



AGENDA DOCUMENT NO. 12-37

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, MAY 10, 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

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 10:10 A.M. on Thursday, May 10, 2012 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for April 26, 2012
Agenda Document No. 12-32**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the open meeting of Thursday, April 26, 2012 as set forth in Agenda Document No. 12-32.

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 and General Counsel Anthony Herman to discuss the procedural motion for handling late submitted documents.

II. DRAFT ADVISORY OPINION 2012-07

Feinstein for Senate by Marc E. Elias, Esq., Kate Sawyer Keane, Esq., and Jonathan S. Berkon, Esq.

(Held over from the meeting of April 12, 2012)

Agenda Document No. 12-23

**Agenda Document No. 12-23-A (Draft B)
(Submitted Late)**

**Agenda Document No. 12-23-B (Draft C)
(Submitted Late)**

Chair Hunter stated that Commissioner McGahn was recused from this matter and would not participate in the discussion.

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. 12-23-A and 12-23-B.

The motion carried on a vote of 5-0 with Commissioners Bauerly, Hunter, Petersen, Walther and Weintraub voting affirmatively for the decision. Commissioner McGahn was recused and did not vote.

Chair Hunter noted that Mr. Elias, the requestor's counsel, was available to answer Commissioners' questions.

Chair Hunter recognized Ms. Jessica Selinkoff 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 Feinstein for Senate's question as to whether it may accept additional funds from contributors whose funds were embezzled by the Committee's treasurer without the additional contributions counting against the contributors' per-election limits to the

Committee. Ms. Selinkoff stated that the Commission received supplemental material from the requestor after the April 12, 2012 meeting and summarized the conclusions reached in the three drafts.

Mr. Elias participated in the discussion which followed.

Chair Hunter thanked the requestor for extending the response deadline to May 14, 2012. She noted that, after the Commission votes on the drafts before it today, the Office of General Counsel will prepare a draft response which includes answers to those questions on which the Commissioners agree and circulate it on a tally vote basis.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve Draft B, Agenda Document No. 12-23-A, and technical and conforming amendments.

The motion failed on a vote of 2-3 with Commissioners Walther and Weintraub voting affirmatively for the motion. Commissioners Bauerly, Hunter and Petersen dissented. Commissioner McGahn was recused and did not vote.

Chair Hunter recognized Commissioner Petersen who

MOVED to approve Agenda Document No. 12-23-B, Draft C.

The motion failed on a vote of 3-2 with Commissioners Bauerly, Hunter and Petersen voting affirmatively for the motion. Commissioners

Walther and Weintraub dissented. Commissioner McGahn was recused and did not vote.

The meeting recessed at 10:34 A.M. and reconvened at 10:36 A.M. with a quorum present.

III. DRAFT ADVISORY OPINION 2012-08

Repledge by Eric M. Zolt

(Held over from the meeting of April 26, 2012)

Agenda Document No. 12-21

Agenda Document No. 12-21-A (Draft B)

**Agenda Document No. 12-21-B (Draft C)
(Submitted Late)**

Commissioner McGahn rejoined the meeting.

Chair Hunter noted that Professor Eric Zolt, the requestor's representative, was available by telephone to answer Commissioners' questions.

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 No. 12-21-B.

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

Mr. Theodore Lutz of the General Counsel's Office and Professor Zolt participated in the discussion which followed.

Chair Hunter noted that this matter would be held over until later in the meeting. (See page 8.)

IV. DRAFT ADVISORY OPINION 2012-16

Angus King for U.S. Senate Campaign by J. Maurice Bisson, Treasurer

Pierce Atwood LLP by Elizabeth R. Butler, Esq.

**Agenda Document No. 12-33
(Submitted Late)**

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 No. 12-33.

