



APPROVED NOVEMBER 3, 2021

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, AUGUST 22, 2019**

PRESENT:

Ellen L. Weintraub, Chair, presiding

Matthew S. Petersen, Vice Chair¹

Steven T. Walther, Commissioner

Caroline C. Hunter, Commissioner

Alec Palmer, Staff Director

Lisa Stevenson, Acting General Counsel

Laura E. Sinram, Acting Secretary and Clerk

¹ Vice Chair Petersen participated in the meeting via telephone.

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:23 A.M. on Thursday, August 22, 2019 with a quorum present.

Chair Weintraub apologized for the delay in the start of the meeting due to a fire drill in the building. She then stated that Vice Chair Petersen was participating in the meeting by telephone and confirmed that the Commission did have a quorum.

Chair Weintraub stated that she had some announcements and started by explaining that one of the FEC's most dedicated employees Ms. Ruth Godding was featured in an article in People magazine about her 20-year friendship with a friend met through the Best Buddies program. Chair Weintraub further stated that she had a couple of personnel announcements. She stated that the Commission had named Mr. Chris Skinner as the permanent Inspector General and noted his background and prior service. Chair Weintraub stated that they were looking forward to working with Mr. Skinner and thanked Mr. Tony Baptiste for his service as Acting Inspector General. Chair Weintraub then stated that Mr. Neven Stipanovic, who was Acting Associate General Counsel for the Policy Division, was named as the permanent Associate General Counsel for the Policy

Division. Chair Weintraub noted Mr. Stipanovic's background and prior service and that they were looking forward to many more years in his permanent role.

I. INTERNET AD DISCLAIMERS RULEMAKING PROPOSAL FOR REG 2011-02 (INTERNET COMMUNICATION DISCLAIMERS AND DEFINITION OF "PUBLIC COMMUNICATION")

**Memorandum from Chair Ellen L. Weintraub dated
June 13, 2019**

Agenda Document No. 19-26-A

**Memorandum from Vice Chair Matthew S. Petersen and
Commissioner Caroline C. Hunter dated June 19, 2019**

Agenda Document No. 19-26-B

**(Held over from the meetings of June 20, 2019, July 11,
2019, and July 25, 2019)**

Chair Weintraub stated that this rulemaking has been on the agenda four times and asked Vice Chair Petersen for a status update. Vice Chair Petersen stated that he did not have anything new at this time and that he had not been able to develop the formulation that he thought would bring them to consensus.

Discussion followed.

This matter was held over to a future meeting.

II. DRAFT ADVISORY OPINION 2019-14

Arizona Libertarian Party by Jeff Daniels

Agenda Document No. 19-32-A (Draft A)

**Agenda Document No. 19-32-A1 (Revised Draft A)
(Submitted Late)**

(Held over from the meeting of July 25, 2019)

Acting Secretary and Clerk Laura Sinram reminded the Commission of the special motion required in this matter.

Chair Weintraub then recognized Commissioner Hunter who

MOVED that the Commission add to the agenda consideration of the Notice of Availability for REG 2019-04 and the Audit Division Recommendation Memorandum on the South Dakota Democratic Party, 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 Documents No. 19-39-A and 19-32-A1.

Chair Weintraub clarified that the two (2) agenda documents were draft responses, one of which was to the Arizona Libertarian Party Draft Advisory Opinion Request and then called for the vote on the motion. The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

II. DRAFT ADVISORY OPINION 2019-14 (continued)

Chair Weintraub recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented the draft advisory opinion request from the Arizona Libertarian Party (AZLP). The requestor asks whether it may transfer \$2,000 to the Libertarian National Party (LNP) to help cover the LNP's overall costs of implementing the "state Customer Relationship Management System" without having to register as a political committee. The Drafts state that the AZLP has previously been granted by the Commission status as a state committee of a national political party responsible for the day-to-day operations of the LNP in Arizona and has put federal candidates on the ballot. Further, because the LNP and AZLP are national and state committees of the same party, the AZLP may transfer the \$2,000 to the LNP using federally permissible funds as proposed. However, the Drafts further conclude that the amount disbursed must be counted against the registration and reporting threshold of \$1,000 for purposes of determining whether AZLP is a political committee. Accordingly, the AZLP must register as a political committee, if it makes a proposed transfer.

Ms. Hemsley participated in the discussion that followed regarding the differences between Draft A and Revised Draft A, especially footnote 2.

Chair Weintraub recognized Commissioner Hunter who stated that she was prepared to support Revised Draft A without footnote 2 because it was not necessary for the conclusion and somewhat confusing.

Chair Weintraub then recognized Vice Chair Petersen who stated that he wasn't sure the footnote was necessary in order to reach the conclusion the draft puts forth and it left him a little confused as to whether they would still consider the party to have met the reporting threshold. Vice Chair Petersen then stated that he was on the same page with Commissioner Hunter in that they could remove footnote 2 and let the analysis speak for itself.

Chair Weintraub stated that she thought the footnote was helpful and got to the point that anyway the Commission looked at the transaction, the requestor received the same answer. She further stated that she thought that it was more important to answer the question and, therefore, if there were four (4) votes to go forward without footnote 2, then she would support that.

