

AGENDA DOCUMENT NO. 02-89

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, NOVEMBER 21, 2002
AND ITS CONTINUATION ON
MONDAY, NOVEMBER 25, 2002

PRESENT: David M. Mason, Chairman, presiding
Karl J. Sandstrom, Vice Chairman
Danny L. McDonald, Commissioner
Bradley A. Smith, Commissioner
Scott E. Thomas, Commissioner
Michael E. Toner, Commissioner
James A. Pehrkon, Staff Director
Lawrence H. Norton, General Counsel
Mary W. Dove, Secretary

Chairman David M. Mason called the Federal Election Commission to order in an open meeting at 1:05 P.M. on Thursday, November 21, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for November 14, 2002
Agenda Document No. 02-81

Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve the minutes for the open meeting of Thursday, November 14, 2002, as submitted in Agenda Document No. 02-81.

The motion carried on the vote of 6-0 with Commissioners Mason, McDonald, Sandstrom, Smith, Thomas, and Toner voting affirmatively.

II. FEC POLICY STATEMENT: INTERIM REPORTING
PROCEDURES

Agenda Documents No. 02-84,
No. 02-84-A and No. 02-84-B

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to suspend the rules
on the timely submission of
agenda documents in order to
consider Agenda Documents
No. 02-84, No. 02-84-A, and
No. 02-84-B.

The motion carried on the vote of 6-0.

Chairman Mason recognized Mr. Jonathan Levin
of the General Counsel's Office and Mr. Gregory Scott
of the Information Division, who reviewed the proposed
interim reporting procedures that would apply to State
and local party committees and their allocation of
disbursements for federal and non-federal or federal
and "Levin" activity.

II. FEC POLICY STATEMENT: INTERIM REPORTING
PROCEDURES (continued)

Mr. John Vergelli of the General Counsel's Office and Ms. Debbie Chacona of the Reports Analysis Division participated in the discussion which followed.

The Chairman recognized Vice Chairman Sandstrom who reviewed his proposed amendment. Following discussion, Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve his proposed amendment, as submitted in Agenda Document No. 02-84-A.

The motion carried unanimously. (6-0)*

Chairman Mason recognized Commissioner Toner, who reviewed his proposed amendments, and

MOVED to approve the amendments, as set forth in Agenda Document No. 02-84-B.

The motion carried unanimously. (6-0)*

* The original votes were 5-0. By unanimous consent, Commissioner McDonald was permitted to cast his votes later in the meeting.

II. FEC POLICY STATEMENT: INTERIM REPORTING
PROCEDURES (continued)

Chairman Mason recognized Commissioner Smith,
who

MOVED to take the following actions
in the above-captioned matter:

1. Approve the Statement of Policy,
as submitted in Agenda Document
No. 02-84, as amended by Agenda
Documents No. 02-84-A and
No. 02-84-B, and further amended
by removing the requirement for
a unique identifier for trans-
actions on "Federal Election
Activities" for publication in
the *Federal Register*.
2. Direct the Office of General Counsel
to submit the revised Statement of
Policy to Congress in accordance
with the Congressional Review Act,
5 U.S.C. § 801 et seq.

The motion carried on the vote of 6-0.

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The meeting recessed at 2:15 P.M. and
reconvened at 2:25 P.M. with a quorum present.

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III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")

Agenda Documents No. 02-82 and
No. 02-82-A through No. 02-82-K

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 02-82 and
No. 02-82-A through No. 02-82-K.

The motion carried on the vote of 6-0.

Chairman Mason recognized Mr. John Vergelli of the
General Counsel's Office who presented a brief overview of
the subject document. The Chairman noted the amendments
would be considered in alphabetical order, with the exception
of the General Counsel's amendments in Agenda Document
No. 02-82-A, which would be presented later.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Commissioner Toner was recognized who reviewed his amendments to Part 113 (Excess Campaign Funds and Funds Donated to Support Federal Office Holder Activities), as contained in Agenda Document No. 02-82-H, noting that the amendments related to the amendments submitted by the General Counsel's Office in Agenda Document No. 02-82-B. Ms. Rosemary Smith of the General Counsel's Office participated in the discussion which followed.

