



AGENDA DOCUMENT NO. 12-73

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, OCTOBER 4, 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 10:14 A.M. on Thursday, October 4, 2012 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for September 20, 2012
Agenda Document No. 12-68**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the meeting of September 20, 2012 as set forth in Agenda Document No. 12-68.

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. 12-69, 12-69-A, and 12-70.

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 that the Commission add to the agenda consideration of Draft Advisory Opinion 2012-32 and the U.S. District Court for the District of Columbia Order in Van Hollen v. FEC and that the Commission determine, pursuant to 11 C.F.R. § 2.7(d), that business so requires and no earlier public announcement was possible.

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 2012-25

American Future Fund, American Future Fund Political Action, Mr. David McIntosh and David McIntosh for Indiana by Jason Torchinsky, Esq. and Michael Bayes, Esq.

Held over from the meeting of September 20, 2012

**Agenda Document No. 12-69 (Drafts A and B)
(Submitted Late)**

**Agenda Document No. 12-69-A (Draft C)
(Submitted Late)**

Chair Hunter recognized Mr. Torchinsky and Mr. Bayes, requestors' counsel, who were available to answer Commissioners' questions.

Chair Hunter recognized Mr. Neven Stipanovic 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 requestors' proposed joint fundraising effort by creating two joint fundraising committees. One proposed joint fundraising committee would involve American Future Fund and American Future Fund Political Action as participants; the other proposed joint fundraising committee would add an independent expenditure-only committee as a participant. Mr. Stipanovic stated that the three drafts include answers to all of the requestors' questions as the drafts were prepared before the requestors withdrew two questions relating to the involvement of federal candidates/officeholders in two other proposed joint fundraising committees. He also summarized the conclusions reached in the three drafts.

Mr. Torchinsky participated in the discussion that followed.

Chair Hunter stated that the Commission did not anticipate voting on the request today but is currently working on a compromise draft. She noted that the 60-day response deadline is October 9, 2012. She acknowledged the requestors' offer to extend the deadline, if necessary, but hopes that the Commission will be able to provide an answer before the 60-day deadline on October 9.

III. DRAFT ADVISORY OPINION 2012-32

**Tea Party Leadership Fund, Mr. John Raese,
and Mr. Sean Bielat by Stephen M. Hoersting, Esq.
and Dan Backer, Esq.**

**Agenda Document No. 12-70
(Submitted Late)**

Chair Hunter recognized Mr. Backer, requestors' counsel, who was available to answer Commissioners' questions.

Chair Hunter recognized Ms. Joanna Waldstreicher 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 contributions by the Tea Party Leadership Fund ("TPLF") to Mr. Bielat and Mr. Raese, both of whom are Federal candidates. TPLF is a non-connected political committee, registered as a political committee in May 2012, represents that it made contributions to seven candidates (including \$2,500 each to Mr. Bielat and Mr. Raese), and received contributions from over 4,500 persons. TPLF asks whether it may contribute an additional \$2,500 each to Mr. Bielat and Mr. Raese, which would exceed the contribution limits for persons other than multicandidate political committees. Mr. Bielat and Mr. Raese ask whether TPLF may make and they may accept an additional \$2,500 each. Ms. Waldstriecher

also noted that this is an expedited request under 2 U.S.C. § 437f(a)(2) and the 20-day response deadline is October 11, 2012.

Chair Hunter stated that the Commission thought it prudent to have a discussion on this request today, because the 20-day response deadline is October 11, prior to the next open meeting on October 18. She said that the Commission will not vote on it today, because the ten day comment period requirement at 2 U.S.C. § 437f(d) does not expire until October 5.

Mr. Backer participated in the discussion that followed.

Chair Hunter stated that the Commission will provide an answer to the requestors by the 20-day response deadline.

IV. DRAFT ADVISORY OPINION 2012-33

Pennsylvania Democratic Party by Neil Reiff, Esq.

Chair Hunter stated that the requestor withdrew the request.

V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE MINNESOTA DEMOCRATIC-FARMER-LABOR PARTY (MNDFL) (A09-08)

**Memorandum from the Audit Division dated
August 2, 2012**

Agenda Document No. 12-64

Chair Hunter recognized Mr. Gary Hache of the Audit Division who presented the two findings in the Draft Final Audit Report: 1) misstatement of financial activity; and 2) overfunding of federal accounts by non-federal accounts.

Mr. Tom Hintermister of the Audit Division and Mr. Lawrence Calvert of the General Counsel's Office also participated in the discussion that followed.

Chair Hunter noted that this matter would be held over to enable the Commission to consider all of the information and discussion from today's meeting.

