



AGENDA DOCUMENT NO. 16-63-A

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, SEPTEMBER 15, 2016

PRESENT: Matthew S. Petersen, Chairman, presiding
Steven T. Walther, Vice Chairman
Lee E. Goodman, Commissioner
Caroline C. Hunter, Commissioner
Ann M. Ravel, Commissioner
Ellen L. Weintraub, Commissioner
Alec Palmer, Staff Director
Daniel Petalas, Acting General Counsel
Shawn Woodhead Werth, Secretary and Clerk

Chairman Matthew S. Petersen called the Federal Election Commission to order in an open meeting at 10:28 A.M. on Thursday, September 15, 2016 with a quorum present.

Chairman Petersen recognized Commissioner Weintraub for a point of personal privilege. Commissioner Weintraub noted that Ms. Kasey Morgenheim, who has been at the Commission for 10 years and most recently worked for some of the Commissioners, is leaving to work at the Department of Education. When Ms. Morgenheim worked in the General Counsel's Office, Commissioner Weintraub explained that she was a "go-to" person and that her managers knew she would handle particularly challenging and complicated cases with diligence, thoroughness, and intelligence -- traits that Commissioner Weintraub valued as well, when Ms. Morgenheim worked in her office. Commissioner Weintraub wished her well and much success and said she will be missed.

Chairman Petersen recognized Commissioner Ravel who thanked Ms. Morgenheim for her advice, breadth of knowledge, balance, and thoughtful and fair approach which were unbelievably helpful to Commissioner Ravel when forming her views.

Chairman Petersen recognized Vice Chairman Walther who also extended his thanks, appreciation, and best wishes to Ms. Morgenheim. He acknowledged

her hard work on a new approach for ameliorating areas of disagreement on on-going projects so that Commissioners could focus on the nub of the issues.

Chairman Petersen also expressed his appreciation to Ms. Morgenheim and thanked her for her service at the Commission. He next recognized Mr. Daniel Petalas, who is now in private practice and in the audience for today's meeting, to thank him for his service as head of the Enforcement Division and as Acting General Counsel. Chairman Petersen said that Mr. Petalas' leadership was much appreciated as was his calm demeanor and level-headed advice.

Chairman Petersen recognized Commissioner Ravel who said that Mr. Petalas exemplified a truly extraordinary General Counsel as he had all of the qualities that make for excellent, thoughtful, balanced, and fair advice.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for July 14, 2016
Agenda Document No. 16-36-A

Minutes for August 16, 2016
Agenda Document No. 16-37-A

Chairman Petersen recognized Vice Chairman Walther who

MOVED to approve the minutes of the meetings of
July 14, 2016 and August 16, 2016 in Agenda Document
Nos. 16-36-A and 16-37-A.

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

Chairman Petersen recognized Vice Chairman Walther who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider the late submission of the following documents: Agenda Document No. 16-40-A, Proposal to Launch Rulemaking; Agenda Document No. 16-41-A, Proposed Statement of Policy on the Application of the Foreign National Prohibition; Agenda Document No. 16-42-A, Promoting Voluntary Compliance; Agenda Document No. 16-43-A, Draft B on Tech Modernization; Agenda Document No. 16-44-A, Statement Regarding Proposal to Rescind Advisory Opinion 2006-15 (TransCanada) and to Open a Rulemaking to Ensure that the U.S. Political Spending is Free from Foreign Influence; Agenda Document No. 16-34-B, Petition for Rulemaking on Implementing the Consolidated and Further Continuing Appropriations Act, 2015; and Agenda Document No. 16-35-B, Political Party Rules.

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

II. REG 2014-10: IMPLEMENTING THE CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT, 2015

Agenda Document No. 16-34-A

Agenda Document No. 16-34-B (Draft B)
(Submitted Late)

(Held over from the August 16, 2016 meeting)

Chairman Petersen recognized Mr. Anthony Buckley of the General Counsel's Office who explained that the Commission received a petition for rulemaking from the Perkins Coie LLP political law group which asks that the Commission adopt

new regulations and revise its current regulations: 1) to implement amendments to the Federal Election Campaign Act made by the Consolidated and Further Continuing Appropriations Act of 2015; and 2) to address convention committees. He stated that the General Counsel's Office examined the submission, determined that it qualifies as a petition under 11 C.F.R. § 200.2(b), and drafted a notice of availability seeking comment on where the Commission should initiate a rulemaking.

Discussion followed.

Chairman Petersen recognized Vice Chairman Walther who

MOVED to approve the Notice of Availability, Draft B.