The Chairman recognized Commissioner Toner, who

MOVED to approve the amendments in Agenda Document No. 02-82-B, as amended by Agenda Document No. 02-82-H, as amended with the new sentence to be inserted on Page 5, Line 6 of Agenda Document No. 02-82-B, to read as follows:

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

"In light of Congress deleting the phrase 'in excess of any amount to defray' campaign expenses from section 439a, and the Commission's revision herein to 11 CFR 113.1 and 113.2, officeholders may spend campaign funds entirely to defray campaign expenses and expenses incurred in connection with the recipient's duties as a holder of federal office, and that such expenses may be paid in any order at their discretion."

The motion carried on the vote of 5-1. *

Commissioners McDonald, Sandstrom, Smith, Thomas, and Toner voted affirmatively. Commissioner Mason dissented.

* The original vote was 4-1. By unanimous consent, Commissioner McDonald was permitted to cast his vote later in the meeting.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

The Chairman noted Agenda Document No. 02-82-C would not be offered, and he recognized Commissioner Thomas who presented an amendment to § 110.11 (Communications; advertising; disclaimers), as submitted in Agenda Document No. 02-82-D, which related to disclaimers on political Internet activity. A discussion followed.

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The meeting recessed at 3:50 P.M. and reconvened at 4:00 P.M. with a quorum present.

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III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason recognized Ms. Dawn Odrowski,
Ms. Ruth Heilizer, and Mr. Richard Ewell of the General
Counsel's Office.

Chairman Mason recognized Commissioner Smith,
who

MOVED to amend proposed 110.11(a)
as follows:

"This section applies only to public
communications, defined for this
section to include the communications
at 11 CFR 100.26 plus unsolicited
electronic mail of more than 500
identical or substantially similar
communications and Internet websites
maintained by political committees
available to the general public,
and electioneering communications,
as defined in 11 CFR 100.29."

The motion failed on the vote of 3-3 with
Commissioners Mason, Smith, and Toner voting affirmatively.
Commissioners McDonald, Sandstrom, and Thomas dissented.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason recognized Commissioner Toner,
who

MOVED to approve the internet
amendment, as set forth in
Agenda Document No. 02-82-D,
on Page 2.

The motion failed on the vote of 3-3 with
Commissioners McDonald, Thomas, and Toner voting
affirmatively. Commissioners Mason, Sandstrom, and
Smith dissented.

The Chairman noted that Agenda Document
No. 02-82-E had been withdrawn.

Chairman Mason introduced his proposed
amendment at 11 CFR 113.1(g)(7), "Definition of
'candidate's family'", as submitted in Agenda Document
No. 02-82-F. A discussion followed.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

The Chairman recognized Commissioner Toner,
who

MOVED to approve the amendment
as submitted in Agenda Document
No. 02-82-F and to include any
necessary technical amendments
to the rule and the Explanation
and Justification.

A discussion followed.

Chairman Mason recognized Commissioner McDonald,
who

MOVED IN A SUBSTITUTE MOTION to
amend Agenda Document No. 02-82,
Page 68, (iv) to read:

"A person who shares a
residence with the candidate."

The motion carried on the vote of 6-0.

Passage of the substitute motion rendered the
original motion moot.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason presented his amendment at 11 CFR
113.1(g)(1)(i)(B) (Funeral Expenses), as submitted in Agenda
Document No. 02-82-G.

The Chairman recognized Vice Chairman Sandstrom,
who

MOVED to approve Agenda Document
No. 02-82-G.

The motion carried on the vote of 6-0.

The Vice Chairman was recognized, and he reviewed
his amendment at 11 CFR 110.11(d), as contained in Agenda
Document No. 02-82-J, which related to communications.

Chairman Mason recognized Commissioner Thomas who
presented his amendment at 11 CFR 110.11(d)(2), as set forth
in Agenda Document No. 02-82-D.

A discussion followed.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to approve the amendment set forth in Agenda Document No. 02-82-D, as amended by deleting the words "made in cooperation, consultation, or concert with, or at the request or suggestion of" and substituting the words "with the approval of" in lieu thereof; and, further, to approve the amendments, as set forth in Agenda Document No. 02-82-J.

The motion carried on the vote of 6-0.

Chairman Mason recognized Commissioner Toner who presented his amendments in Agenda Document No. 02-82-K, which related to personal use of campaign funds.

