



AGENDA DOCUMENT NO. 11-34
APPROVED JUNE 15, 2011

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, MAY 26, 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, Acting Staff Director

Christopher Hughey, Acting General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Cynthia L. Bauerly called the Federal Election Commission to order in an open meeting at 10:02 A.M. on Thursday, May 26, 2011 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for May 5, 2011
Agenda Document No. 11-27**

Chair Bauerly recognized Vice Chair Hunter who

**MOVED to approve Agenda Document No. 11-27,
minutes for the Open Session held on May 5, 2011.**

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

Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively.

II. POLICY REGARDING DISCLOSURE OF DOCUMENTS AND INFORMATION IN THE ENFORCEMENT PROCESS

Agency Procedure for Disclosure of Documents and Information in the Enforcement Process – Memorandum from Commissioner Walther dated May 4, 2011

**Agenda Document No. 11-23
(Held over from the meeting of May 5, 2011)**

Agency Procedure for Disclosure of Exculpatory Evidence in the Enforcement Process – Memorandum from Chair Bauerly and Commissioner Weintraub dated May 4, 2011

**Agenda Document No. 11-23-A
(Held over from the meeting of May 5, 2011)**

Comments re: Disclosure and Exculpatory Evidence Procedures – Memorandum from the Acting General Counsel dated May 5, 2011

**Agenda Document No. 11-23-B
(Held over from the meeting of May 5, 2011)**

Agency Procedure for Disclosure of Documents and Information in the Enforcement Process – Memorandum from Commissioner Walther dated May 25, 2011

**Agenda Document No. 11-23-C
(Submitted Late)**

Agency Procedure for Disclosure of Exculpatory Evidence in the Enforcement Process – Memorandum from Chair Bauerly and Commissioner Weintraub dated May 25, 2011

**Agenda Document No. 11-23-D
(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. 11-23-C, 11-23-D, 11-26, 11-25, 11-25-A and 11-24-A.

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

Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively.

Chair Bauerly noted that this item was discussed at the last meeting, held over to today to provide an opportunity for public

comment, and includes revisions to each of the proposals put forth at the last meeting.

Chair Bauerly recognized Vice Chair Hunter who

MOVED to adopt Agenda Document No. 11-23-C.

Discussion followed.

Chair Bauerly recognized Vice Chair Hunter who withdrew her motion.

Chair Bauerly recognized Commissioner Walther who noted that the comment period was helpful and highlighted the changes in his revised draft procedures, set forth in Agenda Document No. 11-23-C, for a written policy that addresses the disclosure of documents and information in the enforcement process.

Discussion resumed.

Chair Bauerly recognized Commissioner Weintraub who indicated her support for the revised draft procedures, set forth in Agenda Document No. 11-23-D, for a written policy that addresses the disclosure of exculpatory evidence in the enforcement process, and,

MOVED to adopt Agenda Document No. 11-23-D.

Discussion resumed.

The motion failed on a vote of 2-4 with Commissioners

Bauerly and Weintraub voting affirmatively for the motion.

Commissioners Hunter, McGahn, Petersen and Walther dissented.

Chair Bauerly recognized Vice Chair Hunter who

MOVED to adopt Agenda Document No. 11-23-C.

The motion carried on a vote of 4-2 with Commissioners

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

III. DRAFT ADVISORY OPINION 2011-06

**Democracy Engine, LLC; Democracy Engine, Inc. PAC;
Mr. Jonathan Zucker; and Mr. Erik Pennebaker by
Laurence Gold, Esq.**

**Agenda Document No. 11-26
(Submitted Late)**

Chair Bauerly noted that requestors' counsel was present to answer any questions the Commission may have during the discussion.

Chair Bauerly recognized Ms. Esther Heiden 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 Democracy Engine, LLC's proposal to collect and forward contributions from

these individuals to Democracy Engine, Inc. PAC and other political committees. Discussion followed.

Chair Bauerly recognized Vice Chair Hunter, who

MOVED to approve Agenda Document No. 11-26.

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 2011-07

Chuck Fleischmann for Congress, Inc. by Randall B. Hebert, Treasurer

**Agenda Document No. 11-25 – Drafts A and B
(Submitted Late)**

**Agenda Document No. 11-25-A – Revised Draft B
(Submitted Late)**

(Neven Stipanovic/Robert Knop of the Office of General Counsel)

Chair Bauerly noted that, as a result of a Verizon landline outage in Washington, D.C., the Commission was unable to arrange for Mr. Hebert to appear via telephone as he had requested. Mr. Hebert confirmed that, unless the Commission has questions for him, he agrees with the Commission proceeding with his request.

Chair Bauerly 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 use of campaign funds to pay legal fees and expenses of a former campaign consultant.

**Chair Bauerly recognized Commissioner Walther who
MOVED to approve Draft A.**

The motion failed on a vote of 1-5 with Commissioner Walther voting affirmatively for the motion. Commissioners Bauerly, Hunter, McGahn, Petersen and Weintraub dissented.

**Chair Bauerly recognized Vice Chair Hunter who
MOVED to adopt Agenda Document No. 11-25-A, which is revised Draft B.**

The motion carried on a vote of 5-1 with Commissioners Bauerly, Hunter, McGahn, Petersen and Weintraub voting affirmatively for the decision. Commissioner Walther dissented.

V. PROPOSED FINAL AUDIT REPORT ON THE KANSAS REPUBLICAN PARTY (A08-02)

**Memorandum from the Audit Division dated
April 29, 2011
Agenda Document No. 11-24**

**Memorandum from Chair Bauerly and Vice Chair
Hunter dated May 25, 2011
Agenda Document No. 11-24-A
(Submitted Late)**

Chair Bauerly recognized Mr. Joseph Stoltz of the Audit Division who introduced the Audit Report.

Chair Bauerly recognized Vice Chair Hunter who

MOVED to approve Agenda Document No. 11-24-A.

Prior to the vote, Chair Bauerly explained that the process of drafting the Commission's audit reports has changed during the past year; audit reports now contain a new Additional Issues section which includes recommended findings that the Commission did not adopt by the required four votes; and therefore, the substance of this Audit Report reflects the decisions made by the Commission in March.

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

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Chair Bauerly recognized Commissioner Weintraub for a moment of personal privilege. Commissioner Weintraub noted that Mr. Ethan Carrier, the Commission's ethics officer, is leaving the agency and thanked him for his excellent service.

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VI. MANAGEMENT AND ADMINISTRATIVE MATTERS

**There being no further business to come before the
Commission, the meeting adjourned at 10:40 A.M.**

Signed:



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

Attest:



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