



AGENDA DOCUMENT NO. 18-09-A

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, JANUARY 11, 2018**

PRESENT:

Caroline C. Hunter, Chair, presiding

Ellen L. Weintraub, Vice Chair

Lee E. Goodman, Commissioner

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 10:06 A.M. on Thursday, January 11, 2018 with a quorum present.

I. REG 2014-02 DRAFT NOTICE OF PROPOSED RULEMAKING ON INDEPENDENT EXPENDITURES BY AUTHORIZED COMMITTEES; REPORTING MULTISTATE INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

Agenda Document No. 18-01-A

Chair Hunter recognized Ms. Joanna Waldstreicher of the Office of General Counsel who stated that the draft Notice of Proposed Rulemaking (NPRM) before the Commission addresses whether candidates' authorized political committees may make independent expenditures. The draft NPRM proposes two alternatives, one that would allow candidate political committees to make independent expenditures and one that would not. The draft also proposed changes to provide a method for candidate committees to report independent expenditures. Also addressed in the draft NPRM is the reporting of independent expenditures and electioneering communications made in connection with a presidential primary election and publically distributed in multiple states that do not reference a specific state's primary election. It proposes three alternatives that differ in terms of when the applicable reporting thresholds would be met and how such communications

would be reported. The draft NPRM seeks public comment on all of the proposed alternatives within 60 days of publication in the Federal Register.

Chair Hunter recognized Ms. Debbie Chacona of the Reports Analysis Division who spoke specifically to the portion of the draft NPRM dealing with the disclosure method for multistate independent expenditures. Ms. Chacona stated that the issue concerning the disclosure method for multistate independent expenditures came to the attention of the Reports Analysis Division (RAD) when several Political Action Committees (committees) began disclosing independent expenditures that did not include a state for the candidate's office sought as required on the Schedule E, where itemized independent expenditures are disclosed. The omission triggered a Request for Additional Information (RFAI) from RAD requesting the report be amended to disclose the state. In RAD's conversations with committees who received this RFAI and asked for guidance on how to disclose multistate independent expenditures, RAD directed the committees to AO 2011-28 which instructs committees to divide the cost of independent expenditures by the number of states that had not yet held primary elections. The response RAD received from many committees was that this method resulted in inaccurate reporting, could result in less disclosure and, therefore, they did not feel comfortable signing their reports using this approach. Instead, many committees began to disclose these independent

expenditures as single expenditures with a notation of, “nationwide.” Using this method, some committees still opted not to provide a state, while others listed only the states where an independent expenditure was disseminated. Failing to provide the state could result in RAD sending a RFAI and possibly referral to the Office of General Counsel or the Alternative Dispute Resolution Office, in accordance with the RAD Review and Referral Procedures.

Chair Hunter stated that this was an issue that has existed for several years and one that the Commission was striving to provide the public guidance on. The Chair stated that the Commission was working to do this ahead of the next presidential election and thanked the staff for their efforts thus far.

Chair Hunter recognized Vice Chair Weintraub who stated her hope that those impacted by this issue would provide comments as the Commission works to provide practical solutions to real problems that people have in conducting their political business and reporting.

Commissioner Weintraub detailed an issue that came up in the context of a MUR wherein a senate committee made an independent expenditure and a complaint was raised regarding the fact that an authorized committee is only supposed to support the one candidate that the authorized committee is organized around. She stated that while this seemed correct as a statutory

matter, the Commission was then confronted with a lot of case law beginning with Colorado Republicans, through Citizens United and its progeny, which suggested that there cannot be any limits on independent expenditures in general. This raised the question as to why this type of committee would be limited in a way that no other kind of entity was. She stated that while the Commission dismissed that, the question remained as to whether, under the statute, an authorized committee can make independent expenditures.

Discussion continued.

Vice Chair Weintraub proposed adding two sentences to the end of line 7, on page 13: “If the Commission adopts Alternative B, authorized committees would be allowed to make independent expenditures in any amount. What are the implications of authorized committees potentially using substantial portions of their resources on independent expenditures?” She stated that the answer was unclear and noted her interest in what commenters may have to say.

Vice Chair Weintraub then spoke to the Commission’s efforts to program formula calculations for these independent expenditures into the Commission’s filing software, or for those not using the agency’s software, a calculator on the Commission’s website, that would be used to enter the dates and spending, along with the primary dates, to assist filers with the disclosure process.

Chair Hunter stated that Alternatives A and B have been discussed numerous times by the Commission in the past, and put out for public comment at one point, so that people have seen the alternatives previously. The Chair stated that Alternative C was added by the Vice Chair for consideration, and noted her appreciation for her idea. Chair Hunter noted that the software was not yet ready, and reiterated that the Commissioners had spoken with the Commission's Chief Information Officer, Alec Palmer, who has indicated that the software would be ready in time for the presidential cycle. Vice Chair Weintraub confirmed that the way the proposal was written, filers would not be obligated to meet this requirement until the Commission's software was ready to make the automatic calculations.

Chair Hunter recognized Commissioner Petersen who noted his pleasure that the Commission was undertaking this rulemaking, particularly as it relates to the Commission's efforts to adapt to the new ways in which political communications are disseminated and consumed in the contemporary world, which are quite different than they were in the four plus decades since the passage of the Federal Election Campaign Act. Outlining several modern issues recently before the Commission, including fundraising by means of text messaging and character-limited ads, Commissioner Petersen noted that these communications are vastly different from the

traditional radio, television, newspaper, and direct mail advertisements that Congress had in mind when it first enacted disclaimer requirements.

Commissioner Petersen stated that, similarly, the Commission is now contemplating adapting its rules to address a phenomenon that was not present when the independent expenditure regime was first enacted, that phenomenon being nationwide and multistate political advertising during the presidential primary season.

Discussion continued.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to

- 1. Approve Agenda Document No. 18-01-A, subject to the addition of the following two sentences at the end of line 7 on page 13:**

If the Commission adopts Alternative B, authorized committees would be allowed to make independent expenditures in any amount. What are the implications of authorized committees potentially using substantial portions of their resources on independent expenditures?

- 2. Direct the Office of General Counsel to publish the Notice in the Federal Register.**

The motion carried by a vote of 5-0 with Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

Vice Chair Hunter stated that the Commission planned to discuss Volunteer Mail at the next Open Meeting, in the spirit of helping those who have to follow the Commission's rules, comply with them and encouraging the volunteer compliance with the law. The Vice Chair further stated that she looked forward to working staff in the New Year.

II. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 10:25 A.M.

Signed:

**Caroline C. Hunter
Chair of the Commission**

Attest:

**Dayna C. Brown
Secretary and Clerk of the Commission**