



APPROVED FEBRUARY 16, 2018

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, NOVEMBER 16, 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 Director¹

Lisa Stevenson, Acting General Counsel

Dayna C. Brown, Secretary and Clerk

¹ Ms. Patricia Orrock, Chief Compliance Officer, represented Staff Director Palmer

Chairman Steven T. Walther called the Federal Election Commission to order in an open meeting at 10:03 A.M. on Thursday, November 16, 2017 with a quorum present.

Chairman Walther recognized Vice Chair Hunter who

MOVED that the Commission add to the agenda consideration of REG 2011-02 (Internet Communication Disclaimers), 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; and

FURTHER MOVED to suspend the rules on the timely submission of agenda documents in order that the Commission may consider the late submission of Agenda Document Nos. 17-52-A, 17-52-B, 17-52-C, 17-53-A, and 17-53-B.

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

I. ASSESSMENT OF COMMISSION ACTION ON ENFORCEMENT MATTERS AWAITING REASON-TO-BELIEVE CONSIDERATION

**Memorandum from Chairman Steven T. Walther
dated November 15, 2017**

**Agenda Document No. 17-53-A
(Submitted Late)**

**Memorandum from Chairman Steven T. Walther
dated November 15, 2017**

**Agenda Document No. 17-53-B
(Submitted Late)**

Chairman Walther stated that he submitted this detailed document concerning the progress/regress the Commission has made in terms of Enforcement. The Chairman further stated that in view of the more substantial matter on the agenda, he would hold this matter over to the next meeting.

II. REG 2011-02 (INTERNET COMMUNICATION DISCLAIMERS)

**Memorandum from Chairman Steven T. Walther
dated November 15, 2017**

**Agenda Document No. 17-52-A
(Submitted Late)**

**Memorandum from Commissioner Ellen L. Weintraub
dated November 15, 2017**

**Agenda Document No. 17-52-B
(Submitted Late)**

**Memorandum from Vice Chair Hunter and Commissioners Goodman
and Petersen dated November 15, 2017**

**Agenda Document No. 17-52-C
(Submitted Late)**

Chairman Walther stated that there were three motions before the Commission and explained that each of the motions ultimately sought a rulemaking, with the question before the Commission being exactly what process to take. The Chairman detailed that his motion sought to have a one-day hearing of the Commission before finalizing any rulemaking in order to take into consideration the comments that are made during the hearing, including those from the regulated and information technology communities, prior to

drafting rules. Chairman Walther further outlined his proposal that the hearing take place in December and include three panels, the composition of which would be agreed upon by the Commission with at least four (4) votes, such that it is done in a bi-partisan manner. Discussion continued.

Chairman Walther recognized Commissioner Weintraub who stated that the desire to hold a hearing and the desire to begin drafting a rulemaking, as proposed in her motion, were not mutually exclusive, rather they could be mutually beneficial. Commissioner Weintraub expressed her desire that the Commission hold two hearings: 1) while the Commission reviews the Advanced Notice of Proposed Rulemaking comments and prepares a draft rulemaking document, as the Commission seeks to inform itself and to ensure that the rulemaking document is drafted correctly; and 2) once firm proposals have been prepared, the Commission could hold a second hearing to allow the public to respond to the specifics of the Commission's proposals. Commissioner Weintraub stated that the Commission received many comments on the Advanced Notice of Proposed Rulemaking and thanked everyone who took the time to comment, including citizens and tech companies, noting the importance and informative nature of the comments. The Commissioner expressed her desire to invite each of the tech companies to the Commission to hear their various approaches on this issue, as well as representatives from California and Maryland who each have done rulemakings on this topic. Discussion continued.

Chairman Walther recognized Vice Chair Hunter who stated her belief that there was some agreement, specifically to ask the General Counsel's Office to begin drafting a Notice of Proposed Rulemaking in a manner described in the motion released by the Vice Chair and Commissioners Goodman and Petersen the night before. Vice Chair Hunter noted that many comments were received during the Advanced Notice of Proposed Rulemaking comment period that ended this past Monday, and concurred with Commissioner Weintraub in thanking the public for their responses. The Vice Chair stated that rules governing internet disclaimers exist currently, such that the discreet issue before the Commission, and that came up in many of the comments received, revolves around the small items and impracticability exception to those rules. A lot has changed in technology since 2011 and in light of the changing technology and in light of the comments received, Vice Chair Hunter further stated that it would be the best use of the public's and the Commission's time to propose specific rules that commenters can in turn respond to specifically, citing the Administrative Procedures Act. She indicated that the Commission could strive to have a hearing after the Notice of Proposed Rulemaking had gone out and the public had been given an opportunity to respond. Discussion continued.

Chairman Walther recognized Commissioner Weintraub who stated that while the Commission is the expert on legal rules and disclaimers, it is not

expert in technology or how it can be used. She further noted that it would be helpful to get input from the tech community, other legal experts, and others who have had some experience in the field with regulations of this type, as the Commission is drafting the regulations.

