



AGENDA DOCUMENT NO. 18-29-A

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, MAY 10, 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 10:14 A.M. on Thursday, May 10, 2018 with a quorum present.

Chair Hunter recognized Vice Chair Weintraub 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 Documents No. 18-22-A, 18-22-B, and 18-23-A.

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 2018-06

Liuba for Congress by Liuba Grechen Shirley, Candidate

Agenda Document No. 18-21-A (Draft A)

(Theo Lutz is recused.)

Chair Hunter stated that, without objection, the order of the agenda will be changed slightly to begin with this matter. Chair Hunter then recognized Ms. Cheryl Hemsley of the Office of General Counsel who presented the draft advisory opinion request from Ms. Liuba Grechen Shirley, candidate for the 2nd Congressional District of New York. The requestor asks whether her authorized committee may use campaign funds to pay for childcare expenses that she, as

the fulltime caregiver for her children, incurs while she is undertaking campaign activities. The draft concludes that the proposed childcare expenses would not exist irrespective of Ms. Shirley's campaign and that Ms. Shirley's authorized committee may use campaign funds to pay for such childcare expenses to the extent those expenses are incurred as a direct result of Ms. Shirley's campaign.

Chair Hunter recognized the requestor, Ms. Grechen Shirley, Mr. Neil P. Reiff, Esq., and his associate, all of whom were available to answer Commissioners' questions. Mr. Reiff stated that they were all supportive of the draft.

Chair Hunter recognized Vice Chair Weintraub who thanked Ms. Shirley for presenting the Commission with this interesting question. The Vice Chair also thanked the Commission's staff for the succinct and sound draft in response to Ms. Shirley's request.

Vice Chair Weintraub stated that the request raises an important issue for which the Commission received comments from 26 members of Congress, a former presidential candidate, two advocacy groups, and a law professor, all of whom supported the request. The Vice Chair stated that while she has a long track record of being very concerned about personal use issues, the request made was tailored, specifically asking to be able to pay for childcare expenses directly related to the time needed to be spent campaigning. Vice Chair Weintraub cautioned that the Commission was not creating a wholesale carve

out for childcare, as campaign funds still cannot be used for babysitting on date night, but to the extent that the requestor and other similarly situated candidates need the funds to facilitate their campaign work, this answer, if approved, would allow campaign funds to be used for those expenses. The Vice Chair stated that a request such as this may help open the door to political activity by younger candidates, female candidates, people of color, and working class people, and may help to advance a more diverse group of representatives who are perhaps more representative of the country at-large.

Vice Chair Weintraub then

MOVED to approve Advisory Opinion 2018-06, as set forth in Agenda Document No. 18-21-A.

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

Chair Hunter stated that the Commission would next take up the Correction and Approval of Minutes, followed by Draft Advisory Opinion 2018-04, and then announcements related to the move.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for March 8, 2018
Agenda Document No. 18-20-A

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the meeting of March 8, 2018 as set forth in Agenda Document No. 18-20-A.

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 2018-04

Conservative Primary LLC by Petra A. Mangini, Esq.

Agenda Document No. 18-22-A (Draft A)
(Submitted Late)

Agenda Document No. 18-22-B (Draft B)
(Submitted Late)

(Held over from the meeting of April 26, 2018)

Chair Hunter recognized Ms. Petra Mangini, Esq., who was available to answer Commissioners' questions. The Chair then recognized Ms. Joanna Waldstreicher of the Office of General Counsel who presented the draft advisory opinion request submitted by Conservative Primary LLC. The requestor is a for-profit entity that plans to establish a website that will allow customers to participate, for a fee, in straw polls for selected congressional primary elections. The requestor also plans to create and distribute communications to advertise its website as well as the results of the straw polls it conducts, some of which will contain express advocacy. The requestor asks a number of questions about its proposed activities and ads and its interactions with its customers. Drafts A and B both conclude that some of the proposed ads are

independent expenditures and one or more ads would be electioneering communications under certain circumstances, that the ads may contain links to candidate websites as proposed, and that the requestor's customers will not constitute a political committee. The drafts differ in that Draft A concludes that payments from customers will not constitute contributions, while Draft B concludes that such payments will be contributions. Draft A also concludes that the requestor is not currently a political committee but may become one in the future if it meets certain criteria, while Draft B concludes the requestor will be a political committee once it receives at least \$1,000 in contributions or makes \$1,000 in expenditures.

Ms. Mangini noted her preference for Draft A.

Chair Hunter recognized Commissioner Petersen who stated that the biggest question asked by the requestor is to what extent their activities may make them a political committee, and Draft A concludes that the Commission does not have sufficient facts to enable a determination regarding their status as a political committee. Commissioner Petersen further stated that the Commission has received a number of requests over the years wherein vendors provide services to customers and even if they are political in nature, if the organization or vendor is acting primarily as a facilitator to amplify the voice of the customer, it is considered traditional vendor activity and will not result in the organization becoming a political committee. However, if the organization

is primarily leveraging its customers, or in this case leveraging the participants in the straw polls to amplify the message that the group itself wants to advance, it would change the calculus. Commissioner Petersen explained that it is currently unknown the extent to which the group is going to be engaged in facilitating customers' participation versus the extent of the independent expenditures that the group will want to run, and that these are fact specific determinations that are very difficult to make in an advisory opinion context. It is for these reasons, he stated, that he favored Draft A, because he did not feel there were enough facts to answer the questions raised.

Discussion continued with regard to Ad #1 included in the request and whether Conservative Primary has a message it wants to advance that is independent of the message participants in the straw polls may want to have amplified, and the criteria used to select candidates to participate in the straw polls.

