



AGENDA DOCUMENT NO. 12-85
APPROVED DECEMBER 6, 2012

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, NOVEMBER 15, 2012**

PRESENT:

Caroline C. Hunter, Chair, presiding

Ellen L. Weintraub, Vice Chair

Cynthia L. Bauerly, Commissioner

Donald F. McGahn II, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

**Debbie Chacona, Assistant Staff Director, Reports
Analysis Division and Thomas Hintermister,
Assistant Staff Director, Audit Division (morning
session); and Patricia Orrock, Chief Compliance
Officer (afternoon session) for Alec Palmer, Staff
Director**

Anthony Herman, General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Caroline C. Hunter called the Federal Election Commission to order in an open meeting at 10:15 A.M. on Thursday, November 15, 2012 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for October 18, 2012
Agenda Document No. 12-76**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the open meeting of October 18, 2012 as set forth in Agenda Document No. 12-76.

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

Chair Hunter recognized Vice Chair Weintraub who

MOVED to waive the rules on the timely submission of agenda documents so that the Commission may consider Agenda Document Nos. 12-79, 12-69-C, 12-78, and 12-78-A.

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

**II. DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE – REQUEST TO
MODIFY CONCILIATION AGREEMENT (MUR 3620)**

**Memorandum from the Office of General Counsel dated
November 9, 2012**

**Agenda Document No. 12-79
(Submitted Late)**

Chair Hunter recognized Mr. Marc Elias and Mr. Jonathan Behrkon, requestor's counsel, who were available to answer Commissioners' questions.

Chair Hunter recognized Commissioner Walther who stated that he spoke with Mr. Elias yesterday about the case.

Chair Hunter recognized Ms. Jin Lee of the General Counsel's Office who summarized the Committee's request. The Committee asks that the Commission modify provisions of the conciliation agreement, entered into in 1995, that require it to undertake certain on-going remedial measures. These measures are subject to no time limit and include: 1) refunding or forwarding contributions that appear to be earmarked; 2) providing additional education and training to staff regarding earmarking and tally contributions; 3) implementing procedures to ensure that solicitations for the tally program cannot be read to solicit earmarked contributions; and 4) including in all solicitations for the tally program a disclaimer that the Committee does not accept earmarked contributions.

Mr. Elias and General Counsel Anthony Herman also participated in the discussion that followed.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to take the following actions in MUR 3620:

- 1. Find that the Democratic Senatorial Campaign Committee (“DSCC”) has fulfilled its obligations under the Conciliation Agreement and is relieved from satisfying the remedial measures contained in paragraph VI.2.**
- 2. Send the appropriate letter.**

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

Chair Hunter stated that the agenda will be re-ordered to move Item III (Request for Reconsideration of Advisory Opinion 2012-25) to the end of the agenda and there will be a short recess after Item V (Audit Division Recommendation Memorandum on Rightmarch.com PAC, Inc.).

IV. DRAFT ADVISORY OPINION 2012-34

**Freedom PAC and Friends of Mike H
by Laurence A. Levy, Esq.**

**Agenda Document No. 12-78
(Submitted Late)**

**Agenda Document No. 12-78-A (Draft B)
(Submitted Late)**

Chair Hunter stated that Mr. Laurence Levy, requestors' counsel, was available by telephone to answer Commissioners' questions.

Chair Hunter recognized Mr. Neven Stipanovic of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to the requestors' proposal. Freedom PAC is an independent expenditure-only committee. Friends of Mike H is the principal campaign committee of Mike Haridopolos who was a candidate in the 2012 primary election but withdrew his candidacy before the primary, was not a candidate in the 2012 general election, and does not hold Federal office. The requestors ask two questions: 1) may Freedom PAC accept a contribution of \$10,000 or more from Friends of Mike H; and 2) if the answer to the first question is no, may Freedom PAC accept a contribution of up to \$5,000 from Friends of Mike H. Mr. Stipanovic summarized the conclusions reached in the two drafts.

Chair Hunter noted that the deadline for this advisory opinion is December 3, 2012. The Commission may not vote on this matter today and may request an extension until December 7, 2012 in order to consider it at the next open meeting.

Mr. Levy and Ms. Debbie Chacona of the Reports Analysis Division participated in the discussion that followed.

