



AGENDA DOCUMENT NO. 14-55-A
APPROVED OCTOBER 23, 2014

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, OCTOBER 9, 2014

PRESENT: **Lee E. Goodman, Chairman, presiding**

Ann M. Ravel, Vice Chair

Caroline C. Hunter, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Staff Director¹

Lisa J. Stevenson, Deputy General Counsel - Law

Shawn Woodhead Werth, Secretary and Clerk

¹ Ms. Patricia Orrock represented Staff Director Palmer prior to the recess.

Chairman Lee E. Goodman called the Federal Election Commission to order in an open meeting at 10:08 A.M. on Thursday, October 9, 2014 with a quorum present.

Chairman Goodman recognized Vice Chair Ravel who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider the late submission of Agenda Document Nos. 14-53-A (Draft of *Citizens United v. FEC* Final Rule), 14-51-A (Draft of *McCutcheon v. FEC* Interim Final Rule), 14-52-A (Draft of *McCutcheon v. FEC* ANPRM), 14-50-A (Draft A of AO 2014-12, DNC and RNC), 14-50-B (Draft B of AO 2014-12, DNC and RNC), 14-48-A-2 (Draft of AO 2014-14, Trammell), and 14-49-A-2 (Draft of AO 2014-15, Brat).

The motion carried by a vote of 6-0 with Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voting affirmatively for the decision.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for September 18, 2014
Agenda Document No. 14-47-A**

Chairman Goodman recognized Vice Chair Ravel who

MOVED to approve Agenda Document No. 14-47-A, minutes for the open session held on September 18, 2014.

The motion carried by a vote of 6-0 with Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voting affirmatively for the decision.

To facilitate the discussion on Items II (Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations), III (*McCutcheon v. FEC* Interim Final Rule), and IV (*McCutcheon v. FEC* Advance Notice of Proposed Rulemaking), Chairman Goodman stated that, without objection, these will be discussed together. Each Commissioner can discuss any aspect of these Items. When it is time for motions, each Item will be taken up separately for voting purposes.

II. FINAL RULES: INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS BY CORPORATIONS AND LABOR ORGANIZATIONS

**Agenda Document No. 14-53-A
(Submitted Late)**

III. MCCUTCHEON v. FEC DRAFT INTERIM FINAL RULE

**Agenda Document No. 14-51-A
(Submitted Late)**

IV. MCCUTCHEON v. FEC DRAFT ADVANCE NOTICE OF PROPOSED RULEMAKING

**Agenda Document No. 14-52-A
(Submitted Late)**

Chairman Goodman recognized Ms. Esther Gyory of the General Counsel's Office to present Item II and Mr. Theodore Lutz of the General Counsel's Office to present Items III and IV. In addition to thanking Ms. Gyory and Mr. Lutz, Chairman Goodman also thanked Mr. Adav Noti, Ms. Cheryl

**Hemsley, Mr. Robert Knop, Ms. Amy Rothstein, and Ms. Joanna Waldstreicher
for their excellent work on these three items.**

**Ms. Gyory presented the Draft of Final Rules and Explanation and
Justification regarding the making of independent expenditures and
electioneering communications by corporations and labor organizations. The
Commission approved a Notice of Proposed Rulemaking that was published in
the Federal Register on December 27, 2011. The Draft Final Rules include: 1)
revisions to the regulations implementing the statutory prohibitions on
corporations and labor organizations making independent expenditures and
electioneering communications; and 2) revisions to other regulations in light
of the Supreme Court's decision in *Citizens United*. She asked for authority to
make technical and conforming changes to the Draft if it is approved by the
Commission.**

**Mr. Lutz presented the two Draft Notices that follow from the Supreme
Court's decision in *McCutcheon v. FEC*. The Draft Interim Final Rule removes
from Commission regulations the aggregate limits on contributions by
individuals to federal candidates and political committees in each two-year
election cycle. This Draft provides for a 30-day comment window. The Draft
Advance Notice of Proposed Rulemaking requests comments on whether to
begin a rulemaking to revise certain Commission regulations in light of the
McCutcheon decision. This Draft provides for a 90-day comment window and**

a hearing on February 11, 2015. He asked for authority to make technical and conforming changes to both Drafts if they are approved by the Commission.

