



APPROVED DECEMBER 12, 2017

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, JULY 13, 2017**

PRESENT: **Steven T. Walther, Chairman, presiding**

 Caroline C. Hunter, Vice Chair

 Lee E. Goodman, Commissioner

 Matthew S. Petersen, Commissioner

 Ellen L. Weintraub, Commissioner

 Alec Palmer, Staff Director

 Lisa Stevenson¹, Acting General Counsel

 Dayna C. Brown, Secretary and Clerk

¹ Mr. Greg Baker of the General Counsel's Office represented Acting General Counsel Stevenson.

Chairman Steven T. Walther called the Federal Election Commission to order in an open meeting at 10:36 A.M. on Thursday, July 13, 2017 with a quorum present.

I. POSSIBLE USE OF CAMPAIGN FUNDS FOR RESIDENTIAL SECURITY SYSTEMS

A. REQUEST BY THE SERGEANT AT ARMS OF THE UNITED STATES HOUSE OF REPRESENTATIVES REGARDING THE POSSIBLE USE OF CAMPAIGN FUNDS FOR RESIDENTIAL SECURITY SYSTEMS

**Memorandum from Chairman Steven T. Walther
dated June 28, 2017**

Agenda Document No. 17-29-A

B. PROPOSED INTERIM ENFORCEMENT POLICY ON USE OF CAMPAIGN FUNDS BY MEMBERS OF CONGRESS FOR RESIDENTIAL SECURITY SYSTEMS

**Memorandum from Chairman Steven T. Walther
dated July 11, 2017**

**Agenda Document No. 17-33-A
(Submitted Late)**

C. DRAFT ADVISORY OPINION 2017-07

Sergeant at Arms by the Honorable Paul D. Irving

Agenda Document No. 17-32-A (Draft A)

Agenda Document No. 17-32-B (Draft B)

**Agenda Document No. 17-32-C (Draft C)
(Submitted Late)**

**Agenda Document No. 17-32-D (Draft D)
(Submitted Late)**

Chairman Walther introduced the matter and acknowledged the attendance of the Sergeant at Arms of the United States House of Representatives, Paul Irving. The Chairman thanked the Sergeant at Arms and Deputy Sergeant Arms Timothy Blodgett for working with the Commission through this process, as well as for their ingenuity in taking this approach to bring this matter before the Commission for consideration.

Chairman Walther informed the Sergeant at Arms of the Commission's intent to grant his request. He explained that while Commissioners see things differently, ultimately, they would not have difficulty providing the sought relief. The Chairman then highlighted differences in the draft advisory opinions prepared in this matter. He stated that Draft A grants the request as requested, and has the support of several Commissioners. The Chairman highlighted his concerns with respect to Draft A: 1) As drafted, Draft A does not provide a limit, other than the term "reasonable," on the amount of money that may be spent; and 2) Draft A allows for any Member of the House to use the funds without coming to the Commission. The Chairman explained that his proposed Draft, Draft B, includes a suggested limit of \$15,000, and suggests an initial term of one year, at which time the parties involved would take a look and see what, if anything, could be done once we have an opportunity to determine the actual nature of the threats with more precision and know to a greater degree the extent to which the Senate would have comment. Chairman Walther further

stated that Commissioner Weintraub proposed some edits the night before the meeting for the Commission's consideration which would likely garner discussion. Chairman Walther then recognized the Sergeant at Arms and invited him to comment on the matter.

Sergeant at Arms Paul Irving thanked the Commission for considering the critical issue of allowing Members of Congress to use campaign funds for non-structural residence security systems and the monitoring for those systems. He stated that technology has transformed the threat environment that confronts elected officials, such that internet and social media platforms, as well as the "dark web" have created avenues for individuals to make threatening statements directed at Members of Congress and their families, and disseminate information such as addresses and personally identifiable information, under the cloak of anonymity. He further stated that Members also face in-person threats such as being followed and harassed from town hall meetings, having items left at their residences, and having their residences broken into. The Sergeant at Arms informed the Commission that the while the United States Capitol police thoroughly investigate each threatening incident, threat investigations are, by their nature, reactive. Additionally, Capitol police cannot begin an investigation until a threat has been made. He further highlighted the resource and time intensity of threat assessments that require a fair amount of lead time, and that violence or threats against Members and their

families does not always wait for a thorough investigation, as some individuals act on impulse and have never made a threat before the assessment is conducted, which was the unfortunate situation on June 14, 2017. The Sergeant at Arms stated that mitigation of unknown threats is difficult; however, one method is to install residential security systems. Installation of these systems offers protection to Members and their families, and he believes every Member should have a security system due to the threat environment that they face solely because of their elected status.