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

Discussion continued.

III. REG 2016-03: POLITICAL PARTY RULES

Agenda Document No. 16-35-A

Agenda Document No. 16-35-B (Draft B)
(Submitted Late)

(Held over from the August 16, 2016 meeting)

Chairman Petersen recognized Mr. Joseph Wenzinger of the General Counsel's Office who stated that the Commission received a petition for rulemaking from the Minnesota Democratic-Farmer-Labor Party which asks the

Commission to revise existing rules regarding the use of federal funds to pay for certain activities of state, district, or local committees of a political party. He stated that the General Counsel's Office examined the submission, determined that it qualifies as a petition under 11 C.F.R. § 200.2(b), and drafted a notice of availability seeking comment on where the Commission should initiate a rulemaking.

Discussion followed.

Chairman Petersen recognized Vice Chairman Walther who

MOVED to approve Agenda Document No. 16-35-B, Draft B.

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

IV. REG 2013-01: DRAFT NOTICE OF PROPOSED RULEMAKING ON TECHNOLOGICAL MODERNIZATION

Agenda Document No. 15-54-C

Agenda Document No. 16-43-A (Draft B)
(Submitted Late)

(Held over from the August 16, 2016 meeting)

Chairman Petersen stated that the Commission has two documents before it but will not vote on them today. He explained that Agenda Document No. 15-54-C was originally discussed in November 2015; Draft B is a more recent, working document. He expects that there will be further modifications on Draft B and, therefore, this matter will be held over to the next meeting.

Chairman Petersen recognized Vice Chairman Walther who

MOVED that the Commission add to the agenda consideration of Promoting Voluntary Compliance, Proposed Statement of Policy on the Application of the Foreign National Prohibition to Domestic Corporations Owned or Controlled by Foreign Nationals, and Statement Regarding Proposal to Rescind Advisory Opinion 2006-15 (TransCanada) and to Open a Rulemaking to Ensure that the U.S. Political Spending is Free from Foreign Influence; and that the Commission determine pursuant to 11 C.F.R. § 2.7(b) that business so requires and no earlier public announcement was possible.

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

V. PROMOTING VOLUNTARY COMPLIANCE

Memorandum from Commissioner Caroline C. Hunter
dated September 14, 2016

Agenda Document No. 16-42-A
(Submitted Late)

Chairman Petersen recognized Commissioner Hunter who explained that the statute allows the Commission to encourage voluntary compliance with FECA. She explained that the Information Division staff does an excellent job through conferences, the website, and the Commission's toll-free number to inform the public and regulated community about the laws and regulations; and that the Reports Analysis Division staff works with committees who file with the Commission to ensure that they voluntarily comply. Commissioner Hunter noted

that her proposal highlights four points that are most relevant to citizens who may want to be engaged in the process. These points are: 1) protect our elections from foreign influence; 2) stay within the dollar limits; 3) don't give in the name of another; and 4) keep your political ads independent. She looks forward to receiving her colleagues' comments, hopes they can agree on the language, and perhaps submit it to newspapers throughout the country as an op-ed or letter to the editor signed by all Commissioners.

Discussion followed.

Chairman Petersen said that he looks forward to working with his colleagues on this process and hopes the Commission can move forward quickly.

VI. REQUEST FOR GUIDANCE ON INTERPRETATION OF CONCILIATION AGREEMENT IN MUR 5635 (THE VIGUERIE COMPANY, *et al.*)

Memorandum from the Acting General Counsel dated
August 12, 2016

Agenda Document No. 16-39-A

Item VI was resolved prior to the meeting.

VII. PROPOSED STATEMENT OF POLICY ON THE APPLICATION OF THE FOREIGN NATIONAL PROHIBITION TO DOMESTIC CORPORATIONS OWNED OR CONTROLLED BY FOREIGN NATIONALS

Memorandum from Chairman Matthew S. Petersen and
Commissioners Lee E. Goodman and Caroline C. Hunter
dated September 14, 2016

Agenda Document No. 16-41-A
(Submitted Late)

Chairman Petersen recognized Commissioner Goodman who stated that this document is a response to the discussion that occurred during Commissioner Weintraub's forum; it focuses on how the Commission should address the foreign national ban in an economy where business associations and U.S. corporations are increasingly owned in part by foreign companies. He noted the differences between Commissioner Weintraub's proposal and his proposal which takes into consideration 40 years of Commission precedent. It explains how the foreign national ban applies to U.S. domestic subsidiaries of foreign nationals making either independent expenditures or contributing to super PACs making independent expenditures or electioneering communications. Secondly, he noted, it provides a certification mechanism for treasurers of super PACs and Carey funds who accept for-profit donations or contributions from U.S. subsidiaries of foreign companies to assure greater compliance.