Chair Hunter recognized Commissioner Petersen who

MOVED to approve Agenda Document No. 18-22-A, Draft A, with the caveat that the answer to question three would depend on whether or not the group was otherwise determined to have the major purpose of electing or nominating candidates.

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

Chair Hunter then recognized Vice Chair Weintraub who

MOVED to approve Agenda Document No. 18-22-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 Hunter stated that there was some commonality between the two drafts on the less controversial questions and asked Ms. Mangini if it would be useful to her if the Commission's Office of General Counsel prepared a draft that provided an answer on the common parts, to which Ms. Mangini said yes. The General Counsel's Office agreed to prepare the draft.

Discussion continued.

Chair Hunter stated that, having recently moved to this new building, this is the Commission's second public meeting at this new location. The Chair stated that she and her colleagues wished to thank those in particular who spent a lot of time and effort to move the Commission into its new space. Each of these persons will receive a silver Federal Election Commission pen and pencil set as a token of Commissioners' appreciation.

Chair Hunter first thanked Mr. Alec Palmer, Staff Director, and Ms. Lisa Stevenson, Acting General Counsel, the head of the Commission's two divisions,

who were outstanding leaders throughout the process. The Chair next thanked the “CEOs” of the move Mr. Ed Holder and Ms. India Robinson, who by far did the most work in orchestrating the move, with work on the move beginning five (5) years ago. Chair Hunter thanked them for their patience, persistence, detail, and all of the orders and follow-up they have done. The Chair went on to thank those employees that served in the following areas/teams:

Administrative Services & Information Technology:

Donnie Harris	Garland Coleman
Darnell Rose	Toya Henry, contractor
Stanley Houser	Kim Humphries
Pat Dunn	Donna Short
Reginald Watts	Terry Marsh

Lease Renewal Advisory Team (LRAT) Team:

Rebecca Hough, Office of the Staff Director
Greg Baker, Office of General Counsel
Jim Allen, Information Technology
Greg Scott, Communications
Cam Thurber, Office of the Inspector General
Eileen Leamon, Public Records
Ryan Lanz, Compliance
Anita Bailey, National Treasury Employees Union
Gilbert Ford, Office of the Chief Financial Officer
Debbie Chacona, Compliance

Working Group Members:

Construction	Interiors	Furniture	IT	Cleanup Campaign
Edward Holder	Anita Bailey	India Robinson/Pat Dunn	Jim Allen	Marie Dixon
India Robinson	Lauren Lien	Rhonda Gillingwater	Dave Taylor	Dan Buckley
	Wanda Brown	Wanda O'Neal	Garland Coleman	Erica Lee
	Candace Salley	Eileen Leamon	Jim Jones	Jason Bucelato
	Greg Baker	Sari Pickerall	Gashaw Mengistu	Carmen Gray
	India Robinson	Cheryl Painter	Ryan Lanz	Sari Pickerall
		Laura Beaufort	Licerio Ribeiro	Stanley Houser
		Deborah Tibbs		Debra Tibbs
		Gwen Holmes		Samuel Stewart
		Lynn Tran		Krista Roche
		Joanna Waldstreicher		Marilyn Jones
		Dayna Brown		Dayna Brown
		Ray Wolcott (alt. rep)		

Security	Signage	Budget/Procurement	Communications
India Robinson	Eileen Leamon	Gilbert Ford	Edward Holder
Donnie Harris	Jim Jones	Pamela Jones	India Robinson
Pat Dunn	Jonella Culmer		Greg Scott
Kastle Systems	Rebecca Hough		Debbie Chacona
	Pat Dunn		Jonella Culmer
	Lauren Lien		

Transition	Mini-Mart Committee
Donna Short	India Robinson
Terry Marsh	Darnell Rose
India Robinson	Christian Crussiah
Darnell Rose	Tanya Senanayake
	Christine Gallagher

IV. INTERNET COMMUNICATION DISCLAIMERS ILLUSTRATIVE EXAMPLES

Agenda Document No. 18-23-A

(Submitted Late)

(Held over from the meeting of April 26, 2018)

Chair Hunter stated that the Commission noted in March when it passed the Notice of Proposed Rulemaking (NPRM) on this topic, that it would prepare examples and the Commission has now put forth a document that it hopes will be helpful to those who are in the process of commenting on the NPRM by the Friday, May 25, 2018 deadline. The Chair thanked all those who assisted with the preparation of the examples, in particular: Amy Rothstein of the Chair's Office; Tom Moore of the Vice Chair's Office; Neven Stipanovic, Jessica Selinkoff, Greg Scott; Amy Kort; Dorothy Yeager; and Jim Jones who has been especially patient and helpful.

Chair Hunter recognized Vice Chair Weintraub who echoed the Chair's expressions of appreciation to those who assisted in the preparation of the examples, especially Ms. Rothstein and Mr. Moore. The Vice Chair highlighted that preparing the ads was a helpful exercise for the Commission, explained that the examples were meant to be an aid for commenters, and expressed her hope that they will assist in helping to get to a stronger rule. The Vice Chair highlighted two minor technical edits.

Chair Hunter stated that, without objection, the Commission directs the Office General Counsel to place the examples, inclusive of the technical edits outlined by the Vice Chair, in the appropriate places on the Commission's website in order to foster as much public comment as possible.

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 10:47 A.M.

Signed:

Caroline C. Hunter
Chair of the Commission

Attest:

Dayna C. Brown
Secretary and Clerk of the Commission