



APPROVED MARCH 9, 2022

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, APRIL 22, 2021¹**

PRESENT:

Shana M. Broussard, Chair, presiding

Allen Dickerson, Vice Chair

Sean J. Cooksey, Commissioner

James E. "Trey" Trainor III, Commissioner

Steven T. Walther, Commissioner²

Ellen L. Weintraub, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel

Laura E. Sinram, Acting Secretary and Clerk

Vicktoria J. Allen, Acting Deputy Secretary³

Maureen M. Benitz, Program Management Analyst⁴

¹ The meeting was conducted virtually.

² Commissioner Walther began participation in the meeting during the discussion of ITEM II.

³ Acting Deputy Secretary Vicktoria Allen was the recording secretary for the meeting.

⁴ Program Management Analyst Maureen Benitz moderated the meeting.

Chair Shana M. Broussard called the Federal Election Commission to order in an open meeting at 10:17 A.M. on Thursday, April 22, 2021 with a quorum present.

Chair Broussard recognized Vice Chair Dickerson 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. 21-22-A and 22-23-A1.

Acting Deputy Secretary Vicktoria Allen participated in the discussion that followed regarding a technical issue.

Chair Broussard called for the vote on the special motion made by Vice Chair Dickerson. The motion carried by a vote of 5-0 with Commissioners Broussard, Cooksey, Dickerson, Trainor, and Weintraub voting affirmatively for the decision. Commissioner Walther was not present and did not vote.

I. PROPOSED AMENDMENT TO DIRECTIVE 17

Memorandum from the Acting General Counsel dated December 8, 2016

Agenda Document No. 17-06-A

(Held over from the meetings of January 25, 2017 and April 8, 2021)

(To be held over to a future meeting)

IV. OIG FY 2022 APPROPRIATIONS LANGUAGE

(To be circulated)

(To be held over to a future meeting)

II. DRAFT STATEMENT OF POLICY REGARDING CLOSING THE FILE AT THE INITIAL STAGE IN THE ENFORCEMENT PROCESS

Memorandum from Vice Chair Allen Dickerson, Commissioner Sean J. Cooksey, and Commissioner James E. “Trey” Trainor, III dated April 1, 2021

Agenda Document No. 21-21-A

(Held over from the meeting of April 8, 2021)

Chair Broussard recognized Vice Chair Dickerson who presented the proposed policy statement.

Commissioner Weintraub explained why she would not be able to support the proposal and provided a history of how the Commission acted in previous split vote cases. She stated that the policy is contrary to law in that it changes how Commission decisions are made, would cause the Commissioners to delegate their authority, would hinder enforcement, and would diminish the role of the Democratic and Independent Commissioners in enforcing the law.

Vice Chair Dickerson responded that the lack of Commission consensus since 2008 stems not from changes in Commission personnel but from the

change of law after the *Wisconsin Right to Life, Inc. v. FEC* case. As a result, he stated that it has been harder for the Commission to reach a compromise.

Commissioner Cooksey stated his support for the policy and highlighted that closing enforcement matters is important as a ministerial act in that it indicates that a case is over and is separate and apart from a decision on the merits. He also noted that it removes the incentive to withhold information on matters that could be subject to outside litigation and allows respondents to know that a matter has been adjudicated. He further stated that the Commission would become increasingly liable under the Administrative Procedures Act and subject to an argument that its refusal to close the file is arbitrary and capricious.

Commissioner Walther stated that he supports Commissioner Weintraub's approach, that Congress made a deliberate decision to set up the current system, and that he is not sure the proposed policy would improve the system of justice.

Chair Broussard stated that she does not support the proposed policy, believes that the intent of the statute was to require Commissioners to act in a bipartisan nature for this action to find compromise, and that she does not consider it to be a ministerial action.

Discussion continued.

Commissioner Weintraub stated that closing the file is not simply a ministerial task and noted the potential outcomes if this policy is approved. She also noted how some Commissioners would give up authority under this proposed policy.

Commissioner Trainor described his experience with split votes as a Commissioner and stated that, in his time as a Commissioner, not a single case that had a split vote and a refusal to close the file was placed back on the agenda for the Commission's consideration. He further stated his view that the proposed policy is a procedure the Commission needs to avoid the perception that that Commission is not taking action and would allow for quicker adjudication of cases.