A discussion followed.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

It was agreed without objection to continue
the open meeting at 10:00 A.M. on Monday, November 25,
2002.

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The meeting recessed at 5:20 P.M. on Thursday,
November 21, 2002, and reconvened at 10:10 A.M. on Monday,
November 25, 2002, with a quorum present.

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III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason recognized Vice Chairman

Sandstrom, who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 02-82-L
through No. 02-82-P.

The motion carried on the vote of 6-0.

Chairman Mason recognized Commissioner Toner
who reviewed his proposed amendments regarding candidates
salaries, as submitted in Agenda Documents No. 02-82-K
and No. 02-82-O, to amend Agenda Document No. 02-82-A,
submitted by the Office of General Counsel. He offered
a technical amendment to Agenda Document No. 02-82-K to
remove the brackets in the sentence after the word "limit"
through the word "seeks."

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

A discussion followed.

The Chairman recognized Commissioner Toner,
who

MOVED to approve Agenda Document
No. 02-82-A, as amended by Agenda
Document No. 02-82-K.

The motion failed on the vote of 3-3 with
Commissioners Mason, Smith, and Toner voting affirmatively.
Commissioners Sandstrom, Thomas, and McDonald dissented.

Chairman Mason recognized Commissioner Toner,
who

MOVED to approve Agenda Document
No. 02-82-A, as amended by Agenda
Documents No. 02-82-K and
No. 02-82-O, and to include an
additional amendment that a
candidate accepting a salary under
this provision must consent to the
release of income tax returns and
other evidence of income pursuant
to the request of the Commission.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

The motion carried on the vote of 5-1 with
Commissioners Mason, McDonald, Smith, Thomas, and Toner
voting affirmatively. Commissioner Sandstrom dissented.

Chairman Mason recognized Commissioner Thomas
who presented his amendments regarding disclaimers for
unsolicited e-mail, committee websites, and solicitations
for contributions, as submitted in Agenda Documents No.
02-82-N and No. 02-82-P.

A discussion followed.

The Chairman recognized Commissioner Thomas,
who

MOVED to approve Agenda
Document No. 02-82-N.

The motion carried on the vote of 5-1 with
Commissioners Mason, McDonald, Smith, Thomas, and Toner
voting affirmatively. Commissioner Sandstrom dissented.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason reviewed his proposed amendment,
which pertained to the definition of a candidate's family,
as contained in Agenda Document No. 02-82-L.

Following discussion the Chairman recognized
Commissioner McDonald, who

MOVED to approve Agenda Document
No. 02-82-L, as amended by deleting
the word "household" and substituting
the word "residence" in lieu thereof.

The motion carried on the vote of 6-0.

The Chairman reviewed his amendment in Agenda
Document No. 02-82-M, pertaining to authorized committees.

A discussion was held.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason recognized Vice Chairman Sandstrom,
who

MOVED to approve Agenda Document
No. 02-82-M, subject to the following
amendment: Delete the last sentence
in the second paragraph, and substitute
the following in lieu thereof:

"In furtherance of the candidate's
election, a candidate may continue
to contribute to state and local
candidates, pursuant to this
section."

The motion carried on the vote of 6-0.

The Chairman recognized Commissioner Toner,
who

MOVED to approve the amendments,
as submitted in Agenda Document
No. 02-82-I, from the General
Counsel's Office, excluding the
ones previously approved at the
table.

The motion carried on the vote of 6-0.

III. DRAFT FINAL RULES AND EXPLANATION AND
JUSTIFICATION ON DISCLAIMERS, FRAUDULENT
SOLICITATIONS, CIVIL PENALTIES AND PERSONAL
USE OF CAMPAIGN FUNDS (BCRA "OTHER PROVISIONS")
(continued)

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to approve the Final Rules
and Explanation and Justification
on Disclaimers, Fraudulent
Solicitations, Civil Penalties
and Personal Use of Campaign Funds
(BCRA "Other Provisions"), as set
forth in Agenda Document No. 02-82,
as previously amended, and to include
any additional necessary technical
and conforming amendments, for
publication in the *Federal Register*
and transmittal to Congress.

The motion carried on the vote of 6-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

There were no routine administrative matters
to come before the Commission.

The meeting adjourned at 11:30 A.M. on
Monday, November 25, 2002.

Signed:

David M. Mason
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission