



AGENDA DOCUMENT NO. 05-38

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

THURSDAY, AUGUST 18, 2005

PRESENT:

Scott E. Thomas, Chairman, presiding

Michael E. Toner, Vice Chairman

David M. Mason, Commissioner

Danny L. McDonald, Commissioner

Bradley A. Smith, Commissioner

Ellen L. Weintraub, Commissioner

James A. Pehrkon, Staff Director

Lawrence H. Norton, General Counsel

Mary W. Dove, Secretary

Chairman Scott E. Thomas called the Federal Election Commission to order in an open meeting at 10:06 A.M. on Thursday, August 18, 2005, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for July 14, 2005
Agenda Document No. 05-33**

Chairman Thomas recognized Vice Chairman Toner, who

**MOVED to approve the minutes for the
Open Meeting of Thursday, July 14, 2005,
as submitted in Agenda Document No.
05-33.**

The motion carried on the vote of 6-0 with Commissioners

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

II. ADVISORY OPINIONS

**A. Draft Advisory Opinion 2005-07
Andy Mayberry and Andy Mayberry for Congress
Committee**

Agenda Document No. 05-34

**Chairman Thomas recognized Mr. Robert Knop of the General
Counsel's Office who presented draft Advisory Opinion 2005-07**

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2005-07 (continued)

concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the publication and distribution of two periodicals, *The East Ender* newspaper and *The Spirit Magazine*, during Mr. Mayberry's campaign for a seat in the U.S. House of Representatives in the 2005-2006 election cycle.

A discussion followed.

Chairman Thomas recognized Commissioner McDonald, who

**MOVED to approve draft Advisory
Opinion 2005-07, as set forth in
Agenda Document No. 05-34.**

The motion carried on the vote of 6-0.

**B. Draft Advisory Opinion 2005-09
Friends of Chris Dodd 2004 by counsel,
Marc E. Elias**

Agenda Document No. 05-35

**Chairman Thomas recognized Ms. Cheryl Hemsley of the General
Counsel's Office who presented draft Advisory Opinion 2005-09**

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2005-09 (continued)

regarding whether, under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, the Committee may use campaign funds to pay for certain travel expenses of Senator Dodd's minor children.

Chairman Thomas recognized Commissioner Weintraub, who

**MOVED to approve draft Advisory
Opinion 2005-09, as set forth in
Agenda Document No. 05-35.**

The motion carried on the vote of 6-0.

**C. Draft Advisory Opinion 2005-10
Representative Howard L. Berman and Representative
John T. Doolittle by counsel, Judith L. Corley and
Brian G. Svoboda**

Agenda Document No. 05-36

Chairman Thomas recognized Ms. Amy Rothstein of the General Counsel's Office who presented draft Advisory Opinion 2005-10 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to fundraising activities by Representatives Berman and Doolittle for independent ballot measure committees that support or oppose initiatives on the

II. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2005-10 (continued)

November 8, 2005, California statewide special election ballot.

A discussion followed.

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**The meeting recessed at 11:40 A.M. and reconvened at
11:55 A.M. with a quorum present.**

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II. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2005-10 (continued)

Chairman Thomas recognized Vice Chairman Toner, who

**MOVED to approve draft Advisory Opinion
2005-10, as set forth in Agenda Document
No. 05-36.**

**The motion failed on the vote of 1-5 with Commissioner Thomas
voting affirmatively. Commissioners Mason, McDonald, Smith, Toner,
and Weintraub dissented.**

The Chairman recognized Vice Chairman Toner, who

**MOVED to direct the General Counsel's Office
to prepare an advisory opinion indicating that
because ballot initiatives and referenda are
not in connection with an election under
Section 441i(e), Section 441i(e) does not apply
to the activities identified by the requestors**

II. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2005-10 (continued)

and Representatives Berman and Doolittle may solicit funds for such activities outside the amount limitations and source prohibitions of the Act.

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

Chairman Thomas recognized Commissioner Weintraub, who

MOVED to instruct the General Counsel's Office to prepare an answer that the requestors may undertake the activity that they asked about, based on a theory that ballot initiatives are not per se in connection with an election, and that in the circumstances presented in this request, where the requestors are not establishing, maintaining, financing, or controlling the ballot initiative committee, and where it is an off-year election, that the Commissioners do not believe that this presents a situation in connection with an election; further, insert a footnote which states that some Commissioners would adopt a broader approach but it is not before them in this request, and, therefore, the response would be "yes."

The motion carried on the vote of 5-1 with Commissioners Mason, McDonald, Smith, Toner, and Weintraub voting affirmatively. Commissioner Thomas dissented.

II. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2005-10 (continued)

The discussion resumed.

The Chairman recognized Commissioner Smith, who

MOVED reconsideration of the previous motion by Commissioner Weintraub which passed on the vote of 5-1.

The motion to reconsider carried on the vote of 6-0.

Chairman Thomas recognized Commissioner Weintraub, who

MOVED to direct the General Counsel's Office to prepare a draft response to the requestors, to be circulated informally to the Commissioners, which states that under the facts and circumstances presented in the request, the Commission has concluded that the activity is permissible.

The motion carried on the vote of 6-0.

III. NOTICE OF PROPOSED RULEMAKING ON ELECTIONEERING COMMUNICATIONS (11 CFR 100.29)

Agenda Document No. 05-37 (Submitted late)

Chairman Thomas recognized Vice Chairman Toner, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document No. 05-37.

The motion carried on the vote of 6-0.

**III. NOTICE OF PROPOSED RULEMAKING ON ELECTIONEERING
COMMUNICATIONS (11 CFR 100.29) (continued)**

Chairman Thomas recognized Mr. Duane Pugh of the General Counsel's Office who presented the subject document.

The following amendment was offered by Vice Chairman Toner on Page 7, Line 4, at the end of the sentence insert: "Must the Commission provide some definition of PASO for the exemption to be meaningful and explicable to the regulated community or is the PASO standard self-executing and understandable without further definition by the Commission?"

A discussion followed.

Chairman Thomas recognized Commissioner McDonald, who

MOVED to approve the draft Notice of Proposed Rulemaking on Electioneering Communications at 11 CFR 100.29, as set forth in Agenda Document No. 05-37, subject to the amendment noted above, for publication in the *Federal Register*.

The motion carried on the vote of 6-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

The Commission extended best wishes to Commissioner Smith, who had announced his resignation effective August 21, 2005.

The meeting adjourned at 12:30 P.M.

Signed:

**Scott E. Thomas
Chairman of the Commission**

Attest:

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

