



AGENDA DOCUMENT NO. 18-42-A

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, SEPTEMBER 6, 2018**

PRESENT:

Caroline C. Hunter, Chair¹

Ellen L. Weintraub, Vice Chair, presiding

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Alec Palmer, Staff Director²

Lisa Stevenson, Acting General Counsel

Dayna C. Brown, Secretary and Clerk

¹ Chair Hunter participated in the meeting via telephone.

² Ms. Kate Higginbotham, Acting Deputy Staff Director for Management and Administration, represented Staff Director Palmer for a portion of the meeting.

Vice Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 3:42 P.M. on Thursday, September 6, 2018 with a quorum present.

Vice Chair Weintraub stated that the Chair was indisposed but valiantly participating via telephone to ensure that there is a quorum, and as a result she will be presiding over the meeting.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for August 2, 2018
Agenda Document No. 18-38-A**

Vice Chair Weintraub recognized Commissioner Petersen who

MOVED to approve the minutes of the meeting of August 2, 2018, as set forth in Agenda Document No. 18-38-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 2018-11

Microsoft by Jan Witold Baran, Esq. and Eric Wang, Esq.

**Agenda Document No. 18-41-A (Draft A)
(Submitted Late)**

Vice Chair Weintraub recognized Mr. Jan Witold Baran and Mr. Eric Wang who were available to answer Commissioners' questions. The Vice Chair then

recognized Mr. Joseph Wenzinger of the General Counsel's Office who presented the draft advisory opinion request submitted by Microsoft. The requestor asks whether it may offer a package of enhanced online security services at no additional charge, on a non-partisan basis, to its election-sensitive customers including federal candidates and national party committees. The draft concludes that the provision of such services is permissible and will not result in the making of a prohibited in-kind contribution because Microsoft will be providing such services based on commercial and not political considerations, in the ordinary course of its business and not merely for promotional consideration or to generate good will.

Commission Secretary Dayna Brown stated that the draft in this matter was submitted late. Vice Chair Weintraub then recognized Commissioner Petersen who

MOVED that the Commission waive the rules on the timely submission of agenda documents so that it may consider open meeting Agenda Document No. 18-41-A.

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

Mr. Baran stated, for the record, that he is accompanied by Ms. Ginny Badanes with the Cybersecurity and Democracy Project of Microsoft Corporation. Mr. Baran stated that they agree with the conclusion represented in Draft A, and he and Ms. Badanes participated in the discussion that followed.

Vice Chair Weintraub suggested adding language to the draft opinion on pages four (4) and seven (7). Discussion followed on the three specific additions and the reasons for the additions, Mr. Baran's thoughts on the suggested additions, and concerns over the third suggested addition.

Commissioner Petersen requested a brief recess to further work through the additions. Vice Chair Weintraub concurred.

The meeting recessed at 4:29 P.M. and reconvened at 4:58 P.M. with a quorum present.

II. DRAFT ADVISORY OPINION 2018-11 (continued)

Vice Chair Weintraub provided an update on the matter, indicating that the Commission had arrived at a solution. Discussion resumed.

Vice Chair Weintraub then recognized Commissioner Petersen who

MOVED to approve Draft A, as set forth in Agenda Document No. 18-41-A, except that the following changes be reflected in the draft:

- 1. On page 4, line 7: after the word “including” add the phrase “but not limited to”**
- 2. On page 7, line 8: after the word “customers” add “Microsoft has noted the particular importance of providing AccountGuard at this time given the public scrutiny regarding foreign attempts to influence U.S. elections.”**
- 3. On page 7, line 12: after “contribution.” insert the sentence “Moreover, the Commission notes that the provision of the AccountGuard program would further the Commission’s implementation of the ban on foreign participation in elections at 52 U.S.C. § 30121.”**

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

**III. NOTIFICATION OF AVAILABILITY FOR REG 2018-02
(LEADERSHIP PACS’ PERSONAL USE)**

Agenda Document No. 18-39-A

Vice Chair Weintraub recognized Mr. Wenzinger of the General Counsel’s Office who stated that on July 24, 2018, the Commission received a petition for rulemaking from Campaign Legal Center, Issue One, and five (5) former United States Representatives asking the Commission to revise and amend the existing regulation concerning the personal use of campaign funds to specify that the regulation applies to leadership PAC funds. He stated that the Office General Counsel has examined the submission and determined that it qualifies as a petition under the Commission’s regulations; therefore, the General Counsel’s

Office has drafted a Notification of Availability, Agenda Document No. 18-39-A, seeking comment on whether the Commission should initiate a rulemaking on the proposal in the petition.

Discussion followed.

Vice Chair Weintraub then recognized Commissioner Petersen who

**MOVED to approve the Notification of Availability for
REG 2018-02 (Leadership PACs' Personal Use).**

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

IV. IMPLEMENTATION OF OMB CIRCULAR A-123: INTERNAL CONTROL PROGRAM

Agenda Document No. 18-40-A

Vice Chair Weintraub stated that there may be some edits in this matter and that the matter would therefore be held over. She further stated that the Commission may adopt the matter on a tally vote.

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 5:07 P.M.

Signed:

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

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Attest:

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