Chairman Walther stated that it would be helpful for those who are not tech savvy, such as himself, to have as much input as possible regarding these information technology issues. The Chairman again advocated for the Commission holding the one day hearing in December in which the Commission could invite tech companies to help narrow the focus of the Commission before finalizing a draft rule. He further stated that the Commission had not yet heard from the professional community and that he would like to hear from the legal community on this topic. Chairman Walther explained that the hearing would allow for the gathering of information from people who can help the Commission move forward in the drafting, noting that the Commission is not an expert in the drafting of rules in this particular area.

Chairman Walther recognized Vice Chair Hunter who asked Ms. Erin Chlopak, of the General Counsel's Office, the approximate number of comments received in response to the Advanced Notice of Proposed Rulemaking. Ms. Chlopak stated that while they were still working to determine the full volume of comments received, she estimated the following: 60,000 actual comments; 25,000 signatures accompanying comments; and an additional 50,000

signatures/comments, for an approximate total of over 100,000 comments. Vice Chair Hunter advocated for taking time to review the comments received by the Commission, reviewing the Congressional testimony from the three (3) recent hearings that took place on the Hill, and then proposing concrete rules for public comment. The Vice Chair pointed out that there was agreement on moving forward, and that the area disagreement lay in when to hold the hearing.

Discussion continued.

Vice Chair Hunter stressed the importance of writing rules regarding the type of conduct that the Commission can govern, reiterating that this was a discreet area. She further stated that an open-ended public hearing ran the danger of giving false hope that the Commission has any jurisdiction over the vast majority of the issues that are presently going on in the intelligence community.

Chairman Walther recognized Commissioner Weintraub who indicated that she was not suggesting that the tech companies could offer advice on all that is currently taking place, and noted that while the Commission cannot do everything, there is more that it could do consistent with the current law.

Discussion continued.

Chairman Walther recognized Commissioner Goodman who credited Commissioner Weintraub for pushing this issue and pushing the Commission. Commissioner Goodman articulated his belief that the Advanced Notice of

Proposed Rulemaking that the Commission used is an informal vehicle that is not contemplated in the Administrative Procedures Act, but was used effectively by the Commission to obtain thousands of public comments to inform how the Commission proceeds. Commissioner Goodman further stated that he believed the issue to be discreet enough that what is being discussed does not change fundamental disclaimer rules, and underscored that current law already provides disclaimers and transparency on paid ads on the internet and digital mobile devices. He stated that the only real dispute is what to do about the very small ads, those that are character limited or involve very small screens, which is a discreet issue for which a rulemaking would be constructive.

Commissioner Goodman noted that there had been several Advisory Opinions, some with split votes, and to the extent that the Commission can bring clarity to the American people regarding what to do about the small digital paid ads, the best vehicle to do so is the one contemplated in the Administrative Procedures Act. He outlined the process of preparing a Notice of Proposed Rulemaking wherein the Commission puts out an idea and receives specific comment about that proposal, followed by a hearing on the specific proposal, and the implementation of any needed adjustments. Commissioner Goodman further stated his belief that it was the Commission's job to take the materials from the four (4) Congressional hearings on this issue, as well as the comments received from the Advanced Notice of Proposed Rulemaking, and digest and

synthesize the information in order to fashion a proposal, obtain specific comment, and then hold a hearing.

Discussion continued.

Chairman Walther then

MOVED to approve Agenda Document No. 17-52-A.

The motion failed by a vote of 2-3 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented.

Chairman Walther recognized Commissioner Weintraub who

MOVED to open a rulemaking in REG 2011-02 (Internet Communication Disclaimers) and direct the Office of General Counsel to expeditiously draft for Commission consideration an appropriate rulemaking document that incorporates such material as the [Advanced Notice of Proposed Rulemaking], public comments received in this matter, and information conveyed in the course of public hearings before Congress and this Commission.

The motion failed by a vote of 2-3 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented.

Chairman Walther recognized Vice Chair Hunter who

MOVED to direct the Office of General Counsel to draft a notice of proposed rulemaking, as soon as is practicable, that proposes revisions to Commission rules governing disclaimers on paid internet and digital communications, and does not propose changes to any other rules adopted by the

**Commission in the Internet Communications rulemaking of
2006.**

**Chairman Walther recognized Commissioner Weintraub who
stated that she would support the motion because it was step forward.
Chairman Walther stated that he would likewise support the motion for
the same reason.**

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

Discussion continued.

**In a moment of personal privilege, Chairman Walther recognized longtime
FEC employee, Ms. Julia Queen, and wished her all the best in her retirement.
Chairman Walther stated that Ms. Queen joined the Commission in October 1980
as a File Clerk in the division now known as Public Records. Ms. Queen worked
in several divisions of the Commission in the course of her career, including
Processing, the Press Office, and as a Paralegal in the General Counsel's Office.
In 2009 she rejoined the Press Office as a Public Affairs Specialist. The
Chairman stated that as anyone who has met her knows, Ms. Queen radiates joy
and has a can-do spirit. He congratulated her on her retirement.**

III. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:00 A.M.

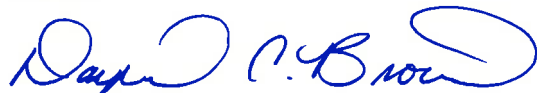
Signed:



Steven T. Walther

**Chairman of the Commission
(2017)**

Attest:



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