Discussion followed.

Chairman Walther announced a 15 minute recess.

The meeting recessed at 11:25 A.M. and reconvened at 12:07 P.M. with a quorum present.

Chairman Walther recognized Vice Chair Hunter who

MOVED to suspend the rules on the timely submission of agenda documents in order that the Commission may consider the following documents: Agenda Document No. 17-33-A; Agenda Document No. 17-32-C; Agenda Document Draft D of the Sergeant at Arms Advisory Opinion Request; Agenda Document No. 17-30-B; and Agenda Document No. 17-31-B.

The motion carried by a vote of 5-0 with Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

I. POSSIBLE USE OF CAMPAIGN FUNDS FOR RESIDENTIAL SECURITY SYSTEMS

C. DRAFT ADVISORY OPINION 2017-07 (continued)

Discussion resumed on this matter with Chairman Walther stating that the Commission had reached an agreement. He recognized Commissioner Weintraub who stated that, as a result of the discussions that took place at the start of the meeting and during the recess, the Commission agreed to make several changes to Draft C in the form of newly created Draft D, which will satisfy all parties. Commissioner Weintraub then walked through the edits to Draft C that made up Draft D.

closure to the Commission Chairman Walther then

Chairman Walther then

MOVED to approve Draft B.

The motion failed by a vote of 1-4 with Commissioner Walther voting affirmatively for the motion. Commissioners Goodman, Hunter, Petersen, and Weintraub dissented.

Chairman Walther then recognized Commissioner Weintraub who

MOVED to approve Draft D, subject to the addition of the word “reporting” before the word “purposes” in line 3 of page 5.

The motion carried by a vote of 5-0 with Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

II. DRAFT ADVISORY OPINION 2017-05

**Great America PAC and Committee to Defend the
President by Dan Backer, Esq.**

Agenda Document No. 17-30-A (Draft A)

**Agenda Document No. 17-30-B (Draft B)
(Submitted Late)**

**Chairman Walther recognized Mr. Dan Backer, Esq., counsel for the
requestors, who was present to answer Commissioners' questions.**

**Chairman Walther recognized Mr. Joseph Wenzinger 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 Great America PAC and The
Committee to Defend the President. The requestors ask several questions
regarding proposals to use Twitter handles and disclaimers on certain
communications, and to maintain Twitter profiles without a disclaimer. Drafts A
and B conclude: the Great America PAC may use its Twitter handle in lieu of its
full name in disclaimers; The Committee to Defend the President may include
it's Twitter handle along with its full name as long the disclaimer's language
makes clear that the committee is paying for the communication; but neither
Great America PAC nor The Committee to Defend the President may use Twitter
handles as an alternative to their permanent street address, telephone number,
or world wide web address. The Drafts differ in that Draft A concludes that**

neither committee's Twitter profile page needs to include a disclaimer, whereas Draft B concludes that they do. Draft B also concludes that the requestors may not satisfy the disclaimer requirement by including a graphic bearing the standard disclaimer if such graphic is not available on certain mobile devices.

Mr. Backer participated in the discussion that followed.

Commissioner Goodman stated that he may want to take some additional time to consider the matter, with Mr. Backer's permission. Mr. Backer stated that he was happy to defer the outcome on the matter if it is helpful to the Commission. Chairman Walther and Commissioner Petersen echoed the desire for additional time to consider the matter.

Discussion continued.

Commissioner Goodman reiterated his desire for additional time to consider the points that Mr. Backer made in the discussion, as well as the distinctions between the types of communications the committees may be considering, as there may be other regulatory implications.