Vice Chair Dickerson noted his concerns regarding the history of split votes, a presumed assumption that a split vote means no action was taken, and the principle of due process.

Chair Broussard recognized Vice Chair Dickerson who

MOVED to adopt Agenda Document No. 21-21-A.

The motion failed by a vote of 3-3 with Commissioners Cooksey, Dickerson, and Trainor voting affirmatively for the motion. Commissioners Broussard, Walther, and Weintraub dissented.

III. DRAFT NOTICE OF AVAILABILITY IN REG 2021-01 (CANDIDATE SALARIES)

Memorandum from the Acting General Counsel dated April 16, 2021

**Agenda Document No. 21-22-A
(Submitted Late)**

Chair Broussard recognized Mr. Kevin Paulsen and Ms. Amy Rothstein of the General Counsel's Office. Mr. Paulsen presented the matter and stated that a Draft Notice of Availability before the Commission contained a Petition for Rulemaking submitted by Nabilah Islam. The Petition asks the Commission to amend its regulations regarding candidate salaries and permissible uses of campaign funds. The Notification seeks comment on whether the Commission should commence a Rulemaking based on this Petition.

Discussion followed regarding whether this would result in a more diverse group of candidates who run for federal office; whether there should be additional disclosure requirements; whether there is a risk of scammers setting up faux campaigns; and whether the Commission could prevent the risk.

Chair Broussard recognized Vice Chair Dickerson who

MOVED to approve Agenda Document No. 21-22-A.

The motion carried by a vote of 6-0 with Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voting affirmatively for the decision.

V. PROPOSED COMMISSION ACTIONS TO ADDRESS “SCAM PACS”

Memorandum from the Scam PACs Working Group dated March 5, 2021

**Agenda Document No. 21-23-A1
(Submitted Late)**

Chair Broussard recognized Ms. Debbie Chacona and Mr. Ryan Lanz of the Office of Compliance; Mr. Greg Scott of the Information Division; and Mr. Paul Clark of the Office of the Chief Information Officer. Ms. Chacona presented the matter. Mr. Lanz and Mr. Clark presented proposed web site changes. Mr. Scott provided information on the educational outreach component of the proposal.

Chair Broussard noted that one of her first cases as a staff attorney related to Scam PACs and explained why she believes this is a very important matter. She also noted that she will not be asking for a vote on this item today as she believes more work is needed.

Ms. Chacona and Mr. Clark participated in the discussion that followed regarding the metrics used to identify possible Scam PACs; whether it was easy to make changes to the website regarding these metrics; and the statutory or regulatory definition of a Scam PAC, the calculation of direct candidate support as it relates to state-level candidates.

Commissioner Weintraub noted that this has been a long-standing project and concern at the Commission.

Chair Broussard asked the working group to evaluate possible alternative metrics; to have the Office of the Chief Information Officer (OCIO) determine the cost, time, and work required to implement the changes; to better develop the Scam PAC snapshot page; and to define a Scam PAC.

Commissioner Walther noted that it was a fine idea but expressed concern about the jurisdictional issues created by this proposal, specifically about the categories of activity used to determine a possible Scam PAC; the costs of implementing these changes; and what would the Commission do with this information.

Ms. Chacona and Mr. Clark participated in the continuing discussion regarding the source of the data used in the working group's proposal; whether the FBI has publicly addressed the Scam PAC issue; the intent behind the working group's proposal; whether this would result in changes to the internal review process as well as public facing information; and whether change in terms of service notifications were needed to explain to FECFile users how their data will be used.

Commissioner Trainor expressed concern about how the data flagging possible Scam PACs could be used and noted the need to control for variables such as rent payments that could skew data.

Vice Chair Dickerson echoed Commissioner Walther's concerns about possible criminal behavior and noted that this proposal was a parallel effort to sending matters to the Department of Justice for criminal prosecution.

Discussion continued.

Chair Broussard stated that this matter will be held over to a future meeting.

VI. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:37 A.M.

Signed:



**Shana M. Broussard
Chair of the Commission (2021)**

Attest:

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