



AGENDA DOCUMENT NO. 18-25-A

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, APRIL 26, 2018

PRESENT:

Caroline C. Hunter, Chair, presiding

Ellen L. Weintraub, Vice Chair

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel

Dayna C. Brown, Secretary and Clerk

Chair Caroline C. Hunter called the Federal Election Commission to order in an open meeting at 10:12 A.M. on Thursday, April 26, 2018 with a quorum present.

In recognition of *Take Our Daughters and Sons to Work Day*, Chair Hunter stated that the Commission's special guests will gavel in the meeting. The children of Commission staff then took turns gaveling and shared their names.

Chair Hunter stated that this was the first open meeting in the building and welcomed those who were visiting the building for the first time. She expressed her excitement about the new building and stated that the Commission has an amazing staff who has done a fabulous job in getting the agency to where it is now. With a few kinks yet to workout, the Chair stated that there would be a formal thank you to the dedicated staff who have assisted in this endeavor at the next public meeting. Chair Hunter noted that she wished to thank Ed Holder, India Robinson, and Dayna Brown, who have been particularly helpful with the move.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for January 25, 2018
Agenda Document No. 18-13-A

Minutes for February 8, 2018
Agenda Document No. 18-14-A

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the meeting of
January 25, 2018 as set forth in Agenda Document No.
18-13-A, and the minutes for the meeting of February 8,
2018 as set forth in Agenda Document No. 18-14-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 2018-03

Committee to Elect Michael Gilmore by Michael A.
Gilmore, Esq., Candidate

Agenda Document No. 18-18-A (Draft A)
(Submitted Late)

Agenda Document No. 18-18-B (Draft B)
(Submitted Late)

Chair Hunter stated that, without objection, the Commission would begin
with Advisory Opinion 2018-03, as Mr. Gilmore has a class to teach this morning.
The Chair then recognized the requestor, Mr. Michael A. Gilmore, Esq., who was
available via telephone to answer Commissioners' questions.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to waive the rules on the timely submission of agenda documents so that the Commission may consider Agenda Documents No. 18-18-A and 18-18-B.

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 2018-03 (continued)

Chair Hunter recognized Mr. Joseph Wenzinger of the Office of General Counsel who presented the draft advisory opinion concerning whether the Committee to Elect Michael Gilmore (the committee) may use campaign funds to pay certain legal expenses of a lawsuit concerning the date of a special election, and whether the value of any pro bono legal services provided in support of the litigation would constitute an in-kind contribution to the committee. Both drafts conclude that the committee may not use campaign funds to pay for the legal expenses because the expenses would exist irrespective of the campaign, therefore use of campaign funds for that purpose would constitute impermissible conversion of campaign funds to personal use. Both drafts also conclude that the value of any pro bono legal services provided in support of the litigation would not constitute in-kind contributions to the committee. The drafts differ slightly in the rationale for why the volunteer services would not constitute contributions. While both drafts conclude that the services would not be for the purpose of influencing a federal election, Draft

A further concludes that even if the services were for such a purpose, they would nevertheless fall within an exemption to the definition of contribution.

Chair Hunter stated that, as noted by Mr. Wenzinger, there are two drafts in this Advisory Opinion request. Draft A was put out by her office and Draft B was put out by the Vice Chair's office. Chair Hunter further stated that while she and Commissioner Petersen prefer Draft A, they have reviewed Draft B and are prepared to approve it at the appropriate time.

Ms. Erin Chlopak of the Office of General Counsel participated in the discussion surrounding Mr. Gilmore's concern regarding the separation between the legal deprivation that the lawsuit is purporting and the expense of the litigation; that although the incident would have existed irrespective of the campaign, the expense would not have existed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Advisory Opinion 2018-03,
Committee to Elect Michael Gilmore, as set forth in
Agenda Document No. 18-18-B.

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

Chair Hunter recognized Vice Chair Weintraub who

MOVED to waive the rules on the timely submission of
agenda documents so that the Commission may
consider Agenda Documents No. 18-17-A and 18-19-A.