Discussion followed.

Chairman Petersen recognized Commissioner Goodman who

MOVED to approve Agenda Document No. 16-41-A, a Proposed Statement of Policy on the Application of the Foreign National Prohibition to Domestic Corporations Owned or Controlled by Foreign Nationals.

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

VIII. PROPOSAL TO RESCIND ADVISORY OPINION 2006-15 (TRANSCANADA)

Memorandum from Commissioner Ann M. Ravel
dated August 9, 2016

Agenda Document No. 16-32-A

(Held over from the August 16, 2016 meeting)

Chairman Petersen recognized Commissioner Ravel who highlighted the nearly 2000 comments received from citizens, ranking member of the House Administration Committee, lawyers, law professors, and non-profit organizations in the month since this item was placed on the agenda. She noted that 99% of the comments supported rescinding the TransCanada Advisory Opinion and expressed concern about the influence of foreign nationals and foreign corporations post *Citizens United*. This proposal, she stated, is preliminary to, and should be considered in tandem to a rulemaking. She explained that most of what the Commission has considered is pre-*Citizens United*, and thus has little or no bearing on the present legal and factual environment. She noted that there has never been complete consensus on this AO, although there has been considerable discussion and concern about how the Commission looks at foreign subsidiaries. She cited the Constitution's recognition of the danger of foreign influence and inadequate disclosure and the failure to address issues of disclosure post-*Citizens United*; expressed her concern that appropriate guidance be provided to the

regulated community; and discussed comments received in response to her proposal.

Discussion followed.

Chairman Petersen recognized Commissioner Ravel who

MOVED to approve Agenda Document No. 16-32-A, Proposal to rescind Advisory Opinion 2006-15.

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

The meeting recessed at 1:09 P.M. and reconvened at 1:32 P.M. with a quorum present.

IX. PROPOSAL TO LAUNCH RULEMAKING TO ENSURE THAT U.S. POLITICAL SPENDING IS FREE FROM FOREIGN INFLUENCE

Memorandum from Commissioner Ellen L. Weintraub
dated September 9, 2016

Agenda Document No. 16-40-A
(Submitted Late)

Chairman Petersen noted that for discussion purposes, Item IX will also incorporate discussion of Item X.

Chairman Petersen recognized Commissioner Weintraub who stated this topic has particular urgency now given the information received from the news and during her hearing about what constitutes ownership and control in the foreign national context and the intrusions into our political system coming from abroad. She discussed ideas raised during the hearing and noted her interest in the proposal raised earlier in the day by her colleagues involving certifications and safe harbors. Although her proposal focuses more narrowly on the issue of foreign nationals, she is hopeful that there is interest among her colleagues to collect public comment and come together on areas of consensus to craft a proposed rulemaking to insure that foreign money stays out of our elections. She then

MOVED to open a rulemaking and to direct the Office of General Counsel to draft a notice of proposed rulemaking that would allow the Commission to consider every option for reducing the potential for foreign spending in our elections taking into account the views of all Commissioners.

Discussion continued.

Chairman Petersen recognized Commissioner Weintraub who restated her motion.

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

Discussion resumed.

Chairman Petersen who stated that, without objection, the General Counsel's Office is directed to prioritize cases involving allegations of foreign influence.

X. STATEMENT OF VICE CHAIRMAN STEVEN T. WALTHER REGARDING PROPOSAL TO RESCIND ADVISORY OPINION 2006-15 (TRANSCANADA) AND TO OPEN A RULEMAKING TO ENSURE THAT U.S. POLITICAL SPENDING IS FREE FROM FOREIGN INFLUENCE

Memorandum from Vice Chairman Steven T. Walther
dated September 15, 2016

Agenda Document No. 16-44-A
(Submitted Late)

No Commission action was taken.

XI. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE UTAH REPUBLICAN PARTY (URP) (A13-06) (RESUBMISSION)

Memorandum from the Audit Division dated August 10, 2016

Agenda Document No. 16-38-A

Item XI was resolved prior to the meeting.

XII. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission,
the meeting adjourned at 2:24 P.M.

Signed:

Matthew S. Petersen
Chairman of the Commission

Attest:

Shawn Woodhead Werth
Secretary and Clerk of the Commission

Shelley E. Garr
Deputy Secretary