Chair Weintraub recognized Commissioner Hunter who

MOVED to approve Advisory Opinion 2019-14, as set forth in Agenda Document No. 19-32-A1 (Revised Draft A) with the removal of footnote number 2.

Chair Weintraub recognized Commissioner Walther who stated, for the record, that he “would support that motion but that he would also support it with footnote 2 included.”

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

III. DRAFT ADVISORY OPINION 2019-10

**Price for Congress by Stefan Passantino, Esq.
and Nathan Groth, Esq.**

Agenda Document No. 19-33-A (Draft A)

Agenda Document No. 19-33-B (Draft B)

Agenda Document No. 19-33-C (Draft C)

Agenda Document No. 19-33-D (Draft D)

(Held over from the meeting of July 25, 2019)

Chair Weintraub introduced the matter and then recognized Mr. Kevin Paulsen of the General Counsel's Office who presented the draft advisory opinion request from Price for Congress. The requestor asks whether it may contribute committee assets to a non-profit organization and whether that organization may engage in certain activities if Dr. Price will serve as its President and CEO. Draft A, which was held over from the July 25, 2021 Open Meeting, and Draft D both conclude that the committee may donate its assets to the organization as proposed. Drafts B and C both conclude that the proposed activity is prohibited because the donation constitutes the conversion of committee funds to personal use.

Commissioner Hunter asked if Mr. Passantino, the requestor, was available. Mr. Passantino confirmed that he was, and Chair Weintraub welcomed him.

Discussion followed regarding the differences between the new drafts.

Commissioner Hunter stated, for the record, that she supported Draft A but was willing to support Draft D.

Discussion continued regarding Draft B; whether transfers made by a 501(c)(4) organization under section 30114(a)(3) to an organization described in section 170(c) of the Internal Revenue Code were permissible; and a series of tweets referenced in the prior open meeting.

Commissioner Hunter stated that she and Vice Chair Petersen had entered into the public record a Memorandum dated July 25, 2021 that lays out the tweets referenced in the prior meeting.

The discussion resumed regarding whether transfers made by a 501(c)(4) organization under section 30114(a)(3) to an organization described in section 170(c) of the Internal Revenue Code were permissible; the tweets referenced in the prior open meeting; and the differences between Drafts A and B.

Mr. Passantino participated in the continuing discussion regarding his belief that Draft B gets the law wrong and that Draft D, under 'any lawful use', also gets them there.

The discussion resumed regarding the differences between Drafts A, B, and D; whether section 30114(a)(6) and the personal use provision were applicable to this request; the use of "zombie" campaigns by some former office holders; whether advisory opinions cited in Draft A could be relied on since they

were issued prior to the change in the personal use law; and whether transfers made by 501(c)(3) and 501(c)(4) organizations as described in section 170(c) of the Internal Revenue Code were permissible.

Mr. Passantino participated in the continuing discussion.

Chair Weintraub recognized Vice Chair Petersen who stated that as he mentioned last time, he supported Draft A.

Discussion continued.

Commissioner Walther stated that he would not support Draft D and that he had concerns that it was so wide open.

Commissioner Hunter then

MOVED to approve Advisory Opinion 2019-10, as set forth in Agenda Document No. 19-33-A, otherwise known as Draft A.

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

Commissioner Walther stated that he would prefer Draft C but that he would support Draft B as well.

Commissioner Walther then

MOVED to approve Advisory Opinion 2019-10, as set forth in Agenda Document No. 19-33-B (Draft B).

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 asked the Office of General Counsel to draft a letter indicating that the Commission was unable to render a decision.

IV. REG 2019-02 (AMEND 11 C.F.R. § 104.5(C)) – NOTIFICATION OF AVAILABILITY

Agenda Document No. 19-37-A

Commissioner Hunter stated that there are three (3) notifications of availability on the agenda. She then stated that the Commission is required by the regulations to put out the notifications and that does not mean that Commissioners were in favor of doing these rulemakings. Commissioner Hunter further stated that that she would like to consider amending that in the future and went on to note that the Commission is putting out these notifications to get comment from the public on whether the Commission should engage in a rulemaking. Commissioner Hunter then stated that she intended to support the three (3) notifications because that is what the regulations essentially require.

Chair Weintraub stated that she appreciated Commissioner Hunter's concern and also noted that it was a valuable method for citizens to engage

with the public and the Commission. Chair Weintraub further stated that she would be open to look for language to clarify what is actually going on.

Discussion continued.

Commissioner Walther stated that he supported the comment that the Commission needed to do something and that has been a concern of his own.

Vice Chair Petersen described the rulemaking petition and comment period process.

IV. REG 2019-02 (AMEND 11 C.F.R. § 104.5(C)) – NOTIFICATION OF AVAILABILITY (continued)

Chair Weintraub recognized Mr. Robert Knop of the General Counsel's Office who presented the Draft Notification of Availability for a Petition for Rulemaking received from the Campaign Legal Center. The Petition asks the Commission to amend one of its regulations to require any unauthorized committee that starts an election year as a quarterly filer to continue to follow the quarterly reporting schedule through any primary elections in which the committee is involved. If approved, the Draft Notification will be published in the *Federal Register*, and the Commission will receive comments on the Petition for a period of 60 days.

