

AGENDA DOCUMENT NO. 02-66

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, SEPTEMBER 12, 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 10:05 A.M. on Thursday, September 12, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

- A. Minutes for August 22, 2002
Agenda Document No. 02-62
- B. Minutes for August 29, 2002
Agenda Document No. 02-63

Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve the minutes for the open meeting of Thursday, August 22, 2002, and Thursday, August 29, 2002, as submitted in Agenda Documents No. 02-62 and No. 02-63, respectively.

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

Without objection, the agenda was reordered
to consider Item III.

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III. ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM
EVALUATION

(Held over from the meeting of August 29, 2002)

Agenda Document No. 02-61

There was a discussion of the subject document,
and Ms. Kathryn McCarty and Mr. Charles Pou, Jr. of ADR
Vantage, Inc., members of the firm contracted to conduct
the evaluation, were recognized. Staff Director James A.
Pehrkon, General Counsel Lawrence H. Norton, Associate
General Counsel Rhonda Vosdingh, and Mr. Allan Silberman,
Director, of the ADR Program, also participated in the
discussion.

III. ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM
EVALUATION

(continued)

Chairman Mason recognized Commissioner Toner,
who

MOVED to accept the report titled
"Evaluation of the Federal Election
Commission's Pilot ADR Program," as
submitted in Agenda Document No. 02-61,
as amended pursuant to the meeting
discussion; and, further, conclude the
ADR Pilot Program and establish a permanent
Office of Alternative Dispute Resolution.

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

The Chairman recognized Commissioner Toner,
who

MOVED to instruct the Staff Director to
report back to the Commission, after
consultation with the Office of General
Counsel, with recommendations as to how
the ADR Program could be improved.

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

The meeting recessed at 11:50 A.M. and reconvened at 12:05 P.M. with a quorum present.

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II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED AND INDEPENDENT EXPENDITURES

Agenda Documents No. 02-64,
No. 02-64-A, No. 02-64-B,
and No. 02-64-C (Submitted late)

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. 02-64, No. 02-64-A, No. 02-64-B, and No. 02-64-C.

The motion carried on the vote of 6-0.

The Chairman recognized General Counsel Lawrence Norton and the members of his staff who have worked on the draft notice of the subject document: Ms. Rosemary Smith, Acting Associate General Counsel; John Vergelli, Acting Assistant General Counsel; and Attorneys Mark Allen, Anthony Buckley, Cheryl Fowle, and Richard Ewell.

II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED
AND INDEPENDENT EXPENDITURES

(continued)

Chairman Mason recognized Mr. John Vergelli of the General Counsel's Office who presented a brief overview of the draft Notice of Proposed Rulemaking relating to coordinated and independent expenditures.

The Chairman recognized Vice Chairman Sandstrom who reviewed his proposed amendments, as submitted in Agenda Document No. 02-64-A. A discussion followed.

Chairman Mason recognized the Vice Chairman,
who

MOVED to approve the proposed amendments, as set forth in Agenda Document No. 02-64-A, subject to the following language presented by the General Counsel's Office to be included in the narrative at Page 59, Line 17:

II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED
AND INDEPENDENT EXPENDITURES

(continued)

"Finally, the Commission notes that it is not at this time proposing specific rules to implement the statutory language 'intends to make' an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C). The Commission seeks comment on whether such rules are necessary, and if so, how would they implement the statutory language."

The motion carried on the vote of 6-0.

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There was a recess at 12:20 P.M. and the meeting reconvened at 2:05 P.M. with a quorum present.

II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED
AND INDEPENDENT EXPENDITURES

(continued)

The proposed amendments submitted by Chairman Mason in Agenda Document No. 02-64-B were considered and a correction was noted in the third line from the bottom to change the word "consider" to "considered."

Chairman Mason recognized Commissioner Smith,
who

MOVED to approve the proposed
amendments, as set forth in
Agenda Document No. 02-64-B,
as amended.

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

A discussion was held relating to the proposed
amendments offered by the Office of General Counsel as
presented in Agenda Document No. 02-64-C.

II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED
AND INDEPENDENT EXPENDITURES

(continued)

During the presentation of the amendments by Mr. John Vergelli of the General Counsel's Office, it was noted that Commissioner Smith's suggested amendment relating to a "former employee" was incorporated in Agenda Document No. 02-64-C, beginning on Page 2 at Line 16 through Page 3 at Line 54.

Chairman Mason recognized Commissioner Thomas,
who

MOVED to approve the proposed amendments, as set forth in Agenda Document No. 02-64-C; and, further, to revise Agenda Document No. 02-64 to include language at the appropriate place seeking comment on whether, under some circumstances, fund raisers should be treated as agents, and under what circumstances they should be treated as agents per se.

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

II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED
AND INDEPENDENT EXPENDITURES

(continued)

There was a discussion of reporting rules relating to independent expenditures on 24- and 48-hour reports.

Chairman Mason recognized Commissioner Thomas, who

MOVED to include language in Agenda Document No. 02-64 on Page 14 seeking comment on calendar year aggregation for 48-hour independent expenditure reports.

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

II. NOTICE OF PROPOSED RULEMAKING ON COORDINATED
AND INDEPENDENT EXPENDITURES (continued)

It was agreed without objection to include
the following amendments in Agenda Document No. 02-64:

- a) Page 73, Line 18: include language to seek comments on whether to include an additional exception in proposed paragraph (b) for non partisan voter guides.
- b) Page 81, Line 13: delete the word "the" before the word "candidate's" and substitute the word "a" in lieu thereof.
- c) Page 109, Line 23: change the word "discussion" to "discussions."

There was further discussion.

Chairman Mason recognized Commissioner Smith,
who

MOVED to approve the draft Notice of Proposed Rulemaking on Coordinated and Independent Expenditures, as set forth in Agenda Document No. 02-64, as amended, for publication in the *Federal Register*.

The motion carried on the vote of 5-0 with
Commissioners Mason, McDonald, 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 3:25 P.M.

Signed:

David M. Mason
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the
Commission