



AGENDA DOCUMENT NO. 19-24-A

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, MAY 9, 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 Counsel¹
Dayna C. Brown, Secretary and Clerk

¹ Acting General Counsel Stevenson arrived to the meeting at 10:08 A.M.

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:06 A.M. on Thursday, May 9, 2019 with a quorum present.

Chair Weintraub 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 Documents No. 18-43-D, 19-18-A, and 19-19-A.

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

I. 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)

Agenda Document No. 18-43-C (Draft C)

Agenda Document No. 18-43-D (Draft D)
(Submitted Late)

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

Chair Weintraub recognized Mr. Michael Toner, requestor's counsel, who was available to answer Commissioners' questions. Chair Weintraub then 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. Drafts A, C, and D conclude that the proposal is permissible while Draft B concludes that the proposal is impermissible.

Chair Weintraub stated that each of the Commissioners agrees that what the requestor is attempting to do is a worthwhile endeavor, with the question being how to work it into the Commission's legal framework.

Mr. Toner participated in the discussion that followed including: the requestor's intent to seek cash and in-kind corporate contributions and the disclosure concern this raises for some Commissioners; the requestor's commitment and planned process to disclose their donors; whether the requestor intends to solicit contributions from 501(c)(4) organizations; and differentiating between in-kind provisions of goods/services and direct contributions.

Commissioner Walther suggested that the Commission continue to fine tune a consensus draft and revisit the matter at the next open meeting. Mr. Toner expressed his client's openness to providing the Commission with as much time as it needs. Chair Weintraub recognized Vice Chairman Petersen who expressed his concern about holding the matter over to another meeting.

Discussion resumed on the differences between Draft C and Draft D and the possibility of the Commission working through those differences in order find consensus today.

Mr. Toner participated in the continuing discussion regarding the importance of the disclosure component of the request; the requestor's full commitment to disclosure under whatever parameters the Commission establishes; the possibility of party committees using their building funds to pay for the services proposed in the advisory opinion request; the types of entities the Commission would and would not be comfortable allowing the requestor to accept contributions from, including: for-profit businesses, foundations, 501(c)(3)'s, LLC's, 501(c)(4)'s, and 501(c)(6)'s; and the requestor potentially seeking government grants.

Discussion continued on whether any additional information was needed from Mr. Toner while he was before the Commission.

Chair Weintraub recognized Commissioner Hunter who proposed circulating a Draft E adding the language discussed at the table today to see if

the new draft would garner four (4) approvals. Discussion continued, including Chair Weintraub suggesting the possibility of voting on tally. Commissioner Hunter agreed to the possibility of resolving the matter via a tally vote.

II. DRAFT ADVISORY OPINION 2019-05

System73 by Craig Engle, Esq.

Agenda Document No. 19-18-A
(Submitted Late)

Chair Weintraub recognized Mr. Craig Engle, requestor's counsel, who was present to answer Commissioners' questions. Chair Weintraub then recognized Ms. Heather Filemyr of the General Counsel's Office who presented the draft advisory opinion request from System73, an incorporated communications technology network. The requestor asks whether it may pay a political committee a license fee for the exclusive rights to live stream the committee's political event. The draft concludes that the proposal would result in prohibited corporate contributions because 1) the proposal does not meet the requirements for the media exemption because System73 would not be acting within the scope of a legitimate media function in paying a political committee for this access; and 2) the proposal is not otherwise permissible because it would result in fundraising for the committee.

Mr. Engle and Ms. Filemyr participated in the discussion that followed regarding whether or not AO 2008-14 (Melothe) was applicable to the System73

advisory opinion request; the standard media industry practice of paying licensing fees; whether a license fee to broadcast a campaign event would constitute a campaign contribution; System73's intent to provide the described services to any and all candidates and its lack of intent to influence elections; 11 C.F.R. § 100.53; the value of the content of political speech and candidates' time and appearances; a detailed description of the requestor's proposal to license candidates' content through an exclusive broadband channel and the interactive components it would include; whether the candidates should pay for the exposure the proposed services would generate; comparing the services outlined in the request to speaking fees for candidates to speak to corporate audiences; what constitutes "a thing of value" as it relates to the definition of a contribution; and when a payment to a political committee is deemed fundraising.

