



AGENDA DOCUMENT NO. 19-20-A

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, APRIL 11, 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 10:16 A.M. on Thursday, April 11, 2019 with a quorum present.

III. DRAFT ADVISORY OPINION 2018-13

OsiaNetwork LLC by Jonathan S. Sack, Esq. and
Brian A. Hunt, Esq.

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

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

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

Chair Weintraub stated that this matter would not be discussed today, as the Commission released a new draft response to the advisory opinion request yesterday and the requestor requested an opportunity to review the draft and possibly provide comments. She further stated that the matter was expected to be taken up at the next meeting.

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)

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

Chair Weintraub recognized requestor's counsel Mr. Marc Elias, former Commissioner Michael Toner, Mr. Daniel Nudelman and Ms. Brandi Zehr, as well as requestor's representatives Mr. Robby Mook and Mr. Matt Rhoades, who were each available to answer Commissioners' questions.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for March 28, 2019
Agenda Document No. 19-12-A

Chair Weintraub recognized Vice Chairman Petersen who

MOVED to approve the minutes for the meeting of March 28, 2019, as set forth in Agenda Document No. 19-12-A.

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

Chair Weintraub again recognized Vice Chairman Petersen 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 Document No.
19-14-B.

II. DRAFT ADVISORY OPINION 2018-12 (continued)

Chair Weintraub recognized Mr. Joseph Wenzinger of the General Counsel's Office 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. Draft A concludes that the proposal is permissible because the provision of the services described in the request would not be made for the purpose of influencing a federal election or in connection with a federal election, and thus would not constitute a prohibited in-kind contribution. Draft B concludes that the proposal is impermissible because the provision of the services provided in the request would be in connection with a federal election and thus would constitute a prohibited in-kind contribution.

Mr. Toner, Mr. Rhoades, Mr. Mook, and Mr. Elias participated in the discussion that followed.

Chair Weintraub suggested that the Commission consider the remaining two (2) advisory opinions on the meeting agenda and then recess until

approximately 2:00 P.M. to allow time to review an alternative draft to see if the Commission can find consensus. Discussion followed and Mr. Toner requested a recess in order to confer with his colleagues.

The meeting recessed at 11:22 A.M. and reconvened at 11:32 A.M. with a quorum present.

II. DRAFT ADVISORY OPINION 2018-12 (continued)

Chair Weintraub stated that the matter would held over to the next meeting rather than resumed at 2:00 today.

Mr. Mook, Mr. Rhoades, Mr. Elias, and Mr. Toner participated in the continuing discussion.

IV. DRAFT ADVISORY OPINION 2019-04

Prytany LLC by Jeffrey Hardin, Esq.

Agenda Document No. 19-13-A (Draft A)

Chair Weintraub recognized Mr. Jeffrey Hardin, requestor's counsel, who was available to answer Commissioners' questions.

Chair Weintraub recognized Mr. Kevin Paulsen of the General Counsel's Office who presented the draft advisory opinion request from Prytany LLC, which has developed an online contribution processing platform that enables users to make contributions to principal campaign committees and national

political party committees. The requestor asks several questions regarding the applicability of the Act and Commission regulations to its activity. The draft concludes that both the provision of contribution processing services by Prytany to individual users and enrolled political committees, as well as the provision of social networking services to enrolled political committees do not result in contributions by Prytany to the recipient committees because Prytany satisfies the criteria to qualify as a commercial vendor. Specifically, Prytany renders its services in the ordinary course of business, aimed at the usual and normal charge for such services. It forwards contributions to political committees through segregated accounts and employs adequate screening procedures to ensure that it is not forwarding illegal contributions. The draft further concludes that because Prytany will be acting as a commercial fundraising firm, it is not subject to any of the reporting requirements under the Act. Finally, the draft concludes that Prytany's practices, as described in the request, comply with the applicable forwarding requirements.

