

AGENDA DOCUMENT NO. 02-56

MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION

THURSDAY, AUGUST 1, 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, August 1, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for July 25, 2002

Agenda Document No. 02-54

Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve the minutes for the open meeting of Thursday, July 25, 2002, as set forth in Agenda Document No. 02-54.

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

II. ADVISORY OPINIONS

A. Draft AO 2002-08

David Vitter for Congress Committee by  
William J. Vanderbrook, Treasurer

Agenda Documents No. 02-52  
and No. 02-52-A

Chairman Mason recognized Vice Chairman

Sandstrom, who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 02-52-A.

The motion carried on the vote of 6-0.

Chairman Mason recognized Mr. Michael

Marinelli of the General Counsel's office who presented  
draft Advisory Opinion 2002-08 concerning the application  
of the Federal Election Campaign Act of 1971, as amended  
("the Act"), and Commission regulations to a proposed  
"transfer" of funds to the David Vitter for Congress  
Committee from a State committee controlled by  
Congressman David Vitter.

II. ADVISORY OPINIONS (continued)

A. Draft AO 2002-08 (continued)

Chairman Mason recognized Commissioner  
McDonald, who

MOVED to approve draft Advisory  
Opinion 2002-08, as submitted in  
Agenda Document No. 02-52, as  
amended by Agenda Document No.  
02-52-A.

The motion carried on the vote of 6-0.

B. Draft AO 2002-10

Green Party of Michigan by  
Marc Reichardt, Chair

Agenda Document No. 02-53

The Chairman recognized Vice Chairman Sandstrom,  
who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 02-53.

The motion carried on the vote of 6-0.

II. ADVISORY OPINIONS (continued)

B. Draft AO 2002-10 (continued)

Chairman Mason recognized Mr. Marinelli of the General Counsel's office who presented draft Advisory Opinion 2002-10 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations concerning the status of the Green Party of Michigan as a State committee of a political party.

Chairman Mason recognized Commissioner McDonald, who

MOVED to approve draft Advisory Opinion 2002-10, as submitted in Agenda Document No. 02-53.

The motion carried on the vote of 6-0.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS

Agenda Documents No. 02-55,  
No. 02-55-A, No. 02-55-B,  
No. 02-55-C, and No. 02-55-D

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. 02-55,  
No. 02-55-A, No. 02-55-B,  
No. 02-55-C, and No. 02-55-D.

The motion carried on the vote of 6-0.

Chairman Mason recognized Ms. Rosemary Smith  
and Mr. Anthony Buckley of the General Counsel's office;  
Ms. Smith presented an overview of the subject document.

The Chairman stated the Commission would address  
the amendments submitted by the Commissioners in the order  
in which they appear in the document.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Commissioner Smith who reviewed proposed amendments at Pages 14, 15, 52, and 54 in Agenda Document No. 02-55.

There was discussion.

The Chairman recognized Commissioner Smith, who

MOVED to approve the amendments, outlined above, as set forth in Agenda Document No. 02-55-B, Category I, Pages 1 and 2, as amended.

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

The Chairman presented an amendment in proposed new section 100.29(c)(3) of Agenda Document No. 02-55.

A discussion followed.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

On behalf of Chairman Mason, a motion was  
offered by Commissioner Smith, who

MOVED to delete the language  
in Agenda Document No. 02-55,  
beginning at Page 18, Line 12,  
through Page 19, Line 19, and  
substitute the language as  
set forth in Agenda Document  
No. 02-55-C in lieu thereof.

The motion carried on the vote of 6-0.

The Chairman suggested an amendment in Agenda  
Document No. 02-55 (V. Other Exceptions) at Page 21,  
Lines 20 and 21, by deleting "a named Senator or Member  
of the House of Representatives regarding..." and  
substituting "various categories of public officials..."  
in lieu thereof. It was agreed without objection, to  
accept the amendment.



III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Commissioner Smith who presented proposed new language in Agenda Document No. 02-55, and

MOVED to insert a new sentence in Agenda Document No. 02-55, (V. Other Exceptions), at Page 21, at the end of Line 10, as set forth in Agenda Document No. 02-55-B, on Page 2, Category II.

