



AGENDA DOCUMENT NO. 11-61

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, SEPTEMBER 22, 2011**

PRESENT:

Cynthia L. Bauerly, Chair, presiding

Caroline C. Hunter, Vice Chair

Donald F. McGahn II, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Staff Director

Anthony Herman, General Counsel

Shelley E. Garr, Deputy Secretary

Chair Cynthia L. Bauerly called the Federal Election Commission to order in an open meeting at 10:06 A.M. on Thursday, September 22, 2011 with a quorum present.

Chair Bauerly welcomed Mr. Anthony Herman, the new General Counsel, to the Commission. Chair Bauerly noted that his experience as a litigator and agency advisor and his enthusiasm for public service make him an ideal candidate to lead the General Counsel's Office. The Chair also thanked Mr. Christopher Hughey who so ably served as Acting General Counsel during the time of transition.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for September 1, 2011
Agenda Document No. 11-56**

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-56, minutes for the open session held on September 1, 2011.

The motion carried on a vote of 6-0 with Commissioners

Bauerly, Hunter, McGahn, Petersen, Walther and Weintraub voting affirmatively for the decision.

II. DRAFT INTERPRETIVE RULE ON WHEN CERTAIN INDEPENDENT EXPENDITURES ARE "PUBLICLY DISSEMINATED" FOR REPORTING PURPOSES

**Agenda Document No. 11-52
(Held over from the meeting of September 1, 2011)**

Chair Bauerly recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented the subject document, which provides guidance on the meaning of "publicly disseminated" for the purpose of reporting certain independent expenditures under 11 C.F.R. §§ 104.4 and 109.10. Discussion followed.

Chair Bauerly recognized Commissioner Weintraub who

MOVED to approve Agenda Document No. 11-52, subject to the following edits:

1. On page 3, add a sentence to the end of footnote 1 to read:

This particular rule interprets "publicly disseminated" for those items that do not have an inherent date certain for public dissemination such as yard signs, mini-billboards, handbills, t-shirts, hats, and buttons.

2. On page 3, line 7, at the end of the sentence ending with "communications are actually disseminated to the public." add a new footnote 2 to read:

Once the public dissemination date is established, independent expenditure communications must be reported pursuant to 11 CFR 104.4(b)(2), (c), and (f) and 109.10(c) and (d).

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for the decision.

III. DRAFT ADVISORY OPINION 2011-14

**Utah Bankers Association and Utah Bankers Association
Action PAC**

**Agenda Document No. 11-46 (Drafts A and B)
(Held over from the meeting of August 4, 2011)**

**Agenda Document No. 11-57 (Draft C)
(Submitted Late)**

Chair Bauerly recognized Vice Chair Hunter who

**MOVED to suspend the rules on the timely submission of
agenda documents in order to consider the late submission
of Agenda Document Nos. 11-57 and 11-58.**

**The motion carried on a vote of 6-0 with Commissioners Bauerly,
Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for
the decision.**

**Chair Bauerly recognized Mr. Neven Stipanovic who introduced the
advisory opinion, which was held over from the August 4th meeting. He
noted that Draft C, intended to be a compromise draft, was released after
that meeting. Discussion followed.**

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-57.

**The motion carried on a vote of 6-0 with Commissioners Bauerly,
Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively for
the decision.**

IV. DRAFT ADVISORY OPINION 2011-16

Dimension4, Inc. PAC by Deborah D'Angelo, Treasurer

Agenda Document No. 11-55 (Drafts A and B)

Chair Bauerly recognized Ms. Esther Heiden of the General Counsel's Office who presented the advisory opinion, concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the repayment of a loan made by Dimension4, Inc. PAC to its connected organization, Dimension4, Inc. She summarized the conclusions reached in Drafts A and B. Discussion followed.

Chair Bauerly recognized Commissioner Petersen who

MOVED approval of Draft Advisory Opinion 2011-16 Draft A which is set forth in Agenda Document No. 11-55.

The motion failed on a vote of 3-3 with Commissioners Hunter, McGahn, and Petersen voting affirmatively for the motion. Commissioners Bauerly, Walther, and Weintraub dissented.

Chair Bauerly recognized Commissioner Weintraub who

MOVED approval of Draft B.

The motion failed on a vote of 3-3 with Commissioners Bauerly, Walther, and Weintraub voting affirmatively for the motion. Commissioners Hunter, McGahn, and Petersen dissented.

Chair Bauerly advised the General Counsel to provide a letter to the requestor indicating that the Commission was not able to reach an answer on its request.

Chair Bauerly noted that the next two items on the agenda, Items V and VI, would be held over to the next meeting.

V. AGENCY PROCEDURE FOLLOWING THE SUBMISSION OF PROBABLE CAUSE BRIEFS BY THE OFFICE OF GENERAL COUNSEL

**Memorandum from Commissioner Steven T. Walther
dated September 6, 2011**

Agenda Document No. 11-53

VI. DRAFT ADVANCE NOTICE OF PROPOSED RULEMAKING FOR INTERNET COMMUNICATION DISCLAIMERS

**Agenda Document No. 11-58
(Submitted Late)**

Chair Bauerly noted that the Commission has recently settled and the Court has issued a stipulated judgment in Carey v. FEC. The Commission intends to consider the issues raised in that case along with those arising from the SpeechNow and EMILY's List decisions and hopes to move forward with a Notice of Proposed Rulemaking on those topics. In the meantime, the Commission is considering how to provide guidance for committees who want to follow in National Defense PAC's footsteps given the state of

current rules and reporting forms which cannot be changed without a rulemaking. The Commission hopes to have something available shortly.

Chair Bauerly recognized Commissioner Petersen who welcomed Mr. Herman to the Commission, noting his wealth of experiences and tremendous legal skills. Commissioner Petersen also thanked Mr. Hughey for the excellent service he provided to the Commission as Acting General Counsel for well over a year.

VII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 10:39 A.M.

Signed:

**Cynthia L. Bauerly
Chair of the Commission**

Attest:

**Shawn Woodhead Werth
Secretary and Clerk of the Commission**

**Shelley E. Garr
Deputy Secretary**