Vice Chairman Petersen stated that he could see a path forward to approve this, though he was still working through some aspects. He inquired of his colleagues whether it was worth pursuing an alternative draft.

Commissioner Walther stated that he was open to working toward a path forward.

Chair Weintraub stated that she was not there yet, but was happy to consider another draft.

Chair Weintraub recognized Mr. Neven Stipanovic of the General Counsel's Office who reminded the Commission of the May 20th deadline in this matter and stated that an extension from the requestor would be needed if the Commission intends to consider this matter at the next open meeting. Mr. Engle agreed to the extension.

III. MOTION TO AMEND DIRECTIVE 68 TO ESTABLISH DEADLINES FOR THE TIMELY PROCESSING OF ENFORCEMENT MATTERS

Memorandum from Commissioner Steven T. Walther
dated May 1, 2019

Agenda Document No. 19-17-A

Memorandum from Commissioner Ellen L. Weintraub
dated May 18, 2015

Agenda Document No. 15-25-B

Chair Weintraub recognized Commissioner Walther who stated that he hoped this document would be one more step to move the Commission in the direction of improving its Enforcement system. Commissioner Walther further stated that over the last two (2) or three (3) years, the Commission has made a lot of headway in terms of transparency, so that the public has a good idea of where the Commission is and where it is not in connection with the way it is handling its Enforcement, though additional work is needed. Commissioner Walther indicated that while he did not think anyone was prepared to vote on

this proposal today, his intent was to propose a process by which the Commission can hold itself accountable, in a realistic and fair manner.

Discussion continued.

Chair Weintraub recognized Commissioner Hunter who thanked Commissioner Walther for his proposals and stated that she would like to take additional time to consider them. Commissioner Hunter explained that there were some fine employees in the Office of General Counsel who were working very hard to move matters more quickly, and the Commission has seen some improvement. She thanked Acting General Counsel Lisa Stevenson and Acting Associate General Counsel for Enforcement Charles Kitcher. Commissioner Hunter stated that the Commission moved some of the easier cases from the Enforcement docket to places that may be more useful to both the committee and the Commission, such as the Alternative Dispute Resolution Office and reiterated that improvement was being made. She further stated that she looked forward to the forthcoming suggestions of Mr. Kitcher, Mr. Stephen Gura, and others within the General Counsel's Office and would like to wait for those suggestions before voting on the proposals before the Commission today.

Discussion continued.

Chair Weintraub thanked Commissioner Walther for bringing this to the table again. The Chair further stated that for historical perspective, she added to the agenda a proposal that she made along similar lines back in May of 2015.

Chair Weintraub stated that there are more cases on the docket than the Commission has ever had at any time in the agency's history and that the Commission was working through them with strained resources, i.e. fewer attorneys.

Discussion followed regarding backfilling vacant Enforcement attorney positions including those on detail to Commissioners' offices and requesting additional attorneys from Congress, previous ideas for improvement suggested by senior management within the Enforcement division, Commissioners' role in the backlog, and the Commissioners' appreciation for Mr. Kitcher taking on the role of Acting Associate General Counsel for Enforcement.

Discussion continued.

IV. 2019 MEETING DATES

Memorandum from Chair Ellen L. Weintraub
dated May 8, 2019

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

Chair Weintraub introduced the matter and discussion followed.

Chair Weintraub recognized Vice Chairman Petersen who

MOVED to approve the meeting dates for the second half of the year, as set forth in Agenda Document No. 19-19-A.

Discussion continued on whether the Commission may be able to meet any additional days for the second half of the year.

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

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:54 A.M.

Signed:

Ellen L. Weintraub
Chair of the Commission

Attest:

Dayna C. Brown
Secretary and Clerk of the Commission