



AGENDA DOCUMENT NO. 19-22-A
APPROVED JUNE 6, 2019

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

PRESENT:

Ellen L. Weintraub, Chair, presiding

Matthew S. Petersen, Vice Chairman

Steven T. Walther, Commissioner

Caroline C. Hunter, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel

Dayna C. Brown, Secretary and Clerk

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:18 A.M. on Thursday, April 25, 2019 with a quorum present.

In recognition of *Take Our Daughters and Sons to Work Day*, Chair Weintraub welcomed the children of Commission staff. Each of the special guests then took turns gaveling the meeting into order.

II. DRAFT ADVISORY OPINION 2018-12

Defending Digital Campaigns, Inc. by Marc Elias, Esq. and Michael Toner, Esq.

Agenda Document No. 18-43-A (Draft A)

Agenda Document No. 18-43-B (Draft B)

**Agenda Document No. 18-43-C (Draft C)
(Submitted Late)**

(Held over from the meetings of October 11, 2018, October 25, 2018, December 13, 2018, March 28, 2019, and April 11, 2019)

Chair Weintraub stated that the Commission released a new draft in this matter this morning. The Chair thanked Vice Chairman Petersen for working with her to find a path forward. Chair Weintraub further stated that the requestor requested time to review the latest draft so the matter will be held over with the hope that it will be resolved at the next meeting.

Chair Weintraub recognized Commissioner Hunter who stated that it may be useful to the public and the requestor for the Chair to explain her position on the draft made public this morning.

Mr. Joseph Wenzinger of the General Counsel's Office participated in the discussion that followed.

Chair Weintraub then stated that the matter would be discussed in its order on the agenda.

VI. 2019 MEETING DATES

(To be circulated)

Chair Weintraub highlighted her plan to have a more aggressive meeting calendar for the rest of the year to address backlog. The Chair stated that she is proposing the Commission meet on a weekly basis for Executive Session for the remainder of the year noting that, understandably, this may not be possible due to vacations. Discussion continued.

Chair Weintraub recognized Vice Chairman Petersen who stated that the Commission received a record number of complaints in the last election-cycle, with a lot of matters cycling through the Office of General Counsel. Vice Chairman Petersen further stated that the Commission is looking into how to address this as aggressively and realistically as possible, while also understanding the scheduling needs of the Commissioners and the Office of General Counsel in affirming the proposed dates.

Discussion continued.

Chair Weintraub stated that this matter would be held over to the next meeting.

I. PRELIMINARY DISCUSSION OF REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION

Chair Weintraub called the matter.

Secretary and Clerk Dayna Brown reminded the Commission of the special motion required for this matter.

Chair Weintraub then recognized Vice Chairman Petersen who

MOVED that the Commission add to the agenda the Preliminary Discussion of the Report on the Investigation into Russian Interference in the 2016 Presidential Election; and the Audit Division Recommendation on the New Jersey Republican State Committee, 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 Agenda Documents No. 18-43-C and 19-16-A.

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

**I. PRELIMINARY DISCUSSION OF REPORT ON THE INVESTIGATION INTO
RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION**

(continued)

Chair Weintraub introduced the matter and stated that while there were parts of the Report that were not within the Commission's purview, there were parts that were squarely within the Commission's jurisdiction. The Chair further stated that given the extreme interest in this document, in Washington and across the country, she thought it would benefit the American people and behoove the Commission to say, initially, what its plans were with the respect to the document.

Discussion continued.

Chair Weintraub stated that she wanted the public to know that she has asked the Commission's Enforcement attorneys to review the document to see if there is any information that is relevant to any matters on the Commission's docket, clarifying that she was not saying there were any such matters. The Chair further stated that she has asked the Commission's Policy attorneys to review the document with an eye toward seeing and making recommendations to the Commission as to whether there are further rulemakings, policy statements, legislative recommendations, or anything more the Commission can do in order to further protect our election and our democracy, and to help ensure, to the extent the Commission can, that we put up stronger defenses in 2020 against the 2016 activities detailed in the Report.

Chair Weintraub then explained that she hoped to convene a forum of outside experts on this topic because it should not be assumed that the Commission has all the information or will think of absolutely every idea. The Chair further noted that she has reached out to the Vice Chairman and requested his assistance in compiling an appropriate panel of experts who could help advise the Commission.

Discussion continued including the timing of the forum and the forthcoming plan for completing the Internet Disclaimer rulemaking.

Chair Weintraub recognized Commissioner Hunter who stated that any foreign interference in our elections is not acceptable. Commissioner Hunter then noted that the Commission's jurisdiction, as discussed previously, is limited and that she did not want to give the public false hope that the Commission would be able to potentially correct all of the problems outlined in the Report. Commissioner Hunter stated that she was happy to hear from Commission counsel on what, if any, changes the Commission may be able to make to its regulations to thwart this type of activity, and reiterated the Commission's limited jurisdiction.