Chairman Goodman recognized Vice Chair Ravel who stated that given the changes that have occurred in the legal landscape over the last five years, it is the obligation of the Commission to provide as much clarity to the public and the regulated community about what the rules are and how to comply with the law. She noted that this agreement provides some of that much needed clarity but, like any compromise, does not completely address all of her concerns. She explained that the Commission was constrained by the *Citizens United* NPRM, which was released prior to her arrival, because it did not address certain issues of concern to her, including the disclosure of independent expenditures. She noted that the Commission is precluded from including that issue in this rulemaking even though eight Supreme Court justices in the *Citizens United* decision upheld the Act's disclosure requirements. She explained that one aspect of this agreement that makes the Commission more open, transparent, and responsive is the inclusion of a mechanism for public comments, and a public hearing on core issues related to campaign finance law is scheduled for February 11, 2015. She noted that this is an historic departure from how the Commission has engaged in rulemaking and is an opportunity for the public and regulated community to speak to the Commission in writing or in person. She commended

Commissioner Hunter for her reasonable and helpful approach in trying to reach agreement; thanked Chairman Goodman for his facilitation of this agreement; and complimented her Executive Assistant Laura Basford and the General Counsel's staff for their efforts to get these items completed.

Chairman Goodman recognized Commissioner Hunter who said that in the 4 years and 8 months since *Citizens United* was decided, there had been considerable debate at the Commission about what to include in the NPRM (which was eventually adopted in 2011) to properly focus on the provisions which the Supreme Court declared unconstitutional. Commissioner Hunter explained that she welcomed Vice Chair Ravel's participation in bringing these 3 items to the Commission today, noting that although Vice Chair Ravel was a tough negotiator, she was cooperative and a pleasure to work with, and she asked important questions about the *McCutcheon* decision. Today, Commissioner Hunter stated, the Commission is asking general questions raised by language in the *McCutcheon* decision which the Commission has authority to amend under the FECA, and she welcomes public comments. Commissioner Hunter further explained that government agencies in Washington rarely remove regulations, and she was delighted to do so today, particularly in light of 2 Supreme Court decisions and a commitment to upholding the First Amendment. She thanked Chairman Goodman for shepherding the Commission through this process and Vice Chair Ravel for

her diligent efforts. She also thanked Laura Basford, Alex Tausanovitch, Leonard Evans, Cheryl Hemsley, the General Counsel's staff, Eric Brown, and Rebekah Marino for their dedication and hard work.

Chairman Goodman recognized Commissioner Weintraub who stated that almost 40 years ago, the Commission was created with the express mission to follow the money raised and spent to fund elections and to make that information available to the public. But she noted that the Commission is now falling down on the job: already this year over \$100 million in dark money has been spent for the 2014 election, with estimates as high as \$700 million. She explained that in 2002, Congress passed the Bipartisan Campaign Reform Act that included provisions that corporations and labor organizations could not fund certain communications defined as electioneering communications and that there would be disclosure of who did fund those communications. When the funding restriction was struck down in *Wisconsin Right to Life*, she noted, the Commission unanimously decided to do a rulemaking to implement that decision. As part of that rulemaking, the Commission added language to sections 104.20(c)(8) and (9) that addressed disclosure for corporations and labor organizations. *Citizens United* was a dramatic, game-changing decision, she said, because the Court stated that disclosure does not have the same failings as the funding restriction. When the Commission went to implement *Citizens United*, some Commissioners said that comments could not be

solicited on the disclosure provisions and wanted to adopt a process whereby the Commission maintained the current provisions. Commissioner Weintraub stated that it is impossible for her to vote for the *Citizens United* Final Rules, because they leave in place a disclosure regime that she believes undermines what Congress was trying to achieve and the Supreme Court endorsed in terms of disclosure.

Chairman Goodman recognized Commissioner Petersen who expressed his support for these 3 items. He explained that following the *Citizens United* decision Congress undertook to amend the laws and put into place more expansive disclosure through the Disclose Act. Although passage of the Act failed, Commissioner Petersen stated that he cannot ignore what happened on the Congressional level. He noted that as Congress writes laws, it is inappropriate for an agency to attempt through regulation to achieve what cannot be done through legislation. Further, he noted that the Commission has an obligation to bring clarity to the legal landscape and, at a minimum, bring the Commission's own rules into compliance with the Supreme Court's decisions. By moving these items forward, he stated that this should enable the Commission to work more productively and find areas of common agreement and consensus. He thanked Chairman Goodman, Vice Chair Ravel, and Commissioner Hunter for their efforts to get the Commission to this point, and staff from the General Counsel's Office and his Executive

Assistants Jon Borrowman and David Adkins for their contributions and help.

Finally, Commissioner Petersen encouraged the public to submit comments on the *McCutcheon* ANPRM.

