



APPROVED FEBRUARY 16, 2022

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, JANUARY 14, 2021¹**

PRESENT:

Shana M. Broussard, Chair, presiding

Allen Dickerson, Vice Chair

Sean J. Cooksey, Commissioner

James E. "Trey" Trainor III, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel

Laura E. Sinram, Acting Secretary and Clerk²

Vicktoria J. Allen, Acting Deputy Secretary³

¹ The meeting was conducted virtually.

² Acting Secretary Laura Sinram moderated the meeting.

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

Chair Shana M. Broussard called the Federal Election Commission to order in an open meeting at 10:04 A.M. on Thursday, January 14, 2021 with a quorum present.

I. WELCOMING REMARKS

Chair Broussard welcomed everyone to the first public meeting of the Commission since June 2020 and the first with six (6) Commissioners since February 2017. She welcomed her fellow Commissioners and thanked 2020 Chair Trainor for taking over the helm of the Commission on short notice in June during a period in which the Commission not only lacked a quorum but confronted significant challenges associated with the pandemic. She looked forward to working with Vice Chair Dickerson and Commissioner Cooksey, both of whom she had the pleasure of getting to know during the nomination process last year. She enjoyed working closely with Commissioner Weintraub over the years as a staff member and looked forward to doing so as a Commissioner in 2021. She then expressed her sincere gratitude to Commissioner Walther for offering her the opportunity to work for him over the past several years. She hoped that she learned a thing or two from him about being an effective Commissioner and Chair, and equally as important, about being a kind and considerate person.

She then praised the exemplary work of the dedicated and hardworking staff during these difficult times. Like most Federal employees, FEC employees had to figure out how to perform their duties without access to their offices, while simultaneously caring for their loved ones and dealing with the general upheaval created by the COVID-19 crisis. She then spoke about the increased workload at the Commission during Presidential election years, highlighting that the sheer volume of activity in 2020 shattered many records. The 2020 election was roughly twice as expensive as the 2016 election in terms of Presidential and Congressional spending, which translated into substantially more work for the staff, who did a fantastic job of getting accurate and timely information out to the public. Finally, she stated that the absence of a quorum for nearly 15 out of the last 16 months posed unique challenges. Although the Commission was prevented from performing basic policymaking and enforcement functions, the employees continued the crucial mission of providing transparency and fairly enforcing and administering Federal campaign finance laws. The staff reviewed, processed, and made public millions of pages of disclosure information and hundreds of millions of transactions; continued to diligently litigate ongoing court cases; examine and process new enforcement complaints and responses; and analyze and investigate enforcement matters to the maximum extent possible. Chair Broussard stated that she did not wish to dwell on statistics but thought it was important for the public to grasp the

magnitude of data that the Commission handles and the ever-increasing volume of information that FEC employees process in an efficient and timely manner. She cited that in comparison to the last Presidential cycle, staff processed five (5) times more financial transactions and reviewed four (4) times the number of pages of disclosure reports. She invited those who were interested in detailed figures to look at her written statement on the FEC's website.

Chair Broussard then noted that it was not possible to make progress in certain areas given the lack of quorum. She noted that Commissioner Weintraub performed a great service by periodically disseminating sobering figures on the backlog, highlighting that there were 446 enforcement matters pending before the Agency including 275 staff reports awaiting Commission decision around the time the quorum was regained.

As Chair, her main priority will be to focus on the numerous enforcement cases imperiled by impending statute of limitations. She was hopeful that they could make progress in other areas as well, such as promulgating rules that curb the activities of scam PACs and that address internet advertising disclaimers; submitting legislative recommendations to Congress; increasing the Agency's use of social media by making educational tools readily available to the public; and continuing to improve the Agency's website.

Chair Broussard then addressed recent events related to the country's elections. She stated that almost 160 million Americans voted in the November

election, which was the most in history by far. American citizens showed their determination and resolve by casting votes in the middle of a global pandemic, while encountering structural and legal barriers to voting. However, she further stated that we have sadly seen the fragility of the nation's democracy in the capital last week. As she and her fellow Commissioners affirmed to FEC staff the prior week, the work the FEC staff does furthers an important role in promoting participation in the nation's democracy and protecting the integrity of its elections. Chair Broussard finished by stating that despite their differences, the Commissioners and FEC staff were committed to joining efforts toward that goal, and she looked forward to working with everyone in 2021.

Chair Broussard then recognized Vice Chair Dickerson, who echoed the kind welcome received from Chair Broussard and stated that she had properly set out the challenges faced by the Agency and the nation. He expressed his gratitude to Chair Broussard for her leadership and his hope that the warm welcome and professionalism the new Commissioners have received from staff will continue apace. He then expressed his personal thoughts that it was disappointing that they were not able to meet in person, both for reasons of health and security, and that he hoped that they would be able to soon gather in person with all of the fellowship and collegiality that implied.

Chair Broussard stated that there were late submitted documents and 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 Document No. 21-02-A.