Discussion continued on the Commission's jurisdiction and the portions of the Report that were relevant to the Commission and the Federal Election Campaign Act.

Chair Weintraub recognized Vice Chairman Petersen who stated that, like his colleagues, he is still working through the Report and looked forward to hearing the reports from the Office of General Counsel with respect to its implications on the Enforcement docket as well as potential Policy implications going forward.

Chair Weintraub recognized Commissioner Walther who stated that he was looking forward to the forum and noted his hope that the invitees can offer advice on how the Commission can stay current, to the highest degree possible, on security. Chair Weintraub welcomed Commissioner Walther's input on who should be invited to the forum.

II. DRAFT ADVISORY OPINION 2018-12 (continued)

Chair Weintraub introduced the matter and then recognized Mr. Wenzinger who presented the draft advisory opinion request from Defending Digital Campaigns, Inc. The requestor asks whether it may provide or facilitate the provision of certain cybersecurity services, software, and hardware to federal candidate committees and national party committees on a nonpartisan basis and according to pre-determined, objective criteria. Mr. Wenzinger stated that Draft A and Draft B have been discussed in previous Open Meetings, and that Draft C was the newest draft. Drafts A and C conclude that the proposal is permissible, while Draft B concludes that the proposal is impermissible.

Chair Weintraub stated that she had concerns, not about the particular proposal before the Commission which was laudatory, but rather for ramifications for other aspects of the law. The Chair further stated that she has had productive discussions with the Vice Chairman and that Draft C, which approves the request using an analysis that is largely informed by one of the comments received from the Campaign Legal Center that suggested an approach that relies on 52 U.S.C § 30121, has the potential to be a consensus draft. Chair Weintraub noted that Draft C was not a perfect approach from the perspective of any Commissioner, which was a useful exercise for the Commission in an effort to find a place of compromise.

Discussion continued.

Chair Weintraub recognized Commissioner Hunter who thanked the Chair for her helpful comments. Commissioner Hunter then stated that she continues to support Draft A, primarily because the money will not be made for the purpose of influencing, or in connection with, a federal election; rather it is for the purpose of preventing foreign nationals from hacking into political party campaigns, which all Commissioners agree with. Commissioner Hunter stated that she planned to vote for Draft A when the matter moves to a vote and, in the spirit of compromise, would support Draft C. Commissioner Hunter went on to highlight that the “yes” answer in lines 15 – 18 of page 12 of Draft C was conditioned and stated that she does not generally condition anything in an

advisory opinion on something that an organization is permitted to do under the law. In this case, Commissioner Hunter stated that she was reluctant to do so, however, she thought there was at least a connection with the underlying purpose of Draft C to prevent foreign nationals from interfering in elections, such that it may make sense to condition the approval on not accepting donations from foreign nationals. Commissioner Hunter noted that this was the part of the draft she was most interested in hearing from the requestor on.

Discussion continued including the possibility of the Commission voting for the matter on tally rather waiting for the next open meeting.

Chair Weintraub recognized Vice Chairman Petersen who stated that his thoughts were similar to those of Commissioner Hunter, in that his preferred approach was Draft A which does not have the requisite four (4) votes. The Vice Chairman further stated that he agreed that when there is a possibility of finding an approach that all four Commissioners can support, even if it is not the favored approach by any Commissioner, it is a worthwhile exercise to undertake in all aspects of Commission activities. Vice Chairman Petersen stated that he looked forward to the requestor's comments.

Chair Weintraub recognized Commissioner Walther who stated that the Commission was doing everything it can to develop security against foreign interception of any communications, such that the Commission finds itself

exhibiting an extra measure of commitment to try and accomplish an agreement on something like this.

Discussion continued.

III. DRAFT ADVISORY OPINION 2018-13

**OsiaNetwork LLC by Jonathan Sack, Esq. and
Brian Hunt, Esq.**

Agenda Document No. 18-49-A (Draft A)

Agenda Document No. 18-49-B (Draft B)

**(Held over from the meetings of November 15, 2018,
December 13, 2018, March 28, 2019, and April 11, 2019)**

Chair Weintraub recognized Mr. Jonathan Sack, requestor's counsel, who was available to answer Commissioners' questions. The Chair then recognized Ms. Joanna Waldstreicher of the General Counsel's Office who presented the draft advisory opinion request from OsiaNetwork LLC. OsiaNetwork is a for-profit entity that plans to make available to political committees, infrastructure that would allow supporters of the political committees to use their computing power to participate in a cryptocurrency mining pool. OsiaNetwork would convert the proceeds of the mining pool to U.S. dollars and transfer those amounts, minus a fee, to the political committees. OsiaNetwork asks a number of questions about its proposal, including its permissibility under the Federal Election Campaign Act and Commission regulations, and how it would be characterized and reported. Both drafts conclude that the proposed activity

does not fall within the volunteer internet activity exemption from the definition of a contribution, as suggested by the requestor. Draft A concludes that both the individuals and the requestor would make contributions. Draft B concludes that only the individuals would make contributions and OsiaNetwork, as a commercial vendor providing a service to the recipient political committees for a commercially reasonable fee, would not make any contributions. Both drafts conclude that only individuals who may make contributions may participate in the mining pool. Both drafts further conclude that participating political committees would be required to report contributions received, while the requestor will not have any reporting obligations.

