



AGENDA DOCUMENT NO. 06-27
APPROVED APRIL 20, 2006

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
FRIDAY, APRIL 7, 2006

PRESENT:

Michael E. Toner, Chairman, presiding

Robert D. Lenhard, Vice Chairman

David M. Mason, Commissioner

Hans A. von Spakovsky, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Robert J. Costa, Acting Staff Director

Lawrence H. Norton, General Counsel

Mary W. Dove, Secretary

Chairman Michael E. Toner called the Federal Election Commission to order in an open meeting at 1:08 P.M. on Friday, April 7, 2006, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

- A. Minutes for March 23, 2006, and its Continuation on March 27, 2006
Agenda Document No. 06-22**
- B. Minutes for March 29, 2006
Agenda Document No. 06-23**

Chairman Toner recognized Vice Chairman Lenhard, who

MOVED to approve the minutes for the open meetings of March 23, 2006, and its continuation on March 27, 2006, and March 29, 2006, as submitted in Agenda Documents No. 06-22 and No. 06-23, respectively.

The motion carried on the vote of 6-0 with Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voting affirmatively.

**II. FINAL RULES ON COORDINATED COMMUNICATIONS
(11 CFR 109.21)**

Agenda Document No. 06-25 (Submitted late)

Agenda Document No. 06-26 (Submitted late)

Chairman Toner recognized Vice Chairman Lenhard, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 06-25 and No. 06-26.

The motion carried on the vote of 6-0.

Chairman Toner reviewed his proposed amendments for coordinated communications at 11 CFR 109.21, as set forth in Agenda Document No. 06-25.

The Chairman recognized Vice Chairman Lenhard who presented his proposed amendments in Agenda Document No. 06-26 which was co-authored with Commissioners Walther and Weintraub.

A discussion followed.

Chairman Toner recognized Commissioner von Spakovsky, who

MOVED to approve that portion of Agenda Document No. 06-25 relating to 109.21(c)(4).

II. **FINAL RULES ON COORDINATED COMMUNICATIONS**
(11 CFR 109.21) (continued)

The motion failed on a vote of 3-3 with Commissioners Mason, Toner, and von Spakovsky voting affirmatively. Commissioners Lenhard, Walther, and Weintraub dissented.

The Chairman recognized Vice Chairman Lenhard, who

MOVED to approve that portion of Agenda Document No. 06-26 relating to 109.21(c)(4).

A discussion followed.

The motion failed on a vote of 3-3 with Commissioners Lenhard, Walther, and Weintraub voting affirmatively. Commissioners Mason, Toner, and von Spakovsky dissented.

Chairman Toner recognized Commissioner Mason, who

MOVED to adopt the 109.21(c)(4) alternative, as outlined in Agenda Document No. 06-26, except that the time frame for House and Senate candidates would be 90 days.

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The meeting recessed at 2:05 P.M. and reconvened at 2:12 P.M.
with a quorum present.

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Chairman Toner restated the motion offered by Commissioner Mason and called the question.

The motion carried on the vote of 6-0.

II. **FINAL RULES ON COORDINATED COMMUNICATIONS**
(11 CFR 109.21) (continued)

Chairman Toner recognized Commissioner Mason, who

**MOVED to amend Agenda Document No. 06-26
as follows:**

(a) Page 2, Line 11, insert the words "and promotes, supports, attacks, or opposes a political party" after the word "party";

(b) Page 2, Line 18, insert the words "and promotes, supports, attacks, or opposes that candidate or another candidate for the same office" after the word "candidate";

(c) Page 3, Line 3, insert the words "and promotes, supports, attacks, or opposes that candidate or another candidate for the same office" after the word "candidate."

The motion failed on the vote of 3-3 with Commissioners Mason, Toner, and von Spakovsky voting affirmatively. Commissioners Lenhard, Walther, and Weintraub dissenting.

Chairman Toner recognized Commissioner Weintraub, who

MOVED to approve the amendment to 109.21(a)(1), as set forth in Agenda Document No. 06-26, beginning on Page 1, Line 20, through Page 2, Line 3.

The motion carried on the vote of 6-0.

There was a recess at 2:25 P.M., and the meeting reconvened at 3:00 P.M. with a quorum present.

