



APPROVED NOVEMBER 3, 2021

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, JULY 25, 2019**

PRESENT:

Ellen L. Weintraub, Chair, presiding

Matthew S. Petersen, Vice Chair

Steven T. Walther, Commissioner

Caroline C. Hunter, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel

Laura E. Sinram, Acting Secretary and Clerk

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:07 A.M. on Thursday, July 25, 2019 with a quorum present.

Chair Weintraub stated there was a motion for some late-submitted documents and recognized Vice Chair Petersen who

MOVED to suspend the rules on the timely submission of agenda documents in order that the Commission may consider the late submission of Agenda Documents No. 19-31-A1 and 19-36-A.

The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

Chair Weintraub provided updates to the agenda order, including that ITEM I. INTERNET AD DISCLAIMERS RULEMAKING PROPOSAL FOR REG 2011-02 (INTERNET COMMUNICATION DISCLAIMERS AND DEFINITION OF "PUBLIC COMMUNICATION") would be the last item discussed and that ITEM V. DRAFT ADVISORY OPINION 2019-14 would be held over to the next meeting. Chair Weintraub further stated that the requestor granted an extension and there might be some further factual development that will assist the Commission in giving the requestor the best possible answer.

II. DRAFT ADVISORY OPINION 2019-10

**Price for Congress by Stefan Passantino, Esq. and
Nathan Groth, Esq.**

Agenda Document No. 19-33-A (Draft A)

Chair Weintraub welcomed Mr. Stefan Passantino and then recognized Mr. Kevin Paulsen of the General Counsel's Office who presented the draft advisory opinion request from Price for Congress. The requestor asks whether it may contribute committee assets to a non-profit organization and whether that organization may engage in certain activities, if Dr. Price will serve as its president and CEO. Draft A concludes that the recipient organization qualifies as an entity described in section 170(c) of the Internal Revenue Code because the requestors represented that the organization will operate as a non-profit entity for an educational purpose and that it will not attempt to influence legislation or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Because the Act and Commission regulations permit the donation of campaign funds to organizations described in section 170(c) of the Internal Revenue Code and because no committee funds will be converted to personal use by Dr. Price or any other person, the draft concludes that the committee may donate its funds to the organization as proposed.

Mr. Paulsen participated in the discussion that followed regarding whether the organization, proposed as a 501(c)(4) organization rather than a 501(c)(3), would qualify under section 170(c) of the Internal Revenue Code; whether prior FEC advisory opinions support the answer in Draft A; and whether there was any authority from the Internal Revenue Service (IRS) to support the answer in Draft A.

Chair Weintraub stated that she did not think that she would be able to support this advisory opinion because it was an expansion of what the Commission has said before about the personal use exemptions and would expand it to 501(c)(4) organizations.

Chair Weintraub recognized Commissioner Hunter who stated that she agreed with Mr. Paulsen. Commissioner Hunter went on to describe permissible uses of funds under section 30114(a) and advisory opinion precedent, such as in the Tom Lantos advisory opinion.

Mr. Passantino participated in the discussion that followed including whether granting this advisory opinion would result in an extension of the personal use exemption to 501(c)(4) organizations; whether advisory opinion precedent was applicable in this situation; permissible uses of funds under section 30114(a); differences between 501(c)(3) and 501(c)(4) organizations; whether contributions to a 501(c)(4) organization would qualify as tax deductions; whether a 501(c)(4) organization could function in its activities as a

501(c)(3) organization; and whether the formal classification of an organization or the activities undertaken by an organization determine whether it falls within section 170(c).

Vice Chair Petersen stated that he believed that a 501(c)(4) organization qualified under section 170(c).

Mr. Passantino participated in the continuing discussion.

Vice Chair Petersen suggested the possibility of an alternative draft that does not analyze whether the requestor qualifies under 30114(a)(3) but instead looks at the request through an analysis of section 30114(a)(6) 'any lawful purpose' and personal use.

Mr. Paulsen participated in the continuing discussion.

Mr. Passantino stated, for the record, "what we are saying is that we intend to conduct activity consistent with 170(c) as the statute requires" and then participated in the continuing discussion.

Mr. Passantino and Mr. Paulsen participated in the discussion that resumed regarding the next steps in this process, such as a potential alternative draft; the need to seek an extension by the requestors; and a series of public tweets concerning Draft A.

