



AGENDA DOCUMENT NO. 04-77

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION**

THURSDAY, AUGUST 19, 2004

PRESENT:

Bradley A. Smith, Chairman, presiding

Ellen L. Weintraub, Vice Chair

David M. Mason, Commissioner

Danny L. McDonald, Commissioner

Scott E. Thomas, Commissioner

Michael E. Toner, Commissioner

James A. Pehrkon, Staff Director

Lawrence H. Norton, General Counsel

Mary W. Dove, Secretary

Chairman Bradley A. Smith called the Federal Election Commission to order in an open meeting at 10:10 A.M. on Thursday, August 19, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for August 12, 2004
Agenda Document No. 04-76**

Chairman Smith recognized Vice Chair Weintraub, who

**MOVED to approve the minutes for the
Open Meeting of Thursday, August 12,
2004, as submitted in Agenda
Document No. 04-76.**

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

II. DRAFT ADVISORY OPINIONS

A. Draft Advisory Opinion 2004-19

DollarVote by Andrew W. Mitchell, President

Agenda Document No. 04-74

Chairman Smith recognized Ms. Margaret Perl of the General Counsel's Office who presented draft Advisory Opinion 2004-19

II. DRAFT ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2004-19 (continued)

concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed internet-based service.

A discussion followed.

Chairman Smith recognized Commissioner Thomas, who

**MOVED to approve draft Advisory Opinion
2004-19, as submitted in Agenda Document
No. 04-74.**

The motion carried on the vote of 4-2 with Commissioners

McDonald, Smith, Thomas, and Toner voting affirmatively.

Commissioners Mason and Weintraub dissented.

B. Draft Advisory Opinion 2004-25

Senator Jon Corzine by counsel, Marc E. Elias

**(Held over from the meeting of August 12, 2004)
Agenda Document No. 04-70**

Late submissions:

**Agenda Document No. 04-70-A (Alternative draft)
Agenda Document No. 04-70-B**

Chairman Smith recognized Vice Chair Weintraub, who

II. DRAFT ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2004-25 (continued)

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 04-70-A and No. 04-70-B.

The motion carried on the vote of 6-0.

Chairman Smith recognized Mr. Jonathan Levin of the General Counsel's Office who presented draft Advisory Opinion 2004-25 and the alternative concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to Senator Corzine's donation of his personal funds to organizations engaging in voter registration activity.

During the discussion which followed, it was agreed without objection to amend Agenda Document No. 04-70, on Page 6, Line 10 by inserting the words "as represented by the requestor" after the word "assumes."

The Chairman recognized Vice Chair Weintraub, who

MOVED to approve draft Advisory Opinion 2004-25, as submitted in Agenda Document No. 04-70, as amended above, and further amended by Agenda Document No. 04-70-B.

II. **DRAFT ADVISORY OPINIONS** (continued)

B. **Draft Advisory Opinion 2004-25** (continued)

The motion carried on the vote of 5-1 with Commissioners

Mason, McDonald, Thomas, Toner, and Weintraub voting affirmatively.

Commissioner Smith dissented.

* * * * *

**The meeting recessed at 11:20 A.M. and reconvened at
11:35 A.M. with a quorum present.**

* * * * *

C. **Draft Advisory Opinion 2004-26**

**Representative Gerald C. Weller and Ms. Zury Rios Sosa,
by counsel, Jan Witold Baran**

Agenda Document No. 04-72

Agenda Document No. 04-72-A (Submitted late)

Chairman Smith recognized Vice Chair Weintraub, who

**MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 04-72-A.**

The motion carried on the vote of 6-0.

II. DRAFT ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2004-26 (continued)

Chairman Smith recognized Mr. Ron Katwan of the General Counsel's Office who presented draft Advisory Opinion 2004-26 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the participation of a foreign national in the activities of two affiliated campaign committees and a nonconnected multicandidate committee on a volunteer basis.

The Chairman recognized Vice Chair Weintraub who reviewed her proposed amendments, as contained in Agenda Document No. 04-72-A.

A discussion followed, and without objection Agenda Document No. 04-72-A was amended by revising the first amendment as follows:

Page 4, Lines 12-14, delete the remainder of the sentence after the word "nationals" on Line 12, which ends on Line 14.

Chairman Smith recognized the Vice Chair, who

MOVED to approve draft Advisory Opinion 2004-26, as submitted in Agenda Document No. 04-72, as amended by Agenda Document No. 04-72-A

The motion carried on the vote of 6-0.