Chair Hunter stated that the Commission would re-order the agenda to next consider Item VII (U.S. District Court for the District of Columbia Order in Van Hollen v. FEC) followed by Items VI (Audit Division Recommendation Memorandum on Rightmarch.com PAC, Inc.) and VIII (Candidate and Committee Viewer Demonstration).

VII. CONSIDERATION OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (SEPTEMBER 20, 2012) ORDER IN VAN HOLLEN v. FEC

Chair Hunter provided an overview of this case. Congressman Chris Van Hollen filed a complaint in April 2011, challenging the Commission's regulation, which was promulgated in 2007, concerning the disclosure of persons making electioneering communications. The U.S. District Court for the District of Columbia found in March 2012 that the Commission's regulation at 11 C.F.R. § 104.20(c)(9) (requiring disclosure of donations

made for the purpose of furthering electioneering communications) was invalid. A month later, the Hispanic Leadership Fund and Center for Individual Freedom intervened and later filed a notice of appeal. In April 2012, the Commission filed a notice that it would not appeal the District Court's March 30 order. On April 27, the District Court vacated the regulation at issue and re-instated the Commission's prior regulation on this matter which took effect in December 2002. On September 18, the U.S. Court of Appeals for the District of Columbia reversed the District Court's decision and remanded the case with instructions to refer the matter to the Commission for further consideration. On September 20, the District Court directed the Commission to inform the Court by October 12 whether the Commission "intends to pursue rulemaking or defend its current regulation." As a result, the Commission is discussing this matter today and intends to vote on whether to pursue a rulemaking. The Commission's decision will be made public in its filing to the District Court.

Discussion followed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED that the Commission:

- 1. Initiate a rulemaking to address the rules governing disclosure of electioneering communications by corporations and labor unions.**

- 2. Direct the General Counsel to inform the District Court that the Commission is pursuing this rulemaking as required by the Court's order of September 20, 2012.**
- 3. Direct the Office of the General Counsel to prepare a draft notice of proposed rulemaking for the Commission's consideration.**

Discussion resumed.

The motion failed by a vote of 3-3 with Commissioners Bauerly, Walther, and Weintraub voting affirmatively for the motion. Commissioners Hunter, McGahn, and Petersen dissented.

Chair Hunter stated that since the motion failed, the Commission will proceed in defending the current regulation which is the Commission's normal practice.

The meeting recessed at 11:55 A.M. and reconvened at 2:06 P.M. with a quorum present.

VI. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON RIGHTMARCH.COM PAC, INC. (A09-25)

Memorandum from the Audit Division dated August 2, 2012

Agenda Document No. 12-65

Chair Hunter recognized Ms. Rhonda Gillingwater of the Audit Division who presented the three findings in the Draft Final Audit Report:

1) misstatement of financial activity; 2) extension of credit by a commercial vendor; and 3) failure to file notices and properly disclose independent expenditures.

Mr. Alex Boniewicz and Mr. Hintermister of the Audit Division, and Mr. Calvert and Ms. Margaret Forman of the General Counsel's Office also participated in the discussion that followed.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve the Audit Division
Recommendation Memorandum on
Rightmarch.com PAC, Inc. (A09-25),
Agenda Document No. 12-65.**

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.

Discussion resumed.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve Findings 1 and 3 in
Agenda Document No. 12-65.**

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 McGahn who

**MOVED to approve Finding 1, move Finding 3
to the Other Issues section, and make
conforming edits.**

Mr. Calvert participated in the discussion that followed.

**Chair Hunter recognized Commissioner McGahn who withdrew his
motion.**

**Chair Hunter noted that this matter would be held over to the next
open meeting.**

VIII. CANDIDATE AND COMMITTEE VIEWER DEMONSTRATION

Held over from the meeting of September 20, 2012

**Chair Hunter thanked Mr. Paul Clark, Mr. Wei Luo, Mr. Jeff Chumley,
and staff from the Information Division, Reports Analysis Division, and
Public Disclosure Division for all of their hard work on the Disclosure Portal.
She explained that the Commission launched the viewer a few weeks ago
and has received positive feedback on it.**

**Mr. Alec Palmer, Staff Director, introduced the demonstration. At its
conclusion, Mr. Chumley highlighted several improvements of the
Disclosure Portal. These include new navigation tools for real-time viewing
of candidate and committees and customizable RSS features in this new
suite of research tools.**

IX. MANAGEMENT AND ADMINISTRATIVE MATTERS

**There being no further business to come before the Commission,
the meeting adjourned at 2:58 P.M.**

Signed:

**Caroline C. Hunter
Chair of the Commission**

Attest:

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