Chair Weintraub recognized Vice Chair Petersen who explicitly requested that the Office of General Counsel prepare an appropriate draft that analyzes

this question through the lenses of section 30114(a)(6) under ‘any lawful purpose’ as a potential compromise draft that Commissioners could review.

Commissioner Hunter stated that she would like to keep Draft A on the public record.

Discussion continued.

Chair Weintraub stated that the Commission would take up this matter on paper or at the next meeting based on counsel’s granting of an extension.

III. DRAFT ADVISORY OPINION 2019-11

Pro-Life Democratic Candidate PAC by Jacob Lupfer

Agenda Document No. 19-35-A (Draft A)

Chair Weintraub welcomed Mr. Jacob Lupfer, who participated in a brief discussion that followed.

Chair Weintraub then recognized Ms. Heather Filemyr of the General Counsel’s Office who presented the draft advisory opinion request from Pro-Life Democratic Candidate PAC. The requestor asks whether it may accept and forward contributions earmarked for a yet unnamed Democratic Presidential candidate who meets certain specified endorsement and experience criteria without itself making a contribution to the recipient of funds. The committee further asks whether it may designate a specific Congressional candidate committee as the default recipient in the event that no Presidential candidate meets the criteria or whether it must instead offer refunds if that occurs. Draft

A concludes that all contributions to the draft fund would be attributable only to the original contributors, and not to the committee, because the committee exercises no direction or control over the choice of the recipient of funds given the objective easily determinable criteria specified. Draft A further concludes that it is permissible for the committee to designate a specific Congressional candidate committee to serve as the default recipient instead of offering refunds if no Presidential candidate meets the criteria to receive the earmarked contributions because it is lawful for a conduit to forward contributions to a default recipient that conduit identifies to contributors at the time the contribution is made.

Chair Weintraub stated that she intended to support the draft as it was consistent with prior advisory opinions, particularly with respect to Advisory Opinion 2019-01. Ms. Filemyr confirmed that it was Advisory Opinion 2019-01 (It Starts Today).

Chair Weintraub recognized Vice Chair Petersen who stated that he agreed and that the draft was consistent with prior advisory opinions that the Commission has issued.

Vice Chair Petersen asked Mr. Lupfer if he wanted to make any comments about the draft. Mr. Lupfer had no comments on the draft but explained his rationale for requesting the advisory opinion.

Chair Weintraub recognized Vice Chair Petersen who

MOVED to approve Draft Advisory Opinion 2019-11 (Pro-Life Democratic Candidate PAC) Draft A, as set forth in Agenda Document No. 19-35-A.

The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

IV. DRAFT ADVISORY OPINION 2019-13

Mary Jennings Hegar & MJ for Texas by Ezra W. Reese, Esq. and Elizabeth P. Poston, Esq.

Agenda Document No. 19-31-A (Draft A)

**Agenda Document No. 19-31-A1 (Revised Draft A)
(Submitted Late)**

Chair Weintraub welcomed the requestor's counsel, Ms. Elizabeth Poston and Mr. Graham Wilson, and then recognized Mr. Robert Knop of the General Counsel's Office who presented the draft advisory opinion request from Mary Jennings Hegar & MJ for Texas. The request asks whether the committee may use campaign funds to pay for childcare expenses for the candidate's young children during her campaign. The drafts conclude that the committee may pay for childcare expenses that are the direct result of campaign activity and, therefore, would not exist irrespective of the candidate's campaign.

Chair Weintraub stated that she particularly liked this advisory opinion because it was rare that the Commission received an advisory opinion where the candidate's opponent submits a comment supporting the candidate's request. Chair Weintraub further stated that it was completely consistent with

the recent opinion that the Commission granted to Liuba for Congress (2018-06) because it would be limited to the childcare expenses that are a direct result of campaign activity and help enable a wider diversity of candidates to consider running for office. Chair Weintraub then stated that she planned to support this request.

Discussion followed.

Chair Weintraub recognized Vice Chair Petersen who

**MOVED to approve Draft AO 2019-13 (Mary Jennings
Hegar & MJ for Texas), as set forth in Agenda
Document No. 19-31-A1, which is being referred to as
Revised Draft A.**

Ms. Poston participated in the discussion on the motion.

