



AGENDA DOCUMENT NO. 18-24-A

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
WEDNESDAY, MARCH 14, 2018**

PRESENT: **Caroline C. Hunter, Chair, presiding**
Ellen L. Weintraub, Vice Chair
Matthew S. Petersen, Commissioner
Steven T. Walther, Commissioner
Alec Palmer, Staff Director¹
Lisa Stevenson, Acting General Counsel
Dayna C. Brown, Secretary and Clerk

¹ Ms. Patricia Orrock, Chief Compliance Officer represented Staff Director Palmer.

Chair Caroline C. Hunter called the Federal Election Commission to order in an open meeting at 2:43 P.M. on Wednesday, March 14, 2018 with a quorum present.

I. REG 2011-02: DRAFT NOTICE OF PROPOSED RULEMAKING ON INTERNET COMMUNICATION DISCLAIMERS AND DEFINITION OF “PUBLIC COMMUNICATION”

**Agenda Document No. 18-12-A
(Submitted Late)**

(Held over from the March 8, 2018 meeting)

Chair Hunter stated that the Commission was delighted to be able to adopt a Notice of Proposed Rulemaking on Internet Communication Disclaimers and a definition of Public Communication. The Chair indicated that the Office of General Counsel would make a presentation, followed by anticipated comments from Commissioners prior to voting on the document.

Vice Chair Weintraub then

MOVED to suspend the rules on timely submission of agenda documents in order that the Commission may consider the late submission of Agenda Document No. 18-12-A.

The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

**I. REG 2011-02: DRAFT NOTICE OF PROPOSED RULEMAKING ON
INTERNET COMMUNICATION DISCLAIMERS AND DEFINITION OF “PUBLIC
COMMUNICATION” (continued)**

Chair Hunter recognized Ms. Jessica Selinkoff of the Office of General Counsel who stated that Agenda Document No. 18-12-A sets out proposals in a Notice of Proposed Rulemaking (NPRM) for the Commission to amend its rule defining public communication and the rules concerning disclaimers, specifically for internet communications. The Commission first started looking at the issue of internet disclaimers in 2011. It has published several Advanced Notices of Proposed Rulemaking in the years since then. The Commission first considered changing the word “website” in the definition of public communication to include things such as “apps,” in 2016 in a rulemaking concerning Technological Modernization. The draft before the Commission proposes two (2) alternative approaches to how internet communications must include disclaimers. Both of the proposals would allow for the use of an adapted disclaimer by which a communication may provide a full disclaimer utilizing a technological mechanism. The NPRM also proposes to amend the definition of public communication to apply not only to communications placed on another person’s website, but to also include, as previously proposed with the same language in the Technological Modernization rulemaking, communications placed for a fee on another person’s internet enabled device or application.

Chair Hunter thanked Ms. Selinkoff for her excellent presentation. The Chair also thanked the General Counsel's Office for helping the Commission get to where they are today, stating that they have been extremely helpful throughout the whole process. She recognized Acting General Counsel Lisa Stevenson, Ms. Erin Chlopak, Mr. Neven Stiponavic, and Jessica Selinkoff. Chair Hunter also thanked Executive Assistants Amy Rothstein and Tom Moore for their efforts.

The Chair reiterated that the Commission was pleased to be putting this proposal out. She stated that it was a fairly narrow rulemaking pertaining to disclaimers on public communications on the internet that contain express advocacy, solicit contributions, or are made by political committees. Chair Hunter stated that, as Ms. Selinkoff noted, both proposals begin with requiring the full disclaimer and both also allow an adapted disclaimer under certain circumstances. The Chair highlighted that one of the major differences between Proposal A and Proposal B, is what gets one to the adapted disclaimer. Proposal A requires a full disclaimer and says that if it cannot fit, you go to the adapted disclaimer whereas Proposal B tries to be somewhat more objective and includes a measure. Specifically, Proposal B proposes that if the disclaimer takes up more than 10% of the ad, the adapted disclaimer can be used. Chair Hunter further stated that Proposal B includes questions such as how the 10% is measured and

whether 10% is the correct metric as the Commission seeks advice from the technological community. She stated that the Commission was open to any and all comments. Chair Hunter further stated that under Alternative B there is also a possibility that if the adapted disclaimer does not fit, to allow just an indicator on the face of the ad. The Chair highlighted that the Commission was working on examples that would attempt to illustrate how Alternative A and Alternative B would apply to real world examples.

Chair Hunter recognized Vice Chair Weintraub who thanked the 150,000 Americans who weighed in when the Commission asked whether they should move forward with this rulemaking, with an overwhelming answer of yes to strengthening the Commission's disclaimer requirements. Vice Chair Weintraub stated that the Commission hears the commenters and is here today to formally start the rulemaking process, and welcomed hearing from those commenters again on the specific proposals being put forward today. She expressed appreciation for commenters' ideas, energy, and interests.

The Vice Chair stated that there were many people who burned the midnight oil to prepare this document for vote today. She further stated that she and the Chair spent many, many hours with a very dedicated group of people, to include: Tom Andersen, Jon Borrowman, and Eric Brown from Commissioners' staff; and Erin Chlopak, Neven Stipanovic, and Lisa

Stevenson of the General Counsel's Office. Vice Chair Weintraub noted that there were three people without whom this document would not have been produced: the indefatigable Amy Rothstein from the Chair's office; the tech savvy and relentlessly upbeat Tom Moore from the Vice Chair's office; and the incomparable Jessica Selinkoff from the Office of General Counsel who spent many hours working on this document.