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

II. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON MCSALLY FOR CONGRESS (MFC) (A15-04)

Memorandum from the Chief Compliance Officer and Audit Division dated February 28, 2018

Agenda Document No. 18-15-A

Chair Hunter stated that the Commission held an Audit Hearing on this matter on February 8, 2018 and recognized Ms. Zuzana Pacious of the Audit Division who presented the matter. Ms. Pacious stated that the Audit Division Recommendation Memorandum (ADRM) for McSally for Congress (MFC) was circulated to the Commission on March 1, 2018 for a vote. The ADRM includes the Draft Final Audit Report (DFAR) which was sent to the committee and the Commission on October 18, 2017. The ADRM also provides an overview of the committee's responses to the issued DFAR and the Audit Hearing, which was held on February 8, 2018.

In discussion with Commission Offices, edits pertaining to Finding 1 (Misstatement of Financial Activity) and Finding 2 (Disclosure of Occupation/Name of Employer), were recommended for the Proposed Final Audit Report. The Proposed Final Audit Report will be the next report which would be circulated after the approval of this ADRM. These edits were circulated to the

Commission Secretary Office and all Commissioners' Offices on April 11, 2018

from Office of Compliance. The proposed edits, in part, are as follows –

- Finding 1 – insert within the Proposed Final Audit Report the following:

“The Audit staff maintains MFC should follow the reporting guidance outlined in the Campaign Guide for Congressional Candidates and Committees regarding the treatment of the two types of transactions discussed above. The Campaign Guide recommends disclosing voided transactions as negative entries within the identified receipt or disbursement categories. Following such best practices in the future will help ensure that MFC’s reported financial activity is in agreement with its bank activity, resulting in no misstatement or reporting discrepancies. Moreover, utilizing these best practices will most likely prevent MFC from receiving future Requests for Additional Information from the Commission’s Reports Analysis Division”.

- Finding 2 – insertion of proposed language changes within the Proposed Final Audit Report that highlights, in part, that MFC:

“explained that it maintained best efforts and filed amended reports”.

Chair Hunter stated that the Commission was not able to discuss this at the last open meeting because the meeting was canceled. With regard to Finding 1, the Chair further stated that one of her concerns was that the committee did not follow the recommendation of the Campaign Guide, but noted that the Campaign Guide states that it is a “recommendation.” The Chair explained that she endeavored to add language, for the benefit of future committees, that although it is described as a recommendation, following the recommendation will save a lot of trouble. With respect to the second Finding,

Chair Hunter stated that she thought it more accurate to make changes to the Audit Report to more clearly reflect what the committee had done in sending out letters in advance of hearing from the Audit Division. Chair Hunter noted that this matter was circulated on tally in the interest of moving it forward as quickly as possible; however, it was not approved and was therefore added to the agenda.

Chair Hunter recognized Vice Chair Weintraub who stated that she approved the original report and that she thought it important that if any changes were made, that they be made in an open meeting, in the interest of transparency and consistent with past practice. Vice Chair Weintraub explained that, pursuant to Directive 70, there are sections of the report that reflect the professional judgement of the Commission's auditors and there are other sections of the report where Commissioners can express their views, with Commissioners ultimately approving (or not) all of the recommendations. The Vice Chair stated that she wanted to ensure that the Commission was not interfering with the auditors professional integrity and judgement, and their ability to express such in their report. She stated that she has had discussions with the Audit staff regarding this and asked that Audit confirm publically what they have shared with her privately, that the changes do reflect Audit's views.

Ms. Pacious confirmed that these are the views of the Audit Division; that they feel comfortable with these additions; and that the additions reiterate, in their opinion, what had already been stated.

Discussion continued.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the recommendations in the Audit Division Recommendation Memorandum on McSally for Congress, as set forth in Agenda Document No. 18-15-A.