Mr. Sack participated in the discussion that followed, noting that he had gone over Draft B with his client and they were prepared to accept Draft B and ask the Commission to adopt the draft as they seek a path forward via the consensus of the Commission.

Chair Weintraub recognized Vice Chairman Petersen who requested a brief recess, to which the Chair agreed.

The meeting recessed at 10:59 A.M. and reconvened at 11:16 A.M. with a quorum present.

III. DRAFT ADVISORY OPINION 2018-13 (continued)

Chair Weintraub recognized Vice Chairman Petersen who stated that he will support Draft B, which provides useful guidance in terms of how the requestor can conduct its activity in compliance with the regulations and the statute.

Discussion continued.

Chair Weintraub stated that she too would support Draft B.

Discussion continued.

Chair Weintraub recognized Commissioner Walther who stated that he was glad the Commission was able to find consensus.

Commissioner Hunter stated that she would also support Draft B.

Mr. Sack participated in the continuing discussion.

Chair Weintraub recognized Vice Chairman Petersen who

MOVED to approve Draft B, as set forth in Agenda Document No. 18-49-B.

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

Discussion continued.

IV. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE NEW JERSEY REPUBLICAN STATE COMMITTEE (A17-17)

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

Agenda Document No. 19-15-A

Chair Weintraub recognized Mr. Bill Antosz of the Audit Division who highlighted the two findings within the Memorandum: 1) Misstatement of Financial Activity; and 2) Reporting of Debts and Obligations.

Chair Weintraub stated that she agreed with the recommendations in the memorandum and noted her concern that there was not a recommendation pertaining to compliance with the joint fundraising regulations at 11 C.F.R. § 102.17(c).

Ms. Rickida Morcomb of the Audit Division and Acting General Counsel Lisa Stevenson participated in the discussion that followed regarding joint fundraising funds received by the New Jersey Republican State Committee, a corresponding motion, potential Commissioner statements on the issue, the circumstance under which the Audit Division would have made a related finding, and the process by which Commissioners can make their views of the law known as it relates to audits.

Chair Weintraub recognized Commissioner Walther who

MOVED to add a new finding that the New Jersey Republican State Committee violated the joint fundraising regulations at 11 C.F.R. § 102.17(c) when it received \$1,585,755 in net proceeds from the Trump Victory joint fundraising committee and on the same day that NJRSC received the proceeds, it transferred \$1,585,635 to the Republican National Committee.

Commissioner Walther then requested a brief recess to confer with Chair Weintraub.

The meeting recessed at 11:32 A.M. and reconvened at 11:33 A.M. with a quorum present.

IV. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE NEW JERSEY REPUBLICAN STATE COMMITTEE (A17-17) (continued)

Chair Weintraub called for the vote on the pending motion.

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

Chair Weintraub then recognized Vice Chairman Petersen who

MOVED to approve the recommendations in the Audit Division Recommendation Memorandum on the New Jersey Republican State Committee.

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

V. REG 2018-04 (SENATE FILING) - INTERIM FINAL RULE (DRAFT A)

**Agenda Document No. 19-16-A
(Submitted Late)**

Chair Weintraub recognized Ms. Waldstreicher and Ms. Cheryl Hemsley of the General Counsel's Office. The Chair then introduced the matter stating that with the passage of electronic filing of Senate reports, the Commission has a rule that will change its regulations to reflect this.

Ms. Hemsley presented the matter stating that the Draft Interim Final Rule implements legislation requiring that all campaign finance reports, statements, and designations be filed with the Commission. The legislation ended the requirement for Senate candidates and other political committees to file with the Senate. The Draft Interim Final Rule amends 11 C.F.R. part of 105 “Where to file” as well as several other sections of 11 C.F.R. to remove all references to filing with the Secretary of the Senate and to clarify that all filings now come to the Commission. The rulemaking falls under the “good cause” section of the Administrative Procedure Act because it does not involve any Commission discretion or policy judgements in implementing the legislation.

Discussion followed.

Chair Weintraub recognized Vice Chairman Petersen who

**MOVED to approve Agenda Document No. 19-16-A, REG
2018-04 (Senate Filing) – Interim Final Rule (Draft A).**

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

VII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:39 A.M.

Signed:



Ellen L. Weintraub

Chair of the Commission

Attest:



Dayna C. Brown

Secretary and Clerk of the Commission