The Vice Chair stated that she was happy to put these proposals out to begin this formal process. She explained that although the document contains a couple different proposals, people should not look at the proposals as silos with only one winner, noting instead that it is possible to combine elements of the proposals and that there is overlap between the proposals. While there are significant differences between them, there are also significant similarities. Vice Chair Weintraub reiterated that both proposals, and the document as a whole, affirm that there is a requirement for disclaimers for these ads. She further noted that while this is a narrow proposal and she would have preferred to have done something broader than this, she is delighted that the Commission was able to obtain unanimous support for this narrow proposal which she believes will be an improvement in bringing greater transparency to political ads. This will not solve all the problems we saw in the last election, but it will be a step in the right direction. The Vice Chair stated that the document is clear that the types of

ads discussed require disclaimers and the proposals lay out the different ways of providing that information, with differences including at what point one can move to an adapted disclaimer which would somehow use technology to get to the full disclaimer. Vice Chair Weintraub expressed her preference to try and fashion a rule that will have the most information on the face of the ad because not everyone will click through to find the information. Bringing the information before the American public is the most important criteria for her. The Vice Chair highlighted that an additional difference between the two proposals is that there is a new exemption proposed in Alternative B, which she is not personally leaning toward; however, she noted that the Commission welcomes all comments. Vice Chair Weintraub echoed Chair Hunter's statement that the process of creating the NPRM made both proposals stronger, with both proposals evolving in the course of the writing process. She indicated that there will be a 60-day comment period followed by a hearing on June 27th, as noted in the document, and stated that the Commission looked forward to robust comments.

Discussion continued with regard to the proposed exemption outlined in Alternative B, as well as the small items and impracticability exception.

Chair Hunter recognized Commissioner Petersen who stated that he was pleased to be able to support this document today, and commended the

Chair and Vice Chair, as well as their respective staffs, for all of their efforts to bring this document to this point. He further thanked Jon Borrowman from his staff for his work in helping to facilitate what will hopefully be a successful conclusion. Commissioner Petersen noted that he has supported moving forward on this topic for a few years now and stated that the Commission, to its credit, has sought to facilitate the continuing development of the internet, apps, and a myriad of different technology as a means for consuming and disseminating political information. Traditional media such as television, radio, newspaper and mail is becoming less and less relevant for purposes of receiving and consuming political news, making contributions, organizing political movements, and even get-out-the-vote activities which are increasingly being done in an online environment.

Commissioner Petersen further stated that radio and television are relatively static in that whether viewing a television ad on a 55" HDTV or a 10" tube television, you are getting the same ad with the exception of the size, whereas in an online environment whether or not you are viewing an ad on a desktop, tablet, or cellphone can make a difference in terms of the content you receive. Whether the cellphone is an iPhone, Samsung Galaxy, or Google Pixel phone can also make a difference. He explained that all these different factors can impact the way in which a political communication is received, and the Commission is therefore in a position where it has a strong interest

in ensuring that it is not impeding the further development of the internet and technology as a means for allowing and facilitating political communication, while at the same time ensuring that the disclaimer requirements required by the Federal Election Campaign Act are also being met. Commissioner Petersen stated that threading this needle is what this rulemaking exercise is all about. He explained that comments are especially valuable in this rulemaking because the Commission is not necessarily dealing with purely questions of law within its wheelhouse of expertise, but these issues regarding the rapidly evolving state of technology is an area where the Commission will be well-served by comments and testimony about what the current state of play is in the technology world so that the Commission can develop relevant, meaningful rules. The comments the Commission receives will be especially valuable as it works to ensure that the rules it drafts are not obsolete in a short period of time, and Commissioner Petersen joined his colleagues in inviting as much response to the NPRM as possible.

Chair Hunter recognized Commissioner Walther who stated that he joined his colleagues in supporting this document. He stated that this has been a long time coming, as the Commission has been dealing with these type of issues for as long as he has been on the Commission. Commissioner Walther stated that in the past the Commission has attempted this but was unable to find agreement, and the Commission has also been confronted with

new ways for people to spend money, as well as with new technology. He stated that the last couple of years have taught the Commission that there are new pressures to find out where the money is coming from and this proposed rulemaking is one way that will improve the Commission's ability to do so. Commissioner Walther stated that this small step forward was a positive one, and remarked that it was great to see the Chair and Vice Chair working together so intently to get the Commission to this point and expressed his hope that the Commission can come up with a final rule that can be adopted.

Chair Hunter recognized Vice Chair Weintraub who

MOVED that the Commission approve Agenda Document No. 18-12-A, a Notice of Proposed Rulemaking on Internet Communication Disclaimers and Definition of "Public Communication" and authorize the Office of General Counsel to submit the Notice for publication in the *Federal Register* for comment.

The motion carried by a vote of 4-0 with Commissioners Hunter, Petersen, Walther, and Weintraub voting affirmatively for the decision.

II. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 3:11 P.M.

Signed:

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

Attest:

**Dayna C. Brown
Secretary and Clerk of the Commission**