III. **PETITION FOR RULEMAKING ON EXEMPTING ADVERTISEMENTS FOR POLITICAL DOCUMENTARY FILMS FROM "ELECTIONEERING COMMUNICATIONS": NOTICE OF AVAILABILITY**

Agenda Document No. 04-73

Chairman Smith recognized Ms. Amy Rothstein of the General Counsel's Office who presented the subject document.

The Chairman recognized Vice Chair Weintraub, who

MOVED to approve the draft Notice of Availability, as submitted in Agenda Document No. 04-73, for publication in the *Federal Register*.

The motion carried on the vote of 6-0.

* * * * *

The meeting recessed at 12:00 noon and reconvened at 2:10 P.M.

with a quorum present.

* * * * *

IV. **DRAFT FINAL RULES FOR POLITICAL COMMITTEE STATUS**

Agenda Documents No. 04-75, No. 04-75-A, No. 04-75-B, and No. 04-75-C (Submitted late)

Chairman Smith recognized Vice Chair Weintraub, who

MOVED to suspend the rules on the timely submission of Agenda Documents in order to consider Agenda Documents No. 04-75, No. 04-75-A, No. 04-75-B, and No. 04-75-C.

**IV. DRAFT FINAL RULES FOR POLITICAL COMMITTEE STATUS
(continued)**

Chairman Smith recognized General Counsel Lawrence Norton who presented an overview of the draft Final Rules presented by the Office of General Counsel, as contained in Agenda Document No. 04-75. Ms. Mai Dinh of the General Counsel's Office summarized the amendments in Agenda Document No. 04-75-C.

Following discussion, Chairman Smith recognized Commissioner McDonald, who

MOVED that the above-referenced agenda documents be submitted to the *Federal Register* for a sixty-day comment period.

The motion failed by a vote of 3-3 with Commissioners McDonald, Thomas, and Weintraub voting affirmatively. Commissioners Mason, Smith, and Toner dissented.

Chairman Smith recognized Commissioner Toner who presented an overview of the alternative proposal submitted jointly by him and Commissioner Thomas, and

MOVED to approve the alternative proposed Final Rules, as set forth in Agenda Document No. 04-75-A.

A discussion followed.

* * * * *

**The meeting recessed at 3:35 P.M. and reconvened at 3:45 P.M.
with a quorum present.**

* * * * *

**IV. DRAFT FINAL RULES FOR POLITICAL COMMITTEE STATUS
(continued)**

**The vote was called on Commissioner Toner's motion, which
failed by a vote of 2-4 with Commissioners Thomas and Toner voting
affirmatively. Commissioners Mason, McDonald, Smith, and Weintraub
dissented.**

**Chairman Smith recognized Commissioner Toner,
who**

**MOVED to approve Agenda
Document No. 04-75, as amended
by Agenda Document No. 04-75-C.**

The discussion resumed.

**The motion failed by a vote of 2-4 with Commissioners Thomas
and Toner voting affirmatively. Commissioners Mason, McDonald,
Smith, and Weintraub dissented.**

IV. DRAFT FINAL RULES FOR POLITICAL COMMITTEE STATUS
(continued)

Chairman Smith recognized Vice Chair Weintraub,
who

**MOVED to approve Agenda Document
No. 04-75-B.**

The Vice Chair presented an overview of Agenda Document No. 04-75-B, the Smith, Weintraub, and Mason proposal, to amend 11 C.F.R. §§ 100.57 (Funds received in response to solicitations.) and 106.6 (Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.)

During the discussion which followed, the original motion was amended as follows:

To adopt the proposed regulations at Section 100.57, at Pages 41 to 42, and Section 106, at Page 43 through Page 47, as set forth in Agenda Document No. 04-75, as amended by Agenda Document No. 04-75-C; and, to instruct the Office of General Counsel to make appropriate corrections to the regulatory language, as discussed at the table, and to draft an Explanation and Justification for Commission consideration.

The vote was taken on the amended motion which carried by a vote of 4-2 with Commissioners Mason, Smith, Toner, and Weintraub voting affirmatively. Commissioners McDonald and Thomas dissented.

V. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 5:00 P.M.

Signed:

**Bradley A. Smith
Chairman of the Commission**

Attest:

**Mary W. Dove
Secretary of the Commission**