Chairman Goodman recognized Commissioner Walther who joined with Commissioner Weintraub in her comments. He stated that because this process has taken so long, he was frustrated that the Commission was unable to accomplish more. He emphasized that, within 15 days of the *Citizens United* decision, the Commission made public and immediately disseminated a written policy on the Commission's interpretation of the decision and how to be guided by it. Today, he noted, the Commission is formalizing that policy by rules which could have been accomplished a long time ago, except for some issues, such as foreign investment and disclosure, which prevented the Commission from putting together a package. He noted that while this advances the formalization of the Commission's regulatory scheme with respect to *Citizens United*, there is much to be done. He explained that, like Commissioner Weintraub, he cannot support the *Citizens United* Final Rules, because he does not want to be associated with ratifying them in view of the way they are being interpreted today; therefore, he explained that he is prepared to make a motion and will issue a statement. He expressed his hope that there will be more collegiality, and he looked forward to receiving public comments.

Discussion followed.

Chairman Goodman stated that the Commission owes its gratitude, appreciation, and congratulations to Vice Chair Ravel and Commissioner Hunter for breaking a near five-year impasse. In addition to the substantive issues at stake, Chairman Goodman noted there was also a profound obligation of the Commission to discharge its first responsibility to comply with the Constitution and to conform the Commission's regulations to the First Amendment's mandate. Second, he explained that embedded in these proposals are important clarifications so that ordinary citizens who pick up the Code of Federal Regulations can rely on its accuracy and its basic constitutionality. Third, he expressed his support for the three items, because they represent profound freedoms for the American people to speak in our democracy. He noted the four court decisions institutionalized in this rulemaking (*Citizens United*, *McCutcheon*, *Carey*, and *Speech Now*), and he said that the effect of these regulations will be to encourage more speakers to join the public debate. With respect to the ANPRM, Chairman Goodman stated that he agreed with Commissioner Weintraub in supporting free speech. He expressed his belief that debate is enhanced with more viewpoints, and he supported Vice Chair Ravel's proposal that the Commission should open its doors to comments on a broader set of regulatory issues. Finally, he stated that if these 3 items are approved, the

Commission's regulations book will be five pages lighter, clearer, constitutional, and encourage more speech in the public forum.

Discussion continued.

Chairman Goodman recognized Commissioner Walther who requested a brief recess to address a procedural issue.

The meeting recessed at 10:56 A.M. and reconvened at 10:58 A.M. with a quorum present.

Chairman Goodman recognized Vice Chair Ravel who

MOVED to approve Agenda Document No. 14-53-A, *Citizens United v. FEC* rulemaking, and authorize the Office of General Counsel to make any technical and conforming edits.

Chairman Goodman recognized Commissioner Walther who offered an amendment to Vice Chair Ravel's motion:

Approve the final rules set forth in Agenda Document No. 14-53-A except to strike the phrase "and were not made by a corporation or labor organization pursuant to 11 C.F.R. 114.15" in paragraph (c)(8) from section 104.20 of the Commission regulations entitled "Reporting electioneering communications;" and to strike paragraph (c)(9) in its entirety from section 104.20 of the Commission's regulations entitled "Reporting electioneering communications."

Chairman Goodman restated Commissioner Walther's pending motion to amend the main motion.

Chairman Goodman recognized Vice Chair Ravel who asked for a point of clarification on the motions. The Chairman stated that Commissioner Walther's motion is a secondary motion to amend the main motion. The Commission will vote separately on Commissioner Walther's motion. If it passes, it will amend Vice Chair Ravel's main motion; if it fails, the Commission will then vote on Vice Chair Ravel's motion.

Chairman Goodman called for the vote on Commissioner Walther's motion to amend the main motion. The motion failed by a vote of 2-4 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Goodman, Hunter, Petersen, and Ravel dissented.

Chairman Goodman called for the vote on Vice Chair Ravel's main motion. The motion carried by a vote of 4-2 with Commissioners Goodman, Hunter, Petersen, and Ravel voting affirmatively for the decision. Commissioners Walther and Weintraub dissented.

Chairman Goodman recognized Vice Chair Ravel who

MOVED to approve Agenda Document No. 14-51-A, *McCutcheon v. FEC* Interim Final Rule, and authorize the Office of General Counsel to make any necessary technical and conforming edits.

The motion carried by a vote of 6-0 with Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voting affirmatively for the decision.