Chair Weintraub called for the vote. The motion carried by a vote of 4-0

**with Commissioners Hunter, Petersen, Walther, and Weintraub voting
affirmatively for the decision.**

V. DRAFT ADVISORY OPINION 2019-14

Arizona Libertarian Party by Jeff Daniels

Agenda Document No. 19-32-A (Draft A)

Chair Weintraub stated this item will be held over until the next meeting.

**VI. NOTICE OF AVAILABILITY FOR REG 2019-01 (ADDING VALUABLE
INFORMATION TO DEFINITION OF CONTRIBUTION)**

**Agenda Document No. 19-36-A
(Submitted Late)**

Chair Weintraub recognized Mr. Anthony Buckley of the General Counsel's Office who presented the Draft Notification of Availability for a Petition for Rulemaking submitted to the Commission by Sai, Fiat Fiendum, Inc., Make Your Laws PAC, Inc., and Make Your Laws Advocacy, Inc. The Petition asks the Commission to amend 11 C.F.R. Part 100, Subpart B, by adding a new section 100.57 to clarify that the definition of contribution includes certain "valuable information." The Notification seeks comment on whether the Commission should commence a rulemaking based on this Petition. The comment period will run for 60 days following publication of the Notification in the *Federal Register*. After the comment period has concluded and after comments have been considered, the Commission may decide whether to initiate a rulemaking.

Chair Weintraub recognized Vice Chair Petersen who

MOVED to approve the Notification of Availability for REG 2019-01 (Adding Valuable Information to Definition of Contribution), as set forth in Agenda Document No. 19-36-A.

The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

VII. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE AMBULATORY SURGERY CENTER ASSOCIATION PAC (ASCAPAC)(A17-08)

Memorandum from the Chief Compliance Officer and Audit Division dated July 11, 2019

Agenda Document No. 19-34-A

Chair Weintraub recognized Chief Compliance Officer Patricia Orrock, who highlighted the five findings within the Memorandum: 1) Misstatement of Financial Activity; 2) Receipt of Prohibited Contributions; 3) Recordkeeping for Receipts; 4) Disclosure of Receipts; and 5) Untimely Deposit of Receipts.

Ms. Orrock and Ms. Camilla Reminsky of the Audit Division participated in the discussion that followed regarding clarification of the numbers referenced in Finding 2 (Receipt of Prohibited Contributions); the various steps in the audit process; and the location within the memorandum of the additional information provided by the committee after the drafting of this report.

Chair Weintraub recognized Vice Chair Petersen who

MOVED to approve the Audit Division Recommendation Memorandum on the Ambulatory Surgery Center Association PAC (ASCAPAC)(A17-08), as set forth in Agenda Document No. 19-34-A.

The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

I. INTERNET AD DISCLAIMERS RULEMAKING PROPOSAL FOR REG 2011-02 (INTERNET COMMUNICATION DISCLAIMERS AND DEFINITION OF "PUBLIC COMMUNICATION")

**Memorandum from Chair Ellen L. Weintraub dated
June 13, 2019**

Agenda Document No. 19-26-A

**Memorandum from Vice Chair Matthew S. Petersen and
Commissioner Caroline C. Hunter dated June 19, 2019**

Agenda Document No. 19-26-B

(Held over from the meetings of June 20, 2019 and July 11, 2019)

Chair Weintraub described the history of this rulemaking and stated that it was an opportunity to provide both flexibility and clarity in an increasingly important aspect of political activity. She went on to describe the increases in the number of and spending on digital political ads and recent efforts to find a path forward.

Chair Weintraub recognized Vice Chair Petersen who stated that he could not say if he had the path forward and provided an update in the matter. He went on to explain some outstanding issues, including a provision that deals with the transferability of disclaimers; what would trigger the disclaimer; what is an adequate truncation for ads that qualify for an adapted disclaimer, such as what is considered an adequate truncated name or acronym that can be used in a disclaimer; and what kind of guidance to in the draft rule as compared to what information is included in the Explanation and Justification.

Discussion followed.

Chair Weintraub stated that she would keep this item on the agenda.

VIII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:27 A.M.

Signed:



**Ellen L. Weintraub
Chair of the Commission (2019)**

Attest:



**Laura E. Sinram
Acting Secretary and Clerk of the Commission**