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

Chair Hunter recognized Commissioner Petersen who inquired as to whether the motion captured the edits in the email from the Compliance Office. Ms. Dayna Brown, Commission Secretary, confirmed that the motion as stated did not include the edits. Vice Chair Weintraub stated that she believed the document before the Commission incorporated the edits described in the email, and that the intent of the motion was to include the edits. Ms. Patricia Orrock, Chief Compliance Officer, explained that the edits were not included in the document before the Commission, but rather were provided, in part, in the email that was sent to Commission offices on April 11, 2018, and described at the table during today's meeting.

Discussion continued.

Vice Chair Weintraub stated that, without objection, she desired for her motion to be interpreted to include the edits provided in the April 11, 2018 email from the Office of Compliance and the discussion at the table. As such, the motion was updated as follows:

MOVED to approve the recommendations in the Audit Division Recommendation Memorandum on McSally for Congress, as set forth in Agenda Document No. 18-15-A, subject to the edits discussed at the table and edits circulated by the Chief Compliance Officer on April 11, 2018 at 1:20 P.M. for the Proposed Final Audit Report.

III. DRAFT ADVISORY OPINION 2018-02

Alabama Academy of Radiology and ALRAD PAC
by Richard L. McBride Jr., Esq.

Agenda Document No. 18-17-A (Draft A)
(Submitted Late)

Chair Hunter recognized Mr. Tony Buckley of the General Counsel's Office who presented the draft advisory opinion concerning the request of Alabama Academy of Radiology (the Academy) and the Alabama Academy of Radiology PAC (ALRAD PAC), a committee organized under Alabama state law and active in Alabama state and local elections. The requestor asks whether, under Commission regulations, the Academy is a membership organization; whether ALRAD PAC may convert from a non-federal committee to a federal separate segregated fund (SSF); whether ALRAD PAC, as a federal committee, may retain all of its current cash-on-hand provided it divest itself of the fair market value of

payroll deduction services provided by participating corporations employing Academy members; and whether the Academy may solicit future contributions to ALRAD PAC using its proposed payroll deduction program. The draft concludes that the Academy is a membership organization under Commission regulations and that ALRAD PAC may convert from a non-federal committee to a federal SSF. The draft also concludes that ALRAD PAC may maintain its current cash-on-hand once it divests itself of impermissible funds, including donations that fail to comply with the Federal Election Campaign Act's (the Act) source and amount restrictions, the fair market value of payroll deduction services provided by participating corporations, and funds that were solicited in a manner that does not comply with the Act and Commission regulations. In addition, the Academy and ALRAD PAC must notify donors of the proposed change in the use of their funds and allow them to object to that use. Finally, the draft concludes that the Academy may solicit future contributions using its existing payroll deduction program as long as it makes changes proposed in the request.

Chair Hunter then recognized Vice Chair Weintraub who

MOVED to approve Advisory Opinion 2018-02 to the Alabama Academy of Radiology and ALRAD PAC, as set forth in Agenda Document No. 18-17-A.

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 2018-04

Conservative Primary LLC by Petra A. Mangini, Esq.

(To be held over to a future meeting)

Chair Hunter stated that, as noted on the agenda, this matter will be held over to the next public meeting, as the Commission continues the preparation of what will likely be two drafts for this matter. She stated that the Commission anticipates releasing the drafts fairly quickly in order to allow the requestor time to review the drafts ahead of the next public meeting.

VI. DRAFT ADVISORY OPINION 2018-05

CaringCent, LLC by Graham M. Wilson, Esq. and
Emma Olson Sharkey, Esq.