Chairman Goodman recognized Vice Chair Ravel who

**MOVED to approve Agenda Document No. 14-52-A,
McCutcheon v. FEC Advance Notice of Proposed
Rulemaking.**

**The motion carried by a vote of 6-0 with Commissioners Goodman,
Hunter, Petersen, Ravel, Walther, and Weintraub voting affirmatively for the
decision.**

V. DRAFT ADVISORY OPINION 2014-12

**Democratic National Committee by Robert Bauer, Esq.,
Marc Elias, Esq., and Graham Wilson, Esq.**

**Republican National Committee by John R. Phillippe, Jr., Esq.
and Ashley K. Stow, Esq.**

**Agenda Document No. 14-50-A (Draft A)
(Submitted Late)**

**Agenda Document No. 14-50-B (Draft B)
(Submitted Late)**

(Executive Assistant Andrew Woodson is recused)

(Executive Assistant Laura Basford is recused)

**Chairman Goodman recognized requestors' counsel, Mr. Bauer, Mr.
Wilson, Mr. Phillippe, and Ms. Stow, who were available to answer
Commissioners' questions.**

**Chairman Goodman 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**

the Commission regulations to the request of the Democratic National Committee and the Republican National Committee (the “Committees”). The Committees are national party committees that until recently were entitled to receive public funds to defray expenses incurred with respect to their presidential nominating conventions. Effective in April 2014, the Gabriella Miller Kids First Research Act terminated their entitlement to public funds. The Committees propose to raise funds under separate contribution limits, into either a segregated account or a separate convention committee, to finance expenses for their respective conventions. She summarized the distinctions between the two Drafts and asked for authority to make any technical and conforming changes to any Draft approved by the Commission.

Mr. Bauer and Mr. Phillippe participated in the discussion that followed.

Chairman Goodman recognized Commissioner Weintraub who

**MOVED to approve Agenda Document No. 14-50-A,
a response to Advisory Opinion Request 2014-12.**

The motion failed by a vote of 2-4 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Goodman, Hunter, Petersen, and Ravel dissented.

Chairman Goodman recognized Vice Chair Ravel who

**MOVED to approve Agenda Document No. 14-50-B,
Draft B, and authorize the Office of General Counsel
to make any necessary technical and conforming edits.**

The motion carried by a vote of 4-2 with Commissioners Goodman, Hunter, Petersen, and Ravel voting affirmatively for the decision.

Commissioners Walther and Weintraub dissented.

Chairman Goodman stated that Items VI and VII (Draft Advisory Opinions 2014-14 and 2014-15, respectively) would be discussed together, without objection, because they raise the same issues but will be taken up separately if the Commission votes on them today.

VI. DRAFT ADVISORY OPINION 2014-14

John Trammell

Agenda Document No. 14-48-A (Draft A)

**Agenda Document No. 14-48-A-2 (Revised Draft A)
(Submitted Late)**

Agenda Document No. 14-48-B (Draft B)

VII. DRAFT ADVISORY OPINION 2014-15

David Alan Brat

Agenda Document No. 14-49-A (Draft A)

**Agenda Document No. 14-49-A-2 (Revised Draft A)
(Submitted Late)**

Agenda Document No. 14-49-B (Draft B)

Chairman Goodman recognized Ms. Waldstreicher of the General Counsel's Office who presented the draft advisory opinions concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the requests received from Mr. Trammell and Mr. Brat. The requestors are both candidates for the U.S. House of Representatives in Virginia's 7th District and employed by Randolph-Macon College, a Virginia corporation. The College offered and both candidates accepted unpaid leaves of absence for the duration of their campaigns and entered into Memoranda of Understanding ("MOUs") setting forth the terms of their leaves of absence. One of the MOU terms provides for the continuation of fringe benefits for which they were eligible prior to the leaves of absence. Both candidates ask whether the terms of the MOUs are consistent with the Act and Commission regulations. Ms. Waldstreicher summarized the similarities and distinctions among the three Drafts for both Requests. She asked for authority to make any necessary technical and conforming changes if the Commission approves any Drafts.

Discussion followed.

Chairman Goodman stated that the General Counsel's Office will work on a revised draft for each of these Advisory Opinion Requests which the Commission will then circulate for approval on a tally vote basis.

VIII. MANAGEMENT AND ADMINISTRATIVE MATTERS

**There being no further business to come before the Commission,
the meeting adjourned at 11:49 A.M.**

Signed:

A handwritten signature in black ink, appearing to read "Lee E. Goodman", with a stylized flourish at the end.

Lee E. Goodman

Chairman of the Commission

Attest:

A handwritten signature in black ink, appearing to read "Shawn Woodhead Werth", with a stylized flourish at the end.

Shawn Woodhead Werth

Secretary and Clerk of the Commission