Commissioner Weintraub stated, for the record, that Commissioner Goodman is correct that the Commission is bound by the statute to have certain disclaimers. She further stated that the Commission could potentially consider, in a rulemaking context, whether the Commission can reinterpret some of those requirements, noting it is unclear whether the Commission has that authority in the digital environment. Commissioner Weintraub also highlighted the

possibility of the Commission making legislative recommendations, seeking public comment, and perhaps holding a hearing on the topic. She reiterated that the Commission must apply the current statute and laws.

Discussion continued.

Chairman Walther stated that the matter will be held over to a future meeting, and announced a recess until 2:30 P.M.

The meeting recessed at 1:01 P.M. and reconvened at 2:42 P.M. with a quorum present.

III. PROPOSED INTERIM ENFORCEMENT POLICY ON "VOLUNTEER MAIL" EXEMPTION

Memorandum from Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen dated July 6, 2017

Agenda Document No. 17-31-A

Memorandum from Chairman Steven T. Walther dated July 11, 2017

**Agenda Document No. 17-31-B
(Submitted Late)**

Chairman Walther introduced the matter stating that there were two memoranda before the Commission on the topic. He stated that he agreed with

the Vice Chair to prepare another draft that moves the two current drafts closer together in order that the Commission might make headway on the topic.

Chairman Walther recognized Vice Chair Hunter who thanked the Chairman for his willingness to work together on the matter. The Vice Chair stated that the Commission held an Open Audit Hearing of the Colorado Republican Committee a few weeks ago where the Commission was once again reminded of the fact that the public, as well as the Commission's lawyers and auditors, were uncertain as to what standards to apply to the volunteer mail exemption, which causes a lot of concern and wasted time and effort on the part the Commission's Audit Division and General Counsel's Office, as well as those who are trying to implement this exemption in the state parties. She highlighted that the Commission currently has six (6) audits, both Republican and Democratic committees, dealing with this issue. Vice Chair Hunter stated her hope that the Commission will resolve this soon, as it is an issue the Commission should be able to arrive at an agreement on.

**IV. DISCUSSION OF COMMISSION'S RESPONSE TO ALLEGED
FOREIGN INTERFERENCE IN AMERICAN ELECTIONS**

**Memorandum from Commissioner Ellen L. Weintraub
dated September 9, 2016**

Agenda Document No. 17-27-A

**Memorandum from Commissioner Ellen L. Weintraub
dated September 29, 2016**

Agenda Document No. 16-49-A

**Memorandum from Commissioner Ellen L. Weintraub
dated June 21, 2017**

Agenda Document No. 17-28-A

(Held over from the June 22, 2017 meeting)

Chairman Walther introduced the matter and stated that given the situation that exists in the country presently with respect to a number of these issues, and given the fact that the Commission has matters before it that deal with some or all of these issues, he hoped the Commission could keep its conversation sufficiently distant from any predilection toward one position or another. The Chairman indicated that there were six (6) items for discussion as noted in Commissioner Weintraub's memorandum, which he would like the Commission to discuss separately, not necessarily to reach agreement, but to see where there may be common ground or basis for movement. Of the six (6) items, Chairman Walther put forth "Provide public assurance on FEC data integrity" as the first item for discussion and invited Commissioner Weintraub to comment.

Commissioner Weintraub indicated that this was an excellent place to begin the discussion, as the Commission has already made some progress on this front. She noted that while there was not a lot that could be stated publically at this time, the Commission was briefed by staff on where it stands

as relates to IT security and there is an effort underway to draft something that could be shared with the public. She articulated her appreciation for everyone being onboard with the Commission assuring itself of its IT security, and trying to find a way of framing the issue such that it can be shared with the public.

Chairman Walther stated that the next item he'd like to discuss was "Examine the Commission's enforcement function," and invited Commissioner Weintraub to comment.