Agenda Document No. 18-19-A (Draft A)
(Submitted Late)

Chair Hunter recognized the requestor, Mr. Graham M. Wilson, Esq., who was present and available to answer Commissioners' questions. The Chair then recognized Ms. Esther Gyory of the General Counsel's Office who presented the draft advisory opinion concerning the request of CaringCent, LLC. The requestor asks several question about the application of the Act and Commission regulations to the requestor's proposal to offer contribution processing services to political committees. First, the draft concludes that CaringCent would not make a contribution to a political committee because CaringCent would be acting as a commercial vendor and would charge the usual

and normal charge for its services. Second, the draft concludes that as a commercial vendor, CaringCent would not be required to register or report as a political committee, or to report as a conduit or intermediary. Finally, the draft concludes that CaringCent's proposed services would comply with the provisions of the Act and Commission regulations relating to the forwarding of contributions to political committees.

Mr. Wilson stated that he reviewed the draft. He further stated his belief that this was a fairly straightforward request and that he agreed wholeheartedly with the draft.

Discussion continued with regard to the distinctions and differences between CaringCent's request and similar previous advisory opinions.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Advisory Opinion 2018-05 to
CaringCent, LLC, as set forth in Agenda Document No.
18-19-A.

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

Discussion continued with regard to Commissioners' availability for the April 10th executive session and April 12th open meeting.

VII. INTERNET COMMUNICATION DISCLAIMERS ILLUSTRATIVE EXAMPLES

(To be circulated)

Chair Hunter stated that the Commission approved a Notice of Proposed Rulemaking (NPRM) in early March, and it was published in the *Federal Register*. Ms. Jessica Selinkoff of the General Counsel's Office confirmed that the comment deadline was May 25, 2018. The Chair expressed her hope that the Commission would receive a lot of great comments, and highlighted that a hearing was scheduled for late June.

Chair Hunter stated that the Commission recently received a comment from several democratic Senators. Part of their comment was that they were surprised that there were two different alternatives proposed in the NPRM. The Chair stated that she found this odd because in the time that she has been on the Commission, the Commission often has an NPRM with more than one option because different people think differently, so the Commission gives the public options and asks which option they prefer. The Chair further stated that she and Vice Chair Weintraub have highlighted on numerous occasions, that the two proposals within the present NPRM should not be viewed as one or the other; rather, there could be a combination of elements from each of the two alternatives. Chair Hunter explained that, as she noted when the NPRM was approved, one of the reasons she and Commissioner Petersen were proponents of Alternative B was because Alternative A's standard was that there must be a

disclaimer in the ad unless it does not fit, which they did not believe was an objective measure for determining whether or not a disclaimer should be on the ad. She and Commissioner Petersen were looking for something easier for the public to understand, so in Alternative B they proposed that if the disclaimer takes up more than 10% of the ad, an alternative disclaimer can be used.

Chair Hunter explained that when the NPRM was adopted, the Commission stated that it would come up with examples of how the different proposals would work in real life. The Commission agreed that such examples would be helpful to the public, and in particular those submitting comments. The Chair stated that, as noted on the agenda, the examples have not yet circulated; however, the Commission remains committed to doing so.

Vice Chair Weintraub stated that she was happy to commit to the goal of attempting to release the examples next week. The Vice Chair further stated that since there were no Commission meetings scheduled for the following week, that would be a good time to really focus on this, noting that the document she was reviewed last night did not yet seem to be in a place where she thought it would be helpful. She explained that in some of the examples provided in the draft document, questions were asked underneath the examples as to whether the ad would comply with the regulation under Alternative A or Alternative B and some of the answers were, "maybe." She further explained that she did not think it would be helpful for the Commission to provide

examples for which it is unsure how the regulation text would apply. Vice Chair Weintraub stated that she would like to work to come up with some consensus on how the proposals actually apply in each of the examples because she believes that would be more helpful to the public.

Discussion continued with regard to the clear and conspicuous standard presently in the regulations.

The Chair and Vice Chair reiterated their commitment to working together to prepare examples they are comfortable with and that will be helpful to those commenting on the NPRM.