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**II. FINAL RULES ON COORDINATED COMMUNICATIONS
(11 CFR 109.21) (continued)**

The next item for consideration was titled Safe Harbor for endorsements and solicitations by Federal candidates.

The Chairman recognized Vice Chairman Lenhard, who

MOVED to approve subsection (h)(1) on Page 6 of Agenda Document No. 06-25, as amended, by deleting the words "the endorsing candidate"s opponent" and substituting the words "another candidate for the same office as the endorsing candidate."

The motion carried on the vote of 5-0 with Commissioners Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting affirmatively.

The discussion of safe harbors resumed.

Chairman Toner recognized Vice Chairman Lenhard, who

MOVED to approve subsection (g)(2) on Page 8, Lines 8 through 14 of Agenda Document No. 06-26, amended to read as follows: "A public communication in which a candidate for Federal office solicits funds for organizations, as permitted by 300.65, is not a coordinated communication with respect to the

**II. FINAL RULES ON COORDINATED COMMUNICATIONS
(11 CFR 109.21) (continued)**

soliciting candidate if the public communication does not promote, support, attack, or oppose the soliciting candidate, or another candidate who seeks election to the same office as the soliciting candidate."

The motion carried on the vote of 5-0 with Commissioners

Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting affirmatively.

There was further discussion.

Chairman Toner recognized Commissioner Weintraub, who

MOVED to include a new subsection as (g)(3) on Page 8 of Agenda Document No. 06-26 to read as follows: "A public communication in which a candidate for Federal office solicits funds for another candidate for Federal or non-Federal office, or a political party committee, is not a coordinated communication with respect to the soliciting candidate if the public communication does not promote, support, attack, or oppose the soliciting candidate, or another candidate who seeks election to the same office as the soliciting candidate."

The motion carried on the vote of 5-0 with Commissioners

Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting affirmatively.

II. **FINAL RULES ON COORDINATED COMMUNICATIONS**
(11 CFR 109.21) (continued)

Chairman Toner recognized Vice Chairman Lenhard, who

MOVED to include the proposed sentence on Page 4, Lines 10 through 12, of Agenda Document No. 06-26, at the end of subsections (d)(2), Material involvement, and (d)(3), Substantial discussion.

The motion carried on the vote of 5-0 with Commissioners

Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting affirmatively.

There was a discussion of proposed revisions regarding firewalls.

The Chairman recognized Vice Chairman Lenhard, who

MOVED to approve the language in subsection (h) on on Page 8 of Agenda Document No. 06-26, as amended by deleting the word "party" on Lines 17 and 20; and, to approve the language on Page 9, Lines 1 through 10, as amended on Lines 8 and 9 by deleting the words "at the time it is implemented."

The motion carried on the vote of 5-0 with Commissioners

Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting affirmatively.

There was a recess at 3:50 P.M., and the meeting reconvened at 4:00 P.M. with a quorum present.

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**II. FINAL RULES ON COORDINATED COMMUNICATIONS
(11 CFR 109.21) (continued)**

Chairman Toner recognized Vice Chairman Lenhard, who

MOVED to approve the text regarding common vendors which begins at Page 4, Line 13 through Page 7, Line 22, of Agenda Document No. 06-26, subject to the following amendments:

(a) Page 5, Line 2, delete the words "in the current two-year election cycle" and substitute the words "during the previous 120 days."

(b) Page 6, Line 21, delete the words "current two-year election cycle" and substitute the words "previous 120 days."

The motion carried on the vote of 5-0 with Commissioners Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting affirmatively.

The Chairman recognized Commissioner von Spakovsky, who

MOVED to insert the following sentence at the end of 109.20(a): "For purposes of this subpart, a candidate, candidate's authorized committee, or political party committee shall include an agent thereof."

**II. FINAL RULES ON COORDINATED COMMUNICATIONS
(11 CFR 109.21) (continued)**

**The motion carried on the vote of 5-0 with Commissioners
Lenhard, Mason, Toner, von Spakovsky, and Weintraub voting
affirmatively.**

**Chairman Toner noted this completes the final rulemaking
as required by the Shays litigation.**

III. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 4:15 P.M.

Signed:



**Michael E. Toner
Chairman of the Commission**

Attest:



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