Mr. Hardin participated in the discussion that followed and thanked Office of General Counsel staff for their assistance.

Chair Weintraub recognized Vice Chairman Petersen who

MOVED to approve Agenda Document No. 19-13-A,
otherwise known as Draft A.

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

V. DRAFT ADVISORY OPINION 2019-06

Leigh Brown by Jessica Johnson, Esq. and Jason Torchinsky, Esq.

Agenda Document No. 19-14-A (Draft A)

Agenda Document No. 19-14-B (Draft B)
(Submitted Late)

Chair Weintraub recognized Ms. Jessica Johnson and Mr. Jason Torchinsky, requestor's counsel, who were available to answer Commissioners' questions.

Chair Weintraub recognized Ms. Joanna Waldstreicher of General Counsel's Office who presented the draft advisory opinion request from Leigh Brown, who is a candidate in the upcoming special election for North Carolina's Ninth Congressional District, for which the electioneering communications period will begin on April 14th. Leigh Brown & Associates is a for-profit real estate business incorporated in North Carolina. Ms. Brown has recorded radio ads for the business that identify her by name but make no reference to her candidacy. Her requests asks whether these existing ads may be exempted from the definition of electioneering communication or, if not, whether proposed alternate versions of the ads would be electioneering communications. Draft A concludes that the existing versions of the ads are

not entitled to an exemption from the definition because they are not plainly and unquestionably not related to the election. Draft B concludes that the existing versions of the ads are entitled to an exemption because they do not promote, support, attack, or oppose any candidate and they are plainly and unquestionably not related to the election. Both drafts conclude that the alternate versions of the ads would not be electioneering communications because they do not contain unambiguous references to a clearly identified federal candidate.

Mr. Torchinsky and Ms. Johnson participated in the discussion that followed.

Commissioner Hunter asked Mr. Torchinsky if it would be helpful to have an advisory opinion regarding the ads being voiced by someone other than the candidate. Mr. Torchinsky requested a recess so that he might confer with his client.

The meeting recessed at 12:11 P.M. and reconvened at 12:19 P.M. with a quorum present.

V. DRAFT ADVISORY OPINION 2019-06 (continued)

Mr. Torchinsky informed the Commission that he was unable to reach his client and asked that the Commission vote on Draft A.

Discussion followed on the Commission's motions.

Vice Chairman Petersen then

MOVED to approve Agenda Document No. 19-14-B,
Draft B.

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 Weintraub recognized Vice Chairman Petersen who

MOVED to approve the answers to questions two and three, as set forth in Agenda Document No. 19-14-A,
Draft A.

Discussion followed on the motion.

The meeting recessed at 12:24 P.M. and reconvened at 12:30 P.M. with a quorum present.

V. DRAFT ADVISORY OPINION 2019-06 (continued)

Chair Weintraub recognized Vice Chairman Petersen who withdrew his pending motion. Discussion followed on how the Commission would proceed with the motions.

Chair Weintraub recognized Commissioner Walther who

MOVED to approve Agenda Document No. 19-14-A,
Draft A.

Discussion followed.

The motion failed by a vote of 1-3 with Commissioner Walther voting affirmatively for the motion. Commissioners Hunter, Petersen, and Weintraub dissented.

Chair Weintraub recognized Vice Chairman Petersen who

MOVED to approve the answers to questions two and three, as set forth in Agenda Document No. 19-14-A, Draft A.

The motion failed by a vote of 3-1 with Commissioners Hunter, Petersen, and Walther voting affirmatively for the motion. Commissioner Weintraub dissented.

Mr. Torchinsky requested to receive the close out letter this afternoon so that they could go to court prior to the electioneering communications window beginning this weekend. Mr. Neven Stipanovic of the General Counsel's Office confirmed that his office would accommodate the request.

VI. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 12:34 P.M.

Signed:

Ellen L. Weintraub
Chair of the Commission

Attest:

Dayna C. Brown
Secretary and Clerk of the Commission