VIII. DIRECTIVE 10, SECTION L.: SPECIAL RULES WHEN THE COMMISSION HAS FEWER THAN FOUR MEMBERS

Memorandum from Chair Caroline C. Hunter
dated April 19, 2018

Agenda Document No. 18-16-A

Chair Hunter stated that, as noted in her April 19, 2018 memorandum, she recently asked the Office of General Counsel to prepare a memorandum analyzing the various components of subsection L. of Directive 10. The Chair stated that while it may be legally permissible for fewer than four (4) Commissioners to decide things, from a policy perspective it may not be something all Commissioners agree with. Chair Hunter acknowledged that Directive 10 is properly enacted and that it would take four (4) votes to change it, and explained that it was adopted in 2007 when the Commissioners at that

time anticipated that there would be a lack of a quorum. The Chair further explained that, from a policy perspective, she does not necessarily agree with all of the elements of subsection L., and looked forward to the Office General Counsel's analysis.

Discussion continued.

Chair Hunter recognized Vice Chair Weintraub who stated that the changes to Directive 10 in 2007 were made with the full advice of the Office of General Counsel, and that the range of activities that could have been included in subsection L. were, if anything, narrowed by the Commissioners at that time in an effort to be conservative. She further stated that the Directive was adopted by unanimous consent of all five (5) Commissioners serving at that time, and that this took place in December of 2007 when there was some degree of trepidation about what would happen come January of 2008 when, as it turned out, there were only two (2) Commissioners left. The goal was to ensure that staff would have appropriate direction; that the database would stay current; and that although no policy decisions could be made or any decisions that required four (4) votes under the statute, to the extent possible the Commission would remain operational, at least at the staff level. Vice Chair Weintraub further stated that, like every other directive, Directive 10 was adopted by Commissioners after internal discussion and that she did not believe the Commission had ever put a directive out for public comment and was not

committing to do so with regard to this matter, though she looked forward to Office of General Counsel's memorandum.

Chair Hunter stated that she did not know why the Commission would not want comment from the public on this, though she was not envisioning a formal NPRM-type process. The Chair further stated that if the Commission lacks a quorum and operates for any period of time, it impacts the public. She also noted that from her perspective, while she was not on the Commission at the time, people were not happy with many things that took place when the Commission last lacked a quorum.

Discussion continued.

IX. MANAGEMENT AND ADMINISTRATIVE MATTERS

Chair Hunter stated that the Commission recently approved a matter in an executive session for which a *Record* article came out yesterday and for which the Commission has already begun receiving questions, so she thought it helpful to provide an update. The Chair recognized Ms. Debbie Chacona, Assistant Staff Director for the Reports Analysis Division (RAD), thanked Ms. Chacona and her staff for their fine work, and invited her to provide the update. Ms. Chacona stated that RAD amended Standard 26 of the 2017-2018 cycle Review and Referral Procedures, which covers Personal Use of Campaign Funds, to address dormant Title 52 authorized committees of former federal candidates and office holders. These revisions were made

to ensure the activity disclosed meets the regulatory standards for permissible use. Committees of former candidates who did not campaign or hold office during the previous two (2) year cycle for House candidates, or four (4) year cycle for Senate and Presidential candidates, will be subject to this review. The revisions include sending a letter to these committees that will request clarification of the status of the candidate and the committee, clarification of certain activity disclosed, and will explain the guidelines for permissible uses of campaign funds for winding down and termination. The review will be conducted semi-annually and will begin with the 2018 October Quarterly Report covering July 1, 2018 – September 30, 2018, which is due October 15, 2018. The revisions will be included in the redacted version of the 2017-2018 RAD Review and Referral Procedures and posted on the Commission's website in the near future.

Chair Hunter recognized Vice Chair Weintraub who thanked Ms. Chacona for her quick and, as always, excellent work on this issue. The Vice Chair expressed her appreciation to Commissioners for their agreement to provide better guidance on this issue of "zombie PACs," to ensure committees are noticed about all the rules.

There being no further business to come before the Commission, the meeting adjourned at 11:14 A.M.

Signed:

Caroline C. Hunter
Chair of the Commission

Attest:

Dayna C. Brown
Secretary and Clerk of the Commission