

AGENDA DOCUMENT NO. 02-89

APPROVED DECEMBER 5, 2002

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.

\* \* \* \* \*

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

\* \* \* \* \*

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.

\* \* \* \* \*

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

\* \* \* \* \*

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.

\* \* \* \* \*

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. .

\* \* \* \* \*

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. .

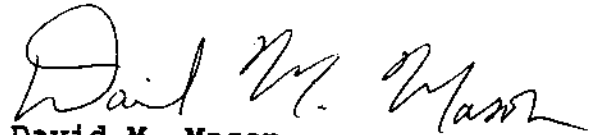
The motion carried on the vote of 6-0.

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