Chair Hunter confirmed with Mr. Levy that the requestors were amenable to an extension until December 7, 2012 should the Commission want to discuss it at the next open meeting.

V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON RIGHTMARCH.COM PAC, INC. (A09-25)

Memorandum from the Audit Division dated August 2, 2012

Agenda Document No. 12-65

(Held over from the meeting of October 18, 2012)

Chair Hunter noted that Commissioner McGahn's motion from the October 18, 2012 open meeting was on the table. She re-stated the motion:

To approve the part of Finding 2 that concludes that Rightmarch.com PAC, Inc. demonstrated that the terms of the contract are in the normal course of the vendor's business and the appropriate supporting language in the report that supports that conclusion in Finding 2.

Ms. Allison Steinle and Mr. Lawrence Calvert of the General Counsel's Office, Mr. Alex Boniewicz and Mr. Thomas Hintermister of the Audit Division, and Ms. Chacona of the Reports Analysis Division participated in the discussion that followed.

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

Mr. Boniewicz participated in the discussion that followed.

Chair Hunter stated that the Commission will recess until noon, at which time it will take up Items III (Request for Reconsideration of Advisory Opinion 2012-25) and VI (Audit Division Recommendation Memorandum on the Maine Republican Party).

The meeting recessed at 11:27 A.M. and reconvened at 12:05 P.M. with a quorum present.

III. REQUEST FOR RECONSIDERATION OF ADVISORY OPINION 2012-25

American Future Fund, American Future Fund Political Action, and McIntosh by Jason Torchinsky, Esq. and Michael Bayes, Esq.

Agenda Document No. 12-69-B

Memorandum from Commissioner Steven T. Walther dated November 14, 2012

**Agenda Document No. 12-69-C
(Submitted Late)**

Chair Hunter stated that this matter was considered at the October 4, 2012 open meeting. At that meeting, the Commission advised the requestors that it was working on a compromise draft; however, if the Commission was not able to agree, it would try to issue a draft that simply answers the remaining questions in the affirmative without providing an explanation. The Commission was not able to concur on either draft and notified the requestors on October 12, 2012. The requestors sent a letter to the Commission on October 15, 2012 asking for reconsideration. Subsequently, Commissioner Walther prepared a third draft, Agenda Document No. 12-69-C, which was publicly released last night; the Commission intends to prepare an additional draft, and hopes to receive requestors' comments on both drafts for future consideration.

Chair Hunter noted that Mr. Jason Torchinsky, requestors' counsel, was not able to attend today's meeting to answer Commissioners' questions.

General Counsel Herman participated in the discussion that followed.

Chair Hunter stated that another draft will be made available for comment in the near future.

**VI. AUDIT DIVISION RECOMMENDATION MEMORANDUM
ON THE MAINE REPUBLICAN PARTY (MRP) (A09-09)
(RESUBMISSION)**

**Memorandum from the Audit Division dated
October 11, 2012**

Agenda Document No. 12-75

Mr. Calvert participated in the discussion that followed.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve the recommendations in the
Audit Division Recommendation Memorandum on
the Maine Republican Party (MRP), Agenda
Document No. 12-75, with respect to Findings
1, 2, 3B, 4, and the sub-finding related to Voter
Identification (\$19,000) in Finding 3A.**

**Mr. Boniewicz of the Audit Division participated in the discussion that
resumed.**

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

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve, with respect to Finding 3A pertaining
to Administrative Costs (\$48,520), Payroll & Associated
Costs (\$14,999), and Printed Materials (\$11,500), that the
Maine Republican Party made potentially federal or
allocable expenses from a non-federal account in the
amount of \$75,019 which required reporting.**

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

VII. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON MCCAIN-PALIN 2008, INC. AND MCCAIN-PALIN COMPLIANCE FUND, INC.

**Memorandum from the Audit Division dated
October 19, 2012**

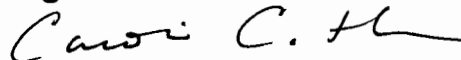
Agenda Document No. 12-77

Chair Hunter stated that this matter would be held over to a future meeting.

VIII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 12:44 P.M.

Signed:



Caroline C. Hunter

Chair of the Commission

Attest:



Shawn Woodhead Werth

Secretary and Clerk of the Commission