43

Chair Hunter 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 National Right to Life Committee, Inc.'s (NRLC) payments for the establishment, administration, and solicitation costs of its independent expenditure-only political committee, the National Right to Life Political Victory Fund (Victory Fund). NRLC asks whether such payments would constitute reportable contributions to the Victory Fund.

Chair Hunter noted that Mr. Bopp, the requestor's counsel who planned to participate via telephone, was not available and Mr. Bopp indicated that the Commission should proceed with the request.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve Agenda Document No. 12-43,
Draft Advisory Opinion 2012-18.**

**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 thanked Deputy General Counsel Chris Hughey for all of his
hard work, including his tenure as Acting General Counsel. She noted that he
was always knowledgeable, professional and prepared. She wished him the
best of luck in his exciting future as a Foreign Service Officer.**

**Chair Hunter recognized Vice Chair Weintraub who echoed the Chair's
thanks, complemented Mr. Hughey on his even-temperedness, and thanked
him for his great service. Chair Hunter recognized Commissioner Walther
who agreed with the Chair's and Vice Chair's comments, noted that Mr.
Hughey was always calm, professional and a tribute to the Commission,
and admired Mr. Hughey's future career choice.**

IX. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 1:37 P.M.

Signed:



Caroline C. Hunter

Chair of the Commission

Attest:



Shawn Woodhead Werth

Secretary and Clerk of the Commission