Chair Weintraub stated that while her colleagues were correct that agreement to publish this in the *Federal Register* is not an indication of the

Commission's views on the matter, this was an important issue and one that she has been concerned about for a long time. She explained her concern and then stated that she was looking forward to public comment on this but that her initial take was that she was in favor of doing something along these lines.

Chair Weintraub recognized Commissioner Hunter who

**MOVED to approve REG 2019-02 (Amend 11 C.F.R.
§ 104.5(c)) – Notification of Availability, as set forth in
Agenda Document No. 19-37-A.**

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

V. NOTICE OF AVAILABILITY FOR REG 2019-03 (MAILING LIST EXCHANGE)

Agenda Document No. 19-38-A

Chair Weintraub recognized Mr. Anthony Buckley of the General Counsel's Office who presented the Draft Notice of Availability (Notification) for a Petition for Rulemaking submitted to the Commission by the Campaign Legal Center. The Petition asks the Commission to revise its regulation requiring the reporting of receipts and disbursements by political committees to specify that the regulation applies to the receipt or disbursement of a mailing list or other valuable list, even if the list is received or disbursed as part of an equal value exchange. The Notification seeks comment on whether the Commission should commence a Rulemaking based on this Petition. The comment period will run for 60 days following publication of the Notification in the *Federal Register*.

After the comment period has concluded and the comments are considered, the Commission may decide whether to initiate a Rulemaking.

Chair Weintraub recognized Commissioner Hunter who

MOVED to approve the Notice of Availability for REG 2019-03 (Mailing List Exchange), as set forth in Agenda Document No. 19-38-A.

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

VI. NOTICE OF AVAILABILITY FOR REG 2019-04 (REPORTING SEGREGATED PARTY ACCOUNTS)

**Agenda Document No. 19-39-A
(Submitted Late)**

Chair Weintraub again recognized Mr. Buckley of the General Counsel's Office who presented the Draft Notice of Availability (Notification) for a Petition for Rulemaking submitted to the Commission by the Campaign Legal Center and the Center for Responsive Politics. The Petition asks the Commission to promulgate rules to specifically require reporting of the special-purpose accounts created by the Consolidated and Further Continuing Appropriations Act of 2015. The Notification seeks comment on whether the Commission should commence a Rulemaking based on this Petition. The comment period will run for 60 days following publication of the Notification in the *Federal Register*. After the comment period has concluded and the comments are considered, the Commission may decide whether to initiate a Rulemaking.

Chair Weintraub stated that these Cronibus accounts have been on the books for years and there is nothing in the Commission's regulations that notes their existence. She explained that this was something that she has been concerned about for a while.

Chair Weintraub recognized Commissioner Hunter who

MOVED to approve the Notice of Availability for REG 2019-04 (Reporting Segregated Party Accounts), as set forth in Agenda Document No. 19-39-A.

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

VII. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE SOUTH DAKOTA DEMOCRATIC PARTY (A17-21)

Memorandum from the Chief Compliance Officer and Audit Division dated August 7, 2019

Agenda Document No. 19-40-A

Chair Weintraub recognized Mr. Martin Favin of the Audit Division, who presented the Audit Division Recommendation Memorandum (ADRM). Mr. Favin stated that that Draft Final Audit Report (DFAR) was provided to the committee on July 1, 2019 and is attached to the ADRM. Mr. Favin further stated that the committee responded to the DFAR on July 19, 2019. Mr. Favin then highlighted the three findings within the Memorandum: 1) Misstatement of Financial Activity – Increased Activity; 2) Contributions from Unregistered Political Organizations; and 3) Reporting of Debts and Obligations.

Chair Weintraub recognized Commissioner Hunter who stated that she is prepared to approve the Memorandum.

Chair Weintraub stated she was generally supportive of the recommendations but, first, wanted to add a finding related to the joint fundraising transfers.

Discussion followed on the order of the motions.

Chair Weintraub recognized Commissioner Walther who

MOVED to make a finding that the South Dakota Democratic Party violated the joint fundraising regulations at 11 C.F.R. § 102.17(c), when it received \$2,494,000 in net proceeds from the Hillary Victory Fund joint fundraising committee and on the same day transferred these proceeds to the Democratic National Committee.

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 Commissioner Hunter who

MOVED to approve the Audit Division Recommendation Memorandum on the South Dakota Democratic Party (A17-21), as set forth in Agenda Document No. 19-40-A.

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

Chair Weintraub welcomed Ms. Christine McClarin to the Office of General Counsel as the new Assistant General Counsel for Administrative Law and noted Ms. McClarin's background and prior service. Chair Weintraub also thanked Mr. Robert Kahn for serving in an acting capacity.

VIII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:36 A.M.

Signed:



Ellen L. Weintraub

Chair of the Commission (2019)

Attest:



Laura E. Sinram

Acting Secretary and Clerk of the Commission