



AGENDA DOCUMENT NO. 12-67

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, AUGUST 23, 2012**

PRESENT:

Caroline C. Hunter, Chair, presiding

Ellen L. Weintraub, Vice Chair

Cynthia L. Bauerly, Commissioner

Donald F. McGahn, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Alec Palmer, Staff Director

**Kevin Deeley, Acting Associate General Counsel
for Policy, representing Anthony Herman,
General Counsel**

Shelley Garr, Deputy Secretary

Chair Caroline C. Hunter called the Federal Election Commission to order in an open meeting at 11:57 A.M. on Thursday, August 23, 2012 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for August 2, 2012
Agenda Document No. 12-60**

Chair Hunter recognized Vice Chair Weintraub who

MOVED to approve the minutes for the meeting of August 2, 2012 as set forth in Agenda Document No. 12-60.

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 the Commission can consider Agenda Document Nos. 12-63, 12-63-A, 12-61, 12-61-A and 12-62.

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 ADVISORY OPINION 2012-27

**National Defense Committee by Benjamin T. Barr,
Esq., Dan Backer, Esq., and Allen Dickerson, Esq.**

**Agenda Document No. 12-63 (Draft A)
(Submitted Late)**

**Agenda Document No. 12-63-A (Draft B)
(Submitted Late)**

**Chair Hunter noted that Mr. Barr and Mr. Dickerson, requestor's
counsel, were 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 the National Defense Committee's proposed
plan. The requestor asks whether: 1) seven communications it intends to
distribute would be express advocacy; 2) four donation requests it intends
to make would be solicitations; and 3) it would be a political committee.**

She summarized the conclusions reached in both drafts.

**Mr. Barr and Mr. Dickerson participated in the discussion which
followed.**

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve Draft B as set forth in Agenda
Document No. 12-63-A with edits pursuant to the
meeting discussion.**

Mr. Kevin Deeley of the General Counsel's Office and Mr. Barr participated in the discussion which resumed.

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 Hunter recognized Commissioner Petersen who

MOVED to approve Draft A as set forth in Agenda Document No. 12-63 with edits pursuant to the meeting discussion.

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 directed the Office of General Counsel to prepare a draft response which includes answers to those questions on which the Commissioners agree.

III. DRAFT ADVISORY OPINION 2012-29

Hawaiian Airlines, Inc. by Ronald M. Jacobs, Esq., Lawrence H. Norton, Esq., and Jeffrey J. Hunter, Esq.

**Agenda Document No. 12-61 (Draft A)
(Submitted Late)**

**Agenda Document No. 12-61-A (Draft B)
(Submitted Late)**

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

Chair Hunter recognized Mr. Anthony Buckley 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 proposal of Hawaiian Airlines, Inc. to host appearances by both general election candidates for the US Senate at its sponsored events that will include attendance by members of its restricted class as well as leaders in the Hawaii travel and tourism industry. He summarized the conclusions reached in both drafts.

Mr. Jacobs participated in the discussion which followed.

Chair Hunter recognized Commissioner Petersen who

**MOVED to approve Agenda Document No. 12-61-A,
Draft B, with respect to Draft Advisory Opinion 2012-29.**

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 A as set forth in Agenda Document No. 12-61.

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 Hunter directed the Office of General Counsel to send a letter to the requestor noting that there were not four affirmative votes for either draft.

IV. DRAFT ADVISORY OPINION 2012-30

**Revolution Messaging, LLC by Joseph E. Sandler, Esq.,
Neil P. Reiff, Esq. and Elizabeth L. Howard, Esq.**

**Agenda Document No. 12-62
(Submitted Late)**

Chair Hunter noted that Ms. Howard and Mr. Reiff, requestor's counsel, were available to answer Commissioners' questions.

Chair Hunter recognized Ms. Joanna Waldstreicher 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 Revolution Messaging, LLC's proposal to process contributions by text message. The requestor asks whether the following activities comply with the Act and Commission regulations: 1) allow users to make contributions by text message aggregating in excess of \$50 per month and \$200 per calendar year or election cycle so long as the users provide identifying information which the requestor will provide to

the recipient political committees; and 2) allow political committees to share common short codes that are used to designate the recipient of a contribution made by text message by assigning unique key words to each political committee.

Mr. Reiff participated in the discussion which followed.

Chair Hunter stated that another draft will be prepared incorporating edits discussed during today's meeting; the deadline to submit comments on all drafts is extended to Tuesday, August 28, 2012; and the Commission will then vote on this request on a tally vote basis.

V. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE NATIONAL CAMPAIGN FUND (A09-26)

Memorandum from the Audit Division dated July 9, 2012

Agenda Document No. 12-59

Chair Hunter recognized Mr. Alex Boniewicz of the Audit Division who presented the two findings in the Draft Final Audit Report: 1) misstatement of financial activity; and 2) failure to file notices and properly disclose independent expenditures.

Discussion followed.

Chair Hunter recognized Vice Chair Weintraub who

**MOVED to approve Agenda Document No. 12-59,
the Audit Division Recommendation Memorandum
on the National Campaign Fund.**

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 Hunter recognized Commissioner Petersen who

MOVED to approve the Audit Division Recommendation Memorandum on the National Campaign Fund (A09-26) except that the following communications be considered to contain express advocacy: 1-5, 7-13, 15-18, 21-25, 27-28, 34-47, 49, 52-53, and 61.

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

VI. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 1:52 P.M.

Signed:

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

Attest:

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

**Shelley E. Garr
Deputy Secretary**