Commissioner Weintraub stated that she would like to frame her comments, as she has overall comments that will apply to the topic as a whole. She stated that this is a great opportunity for the Commission to take on an issue that is of great concern to the public. Commissioner Weintraub highlighted the Commission's ability to come to a consensus a matter discussed earlier in the meeting, and hoped that the Commission could continue to work together. She further stated that she wanted to be very clear that she wants to discuss these issues in a prospective manner, as she is worried about the 2018 election. She specified that nothing that would come of any of these proposals would affect anyone or anything related to the 2016 election. Any rulemakings or other paths forward would all be prospective.

Commissioner Weintraub stated that this was not a partisan issue, as there are Republicans and Democrats and Independents, Libertarians, Green Party members, and others, who are concerned about what has happened and

what may happen in the future. She further stated that it is important for the Commission to grapple with these issues, as we are only 16 months away from the 2018 election and the Commission should work to close any loopholes.

Commissioner Weintraub specified that the key first step is information gathering. This is an issue in which the government should be all on the same page and all working toward the same goal. With any number of investigations going on, she stated that there was no need for the Commission to recreate the wheel and would like to see the Commission request public and, if need be, private briefings about what other agencies in government are learning so that the Commission can be in the best position to assess whether there are steps that could be taken to tighten its rules to ward off future problems. The Commissioner explained that she would love to see some of the Commission's legal staff meet with some of the career prosecutors at the Justice Department to find out whether there are aspects of the Commission's rules that they think it would behoove the Commission to change, that would make their jobs easier going forward. She suggested having the Commissioners and a small group of persons within the Commission's Office of General Counsel obtain security clearances so that if there were matters that required this level of security, the Commission would have staff onboard who were able to receive such information. Commissioner Weintraub stated that she would also like to see the Commission revisit some of the previous rulemakings she suggested. She

stated that given the ingenuity that other countries may be employing in trying to influence our elections, it would behoove the Commission to try and adopt a certification procedure whereby people who are spending money on the kind of political activity that requires disclosure to the Commission, would have to certify that they were not receiving their money from entities owned or controlled by foreign governments.

Discussion followed.

Responding to specific proposals and what he believes the Commission can do, Commissioner Goodman:

- 1. Stated that the Commission's best mechanism for conducting its fact finding would be its enforcement procedures, which are well trod.**
- 2. Agreed with the proposal to have open lines of communication with the Commission's sister agencies, especially where issues that may come before the Commission overlap with issues that may come before other agencies. Commissioner Goodman noted that the Commission should also offer its expertise to sister agencies, to the extent that such advice is desired.**
- 3. Agreed on the need to gather facts without recreating the wheel and noted that there are over a dozen other investigations going on, some of which will render public reports that will have bearing and provide factual predicates for prospective legislative recommendations and rulemakings.**

Commissioner Goodman stated that the Commission should have a formal process for monitoring and collecting the reports and findings of other agencies, including Congressional committees, and that this information should be used to inform legislative and regulatory proposals.

- 4. Stated that the Commission has redoubled its efforts and spent money to improve and strengthen its IT Security, following the 2013 hacking incident by a foreign source.**
- 5. Agreed on the need to insure that the Commission has the necessary in-house resources. Commissioner Goodman stated that as new attorneys are hired, the Commission may want to figure into the qualification of the new hires, any knowledge gaps that we may have. He suggested looking at the skills in the Office of General Counsel and assessing whether they cover skills and knowledge in areas such as finances, cyber warfare, computer crimes.**
- 6. Stated his uncertainty with regard to security clearances, which was something he would have to consider. Commissioner Goodman noted that if the agency were to obtain security clearances for some staff, the Commission would need to redouble its commitment to insure that it is a trusted agency.**

Discussion continued.

Chairman Walther asked the Office of General Counsel to look into

skills that could be sharpened within their office as it relates to how money and things of value are being moved, and stated that this should be kept in mind in the event that the Commission engages in regulatory efforts. Mr. Greg Baker of the General Counsel's Office agreed this could be done.

Discussion followed highlighting the areas of agreement that were identified in the course of the discussion.

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 4:22 P.M.

Signed:



**Steven T. Walther
Chairman of the Commission**

Attest:



**Dayna C. Brown
Secretary and Clerk of the Commission**