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

II. DRAFT ADVISORY OPINION 2020-02

Jean-Marc Bertrand

**Agenda Document No. 21-02-A (Draft A)
(Submitted Late)**

Chair Broussard welcomed Mr. Jean-Marc Bertrand and recognized Mr. Kevin Paulsen and Ms. Amy Rothstein of the General Counsel's Office. Mr. Paulsen welcomed the new Commissioners and then presented the draft advisory opinion request from Mr. Bertrand, a U.S. citizen residing in Canada. The requestor asks several questions concerning application of the Act and Commission regulations to the proposed purchase of political advertisements on certain media platforms. The Draft concludes that the requestor may make expenditures, independent expenditures, and disbursements on political advertisements because the Act provides that U.S. citizens are not foreign

nationals, no matter where they reside, and does not otherwise distinguish between a U.S. citizen residing in the United States and a U.S. citizen residing abroad. The Draft also concludes that neither the Act nor Commission regulations require the requestor to provide any media platform with proof of a U.S. bank account, financial instruments drawn on a U.S. bank, or a U.S. residential address as a prerequisite to the purchase of political advertisements on their platforms. The Draft further explains that this Advisory Opinion cannot serve as legal proof that the requestor is a U.S. citizen or relieve any entity of its obligations to comply with the Act or Commission regulations.

Chair Broussard recognized Mr. Bertrand, who had no additional comments beyond his comments already posted to the Commission's website.

Chair Broussard then recognized Commissioner Weintraub who stated that she was prepared to support to the Draft as is; however, she and Vice Chair Dickerson have been discussing whether there needed to be any tweaking of the language. She further stated that she thought it was important to note that she was uncertain whether this request would answer Mr. Bertrand's underlying questions, especially as related to what private companies could do. She then stated that the First Amendment states that Congress may make no law abridging anyone's freedom of speech. However, she further stated that a person could have a First Amendment right to speak but that did not mean that any platform, media outlet, or publisher was obligated to provide a forum for

that message. She also discussed the background of Facebook’s screening procedures for political advertising and how that affects this request.

Chair Broussard then recognized Vice Chair Dickerson, who agreed with Commissioner Weintraub regarding the statutory law and First Amendment jurisprudence. He stated that the Commission has a very narrow mission given to it by Congress in a specific Act. Regarding the Draft, he noted that his only concern relates to not being able to review Facebook’s particular screening procedures. He stated that he would be open to opining on those questions and would likely end up in a similar place as Commissioner Weintraub in the right context, such as in an advisory opinion request by Facebook. That said, he further stated that he did not think it was appropriate for the Commission to opine on specific screening procedures in this context. Vice Chair Dickerson then stated that he circulated a paragraph that largely eliminates a paragraph on page 5 of Draft A beginning with “The Commission has encouraged...”. He explained that that in general, he was fine with Draft A but that his concern was the last portion of that paragraph beginning with “these entities may...”. He then stated that he was happy to answer questions or work with Commissioner Weintraub on compromise language.

Chair Broussard recognized Commissioner Walther, who stated that he welcomed the atmosphere in which they were discussing these matters and

that he was able to support either approach. He also stated that he would like to see the Commission consider a rulemaking or policy.

Discussion continued regarding the proposed language circulated by Vice Chair Dickerson's Office and how to procedurally handle amendments made at the table.

Chair Broussard, without objection, stated that there appeared to be consensus on resolving this matter on tally and that this matter would be held over.

Mr. Bertrand thanked the Commission.

III. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE MISSISSIPPI REPUBLICAN PARTY (A17-15)

Memorandum from the Chief Compliance Officer and Audit Division dated June 4, 2020

Agenda Document No. 21-01-A

This matter was held over to a future meeting.

IV. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON VAN DREW FOR CONGRESS (A19-04)

Memorandum from the Chief Compliance Officer and Audit Division dated August 7, 2020

Agenda Document No. 21-05-A

(Resolved on tally)

V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE NATIONAL TOOLING & MACHINING ASSOCIATION (NTMA) COMMITTEE FOR A STRONG ECONOMY (A19-10)

Memorandum from the Chief Compliance Officer and Audit Division dated November 12, 2020

Agenda Document No. 21-03-A

Chair Broussard recognized Mr. Jonathan Fonseca and Ms. Erica Lee of the Audit Division. Mr. Fonseca highlighted the two findings within the Memorandum: 1) Misstatement of Financial Activity- Increased Activity and 2) Disclosure of Contributions Made to Federal Candidate Committees.

Chair Broussard recognized Vice Chair Dickerson who

MOVED to adopt the Audit Division Recommendation Memorandum on the National Tooling & Machining Association (NTMA) Committee for a Strong Economy (A19-10), as recommended in the Memorandum from the Chief Compliance Officer and the Audit Division dated November 12, 2020.

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

VI. PROPOSED FINAL AUDIT REPORT ON THE DEMOCRATIC FOUNDATION OF ORANGE COUNTY (A19-23)

Memorandum from the Chief Compliance Officer and Audit Division dated September 30, 2020

Agenda Document No. 21-04-A

(Resolved on tally)

VII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 10:37 A.M.

Signed:



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

Attest:

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

**Vicktoria J. Allen
Deputy Secretary of the Commission**