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 Ms. Selinkoff 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 request from the Angus King for U.S. Senate Campaign (the “Committee”) and Pierce Atwood LLP (the “Firm”). They ask two questions: 1) whether the Firm may provide *pro bono* legal services to the Committee pertaining to FEC compliance even though the Firm is a federal contractor; and 2) whether the Firm’s partners, associates and other employees, individually, may volunteer for the Committee without the Firm providing a prohibited in-kind contribution to the Committee.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve Agenda Document No. 12-33,
a response to Angus King for U.S. Senate Campaign
and Pierce Atwood LLP.**

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

V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE LEGACY COMMITTEE POLITICAL ACTION COMMITTEE (A09-22)

Memorandum from the Audit Division dated March 8, 2012

Agenda Document No. 12-30

Chair Hunter recognized Mr. Thomas Hintermister, Mr. Alex Boniewicz, and Ms. Paula Nurthen of the Audit Division. Ms. Nurthen presented the Audit Division Recommendation Memorandum with two

findings: 1) the misstatement of financial activity; and 2) the failure to file notices and properly disclose independent expenditures.

Ms. Nurthen, Mr. Hintermister, General Counsel Herman, and Mr. Lawrence Calvert of the General Counsel's Office participated in the discussion which followed.

Chair Hunter noted that this matter would be held over until later in the meeting. (See page 12.)

The meeting recessed at 11:26 A.M. and reconvened at 11:35 A.M. with a quorum present.

III. DRAFT ADVISORY OPINION 2012-08 (CONTINUED)

Chair Hunter noted that Professor Zolt was available by telephone to answer Commissioners' questions.

Chair Hunter recognized Mr. Lutz 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 Repledge's proposal to establish a Web-based platform that would allow individuals to remove pledged funds in equal amounts from opposing candidates for Federal office and, instead, to donate their funds to charitable organizations.

Professor Zolt and General Counsel Herman participated in the continuing discussion.

Chair Hunter recognized Commissioner Petersen who

**MOVED to approve Agenda Document No. 12-21
with respect to Draft Advisory Opinion 2012-08.**

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 Hunter recognized Vice Chair Weintraub who

MOVED to approve Draft C as set forth in Agenda Document No. 12-21-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.

VI. REVISED GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PROCESS

**Agenda Document No. 12-34
(Submitted Late)**

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 No. 12-34.

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 Mr. Stephen Gura of the General Counsel's Office who introduced the subject document. She thanked Commissioner Walther for spearheading work on this project when he served as Chair and noted its usefulness to the general public. She explained that this Guidebook, which now incorporates seven additional policies adopted by the Commission since it was first issued, will continue to be revised and updated as new policies are approved by the Commission.

Staff Director Alec Palmer also participated in the discussion.

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the Revised Guidebook for Complainants and Respondents on the FEC Enforcement Process as set forth in Agenda Document No. 12-34.

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

VII. DRAFT 2012 LEGISLATIVE RECOMMENDATIONS

**Memorandum from the Office of Congressional,
Legislative and Intergovernmental Affairs
dated May 3, 2012**

Agenda Document No. 12-31

Chair Hunter recognized Mr. Duane Pugh of the Office of Congressional, Legislative and Intergovernmental Affairs who summarized the five draft legislative recommendations for 2012: the electronic filing of Senate reports; making permanent the Administrative Fine Program for reporting violations; fraudulent misrepresentation of campaign authority; conversion of campaign funds; and authority to create SES positions. Mr. Pugh thanked Commissioners and staff for their contributions to this year's recommendations.

Chair Hunter recognized Mr. Peter Schalestock of the House Committee on House Administration who was in attendance.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve the Draft Legislative
Recommendations for 2012 as set forth
in Agenda Document No. 12-31.**

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

**V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON
THE LEGACY COMMITTEE POLITICAL ACTION COMMITTEE
(A09-22) (CONTINUED)**

Chair Hunter noted that the Audit Division Recommendation Memorandum on the Legacy Committee Political Action Committee would be held over to the next meeting. She recognized General Counsel Herman who summarized the requirements of Directive 70 with respect to voting on audit findings.

VIII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 12:08 P.M.

Signed:

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

Attest:

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