AGENDA DOCUMENT NO. 04-06

MINUTES OF AN OPEN MEETING

OF THE

FEDERAL ELECTION COMMISSION

WEDNESDAY, JANUARY 7, 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

Robert J. Costa, Deputy Staff Director for Audit and Review, representing 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 10:07 A.M. on Wednesday, January 7, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

A. Minutes for December 11, 2003
Agenda Document No. 04-02

B. Minutes for December 18, 2003
Agenda Document No. 04-03

Chairman Smith recognized Vice Chair Weintraub, who

> MOVED to approve the minutes for the Open Meetings of Thursday, December 11, 2003, and Thursday, December 18, 2003, as submitted in Agenda Documents No. 04-02 and No. 04-03, respectively.

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

II. DRAFT ADVISORY OPINION 2003-36

Republican Governors Association by
Executive Director Edward T. Tobin, III

Agenda Documents No. 04-04, No. 04-04-A,
and No. 04-04-B

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. 04-04-A and No. 04-04-B.

The motion carried on the vote of 6-0.

Chairman Smith recognized Mr. Jonathan Levin of the General Counsel's Office who presented two proposed drafts of Advisory Opinion 2003-36 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the participation of Federal candidates and officeholders in fundraising activities on behalf of the Republican Governors Association.

A discussion followed.

II. DRAFT ADVISORY OPINION 2003-36 (continued)

Chairman Smith recognized Commissioner Mason, who

> MOVED to approve Draft A of Advisory Opinion 2003-36, as submitted in Agenda Document No. 04-04.

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

The Chairman recognized Commissioner Thomas who reviewed his amendments to Draft B, as contained in Agenda Document No. 04-04-A. The Chairman then presented his amendments to Draft B, as set forth in Agenda Document No. 04-04-B, and offered an amendment at the table to amend Page 9, Footnote 8, of Draft B, in Agenda Document No. 04-04, by deleting the words "explicitly solicits" on the second line from the bottom and replacing with the following words: "would constitute a solicitation by the covered person of."

II. DRAFT ADVISORY OPINION 2003-36 (continued)

Chairman Smith recognized Mr. Jonathan Levin who proposed an amendment to Agenda Document No. 04-04-B, Number 6, Page 11, Line 11, whereby the new sentences would read:

> "Additionally the requestor may have claimed that conference account income is exempt function income under 26 U.S.C. 527. In the absence of other legal or factual considerations, the Commission would accept this characterization of the requestor's conference account activities."

The Chairman accepted the proposed language by the Office of General Counsel as a friendly amendment.

There was further discussion.

Chairman Smith recognized Vice Chair Weintraub, who

> MOVED to approve Page 1 through Page 11, Line 15 of Draft B, of Advisory Opinion 2003-36, as submitted in Agenda Document No. 04-04, as amended by Agenda Document No. 04-04-A, as amended by deletion of Item No. 8, and as amended by Agenda Document No. 04-04-B, subject to the amendments noted above, and to instruct the Office of General Counsel to make any necessary technical amendments.

The motion carried on the vote of 6-0.

II. DRAFT ADVISORY OPINION 2003-36 (continued)

The Chairman recognized Vice Chair Weintraub, who

> MOVED to approve Page 11, beginning with Line 16 through the end of the document on Page 12, of Draft B of Advisory Opinion 2003-36, as submitted in Agenda Document No. 04-04.

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

III. PETITION FOR RULEMAKING ON PUBLIC ACCESS TO MATERIALS RELATING TO CLOSED ENFORCEMENT CASES: NOTICE OF AVAILABILITY

Agenda Document No. 04-01

The Chairman recognized Mr. Anthony Buckley of the General Counsel's Office who presented the subject document. During his presentation, Mr. Buckley noted the following amendments in the Notice of Availability:

III. PETITION FOR RULEMAKING ON PUBLIC ACCESS TO MATERIALS RELATING TO CLOSED ENFORCEMENT CASES: NOTICE OF AVAILABILITY

(continued)

Page 1, change the word "Commissioned" to "Commission" on in the first line of the Summary of the Notice;

Page 2, change the first word on Page 2 of the Notice from "send" to "sent";

Page 3, insert "256" after "Request Document #" on Page 3 of the Notice at the end of the second paragraph.

A discussion followed.

Chairman Smith recognized Commissioner Thomas, who

MOVED to approve the Notice of Availability, as submitted in Agenda Document No. 04-01, as amended above, for publication in the *Federal Register*.

The motion carried on the vote of 6-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

There were no routine administrative matters to come before the meeting.

The meeting adjourned at 11:45 A.M.

Signed:

Bradley A. Smith
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission