

AGENDA DOCUMENT NO. 02-62

MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION

THURSDAY, AUGUST 22, 2002

PRESENT: Karl J. Sandstrom, Vice Chairman, presiding  
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

Vice Chairman Karl J. Sandstrom called the Federal Election Commission to order in an open meeting at 10:08 A.M. on Thursday, August 22, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for August 15, 2002

Agenda Document No. 02-59

Vice Chairman Sandstrom recognized Commissioner Smith, who

MOVED to approve the Minutes for the open meeting of Thursday, August 15, 2002, as submitted in Agenda Document No. 02-59.

The motion carried on the vote of 5-0 with Commissioners McDonald, Sandstrom, Smith, Thomas, and Toner voting affirmatively.

II. DRAFT ADVISORY OPINION 2002-09  
(Alternative Drafts)

Agenda Document No. 02-58

Vice Chairman Sandstrom recognized Ms. Ruth Heilizer of the General Counsel's office who presented draft Advisory Opinion 2002-09, Alternatives A and B, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the distribution of political advertisements through wireless telecommunications networks.

A discussion followed.

The Vice Chairman recognized Commissioner Thomas who presented amendments to Alternative B, as follows:

- 1) Page 5, Line 6: delete the word "now" and substitute the word "will" in lieu thereof;
- 2) Page 5, Line 9: delete the word "are" at the beginning of the line and substitute the words "will be" in lieu thereof;

II. DRAFT ADVISORY OPINION 2002-09  
(Alternative Drafts) (continued)

- 3) Page 5, Line 11: insert the words  
"will have to" after the word  
"disclaimers."

It was agreed without objection to accept the  
amendments.

Vice Chairman Sandstrom recognized Commissioner  
Toner who offered the following amendment to Alternative B:

On Page 5, Line 19, delete the  
words "even greater" and insert  
the word "similar" in lieu thereof.

The amendment was accepted without objection.

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The meeting recessed at 11:15 A.M. and reconvened  
at 11:30 A.M. with a quorum present.

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II. DRAFT ADVISORY OPINION 2002-09  
(Alternative Drafts) (continued)

Vice Chairman Sandstrom recognized Commissioner Thomas who offered amendments to Alternative B as follows:

- 1) Drop a footnote at the end of the sentence on Page 5, Line 15, which reads:

"The Commission notes that Target suggested in its request certain alternatives to allow recipients to ascertain the identity of the sponsors of political messages (a telephone or website reference). Nothing in this opinion would preclude Target's use of these approaches."

- 2) Delete the language on Page 6, Line 2, beginning with the word "it" through the word "decision" on Line 4.
- 3) Insert a sentence on Page 6, Line 10, which reads as follows:

"The Commission emphasizes that if any of the material circumstances proposed change, the conclusion herein would not apply."

II. DRAFT ADVISORY OPINION 2002-09  
(Alternative Drafts) (continued)

It was agreed without objection to accept the proposed amendments.

Vice Chairman Sandstrom recognized Ms. Ruth Heilizer of the General Counsel's Office who offered the following amendments to Alternative B:

- 1) Delete the reference to the February 25, 2002 letter, which appears on Page 1, Line 9.
- 2) Delete Footnote 1, which appears on Pages 2 and 3.

The amendments were accepted without objection.

The Vice Chairman recognized Commissioner Toner who presented the following amendment to Alternative B:

On Page 5, Line 6, insert the words "through any type of general public political advertising" after the word "committee."

It was agreed without objection to accept the amendment.

II. DRAFT ADVISORY OPINION 2002-09  
(Alternative Drafts) (continued)

Vice Chairman Sandstrom recognized Commissioner  
Smith, who

MOVED to approve Alternative B  
of draft Advisory Opinion 2002-09,  
as set forth in Agenda Document  
No. 02-58, subject to the amendments  
noted above.

The motion carried on the vote of 4-1 with  
Commissioners Sandstrom, Smith, Thomas, and Toner voting  
affirmatively. Commissioner McDonald dissented.

III. DRAFT NOTICE OF PROPOSED RULEMAKING ON  
DISCLAIMERS, FRAUDULENT SOLICITATION,  
CIVIL PENALTIES, AND PERSONAL USE OF  
CAMPAIGN FUNDS

Agenda Document No. 02-60 (Submitted late)

Vice Chairman Sandstrom recognized Commissioner  
Smith, who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 02-60.

III. DRAFT NOTICE OF PROPOSED RULEMAKING ON  
DISCLAIMERS, FRAUDULENT SOLICITATION,  
CIVIL PENALTIES, AND PERSONAL USE OF  
CAMPAIGN FUNDS

(continued)

The motion carried on the vote of 5-0 with Commissioners McDonald, Sandstrom, Smith, Thomas, and Toner voting affirmatively.

Vice Chairman Sandstrom recognized Mr. John Vergelli of the General Counsel's Office who presented an overview of the subject document.

A discussion followed.

The Vice Chairman recognized Commissioner Toner who presented an amendment at Page 10, Line 10, after the period, insert the following:

"Or, alternatively, there could be a safe harbor for a disclaimer with a type size that is at least as large as the smallest type size in the communication. Or, there could be a safe harbor for a disclaimer with a type size that is at least as large as the smallest type size in the body of the text of the message."



III. DRAFT NOTICE OF PROPOSED RULEMAKING ON  
DISCLAIMERS, FRAUDULENT SOLICITATION,  
CIVIL PENALTIES, AND PERSONAL USE OF  
CAMPAIGN FUNDS

(continued)

It was agreed without objection to accept  
the proposed amendment.

Vice Chairman Sandstrom noted that it was originally the intention of the Commission to include regulations dealing with inaugural committees in this rulemaking. However, that rulemaking will be considered at a later date, and, if necessary, through interim rules after a determination is made as to what issues may fall under that rulemaking authority.

The Vice Chairman recognized Mr. John Vergelli of the General Counsel's Office who presented the following amendments:

III. DRAFT NOTICE OF PROPOSED RULEMAKING ON  
DISCLAIMERS, FRAUDULENT SOLICITATION,  
CIVIL PENALTIES, AND PERSONAL USE OF  
CAMPAIGN FUNDS

(continued)

- 1) Page 8, Line 2: Delete the word "to";
- 2) Page 11, Line 14: Delete the word "aural"  
and substitute the word "oral" in lieu  
thereof;
- 3) Page 12, Line 20: Delete the comma at  
the end of the line.

The amendments were accepted without objection.

Vice Chairman Sandstrom recognized Commissioner

Smith, who

MOVED to approve the draft Notice of Proposed Rulemaking relating to disclaimers, fraudulent solicitation, civil penalties, and personal use of campaign funds, for publication in the FEDERAL REGISTER, as submitted in Agenda Document No. 02-60, as amended at the table, and to incorporate any technical and conforming amendments, as appropriate.

III. DRAFT NOTICE OF PROPOSED RULEMAKING ON  
DISCLAIMERS, FRAUDULENT SOLICITATION,  
CIVIL PENALTIES, AND PERSONAL USE OF  
CAMPAIGN FUNDS

(continued)

The motion carried on the vote of 5-0 with  
Commissioners McDonald, Sandstrom, Smith, Thomas, and  
Toner voting affirmatively.

IV. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 11:55 A.M.

Signed:

Karl J. Sandstrom  
Vice Chairman of the  
Commission

Attest:

Mary W. Dove  
Secretary of the  
Commission