The motion carried on the vote of 6-0.

The Chairman recognized Commissioner Thomas who presented substitute language in Agenda Document No. 02-55 under the title "Who may make or fund electioneering communications?"

A discussion followed.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Commissioner Thomas,

who

MOVED to delete the language in Agenda Document No. 02-55 on Page 23, beginning on Line 10 through the end of the sentence on Line 18, and replace with the substitute language in Agenda Document No. 02-55-A on Page 3 in lieu thereof.

The motion carried on the vote of 6-0.

The Chairman recognized Commissioner Smith,

who

MOVED to amend Agenda Document No. 02-55 at Page 32, Line 22, and Page 33, Line 1, as set forth in Agenda Document No. 02-55-B, on Pages 2 and 3, Category III.

The motion carried on the vote of 6-0.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

It was agreed without objection to amend Agenda Document No. 02-55 at Page 23, Line 2, by inserting a comma after the word "shows" and inserting the word "may" before the word "fall."

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The meeting recessed at 11:30 A.M. and reconvened at 11:50 A.M. with a quorum present.

\* \* \* \* \*

There was a discussion at § 100.29 (Electioneering communication), Alternative 1-A, and it was agreed without objection to amend Agenda Document No. 02-55 at Page 55, Lines 19, 20, and 21, pursuant to the meeting discussion.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Commissioner Toner,

who

MOVED to insert the following  
sentence at § 100.29 in Agenda  
Document No. 02-55, on Page 54,  
Line 11, after "www.fec.gov":

"It shall be a complete defense  
against any charge that a  
communication reached 50,000 or  
more persons when the maker of  
an electioneering communication  
relies on such information posted  
on the website of the Federal  
Communications Commission prior  
to the date the communication  
is publicly distributed."

A discussion followed.

The motion carried on the vote of 6-0.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Vice Chairman Sandstrom,

who

MOVED the following amendments  
in Agenda Document No. 02-55:

- 1) Page 23, Line 7, insert  
the following sentence after  
the word "advertisement?":

"Should the Commission create  
an exemption for communications  
aired exclusively over public  
access channels?"

- 2) Page 23, Line 22, insert the  
following sentence:

"In addition, the Commission seeks  
comment on whether a 501(c)(4) or  
527 organization that was previously  
incorporated and that changes its  
status to become a limited liability  
company or similar type of entity  
under state law would be permitted to  
pay for electioneering communications  
with funds that had been donated from  
individuals to the 501(c)(4) or 527  
organization during the time it was  
incorporated."

The motion carried on the vote of 6-0.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

The Chairman recognized Commissioner Toner,

who

MOVED the following amendment  
in Agenda Document No. 02-55  
at Page 15, Line 20, insert  
the following sentence:

"Separately, comments are sought on whether BCRA's electioneering communications restrictions apply at all to communications depicting Presidential or Vice Presidential candidates, other than 30 days before a party's national convention and 60 days before the general election, given that candidates can only be nominated for President or Vice President at their parties' national convention."

The motion carried on the vote of 6-0.

III. NOTICE OF PROPOSED RULEMAKING ON  
ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Ms. Rosemary Smith of the General Counsel's office who noted an additional correction to be included in Agenda Document No. 02-55-D, an errata sheet submitted by the General Counsel's office, as follows:

In Agenda Document No. 02-55,  
at Page 7, Line 14, insert the  
word "definition" after the word  
"communication."

Chairman Mason recognized Commissioner McDonald,  
who

MOVED to approve the draft Notice of Proposed Rulemaking on Electioneering Communications, as set forth in Agenda Document No. 02-55, as amended by Agenda Document No. 02-55-D, subject to the amendment noted above, to incorporate all amendments previously adopted and any other necessary technical and conforming amendments, and to submit the revised notice 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 Commission.

The meeting adjourned at 12:15 P.M.

Signed:

David M. Mason  
Chairman of the Commission

Attest:

Mary W. Dove  
Secretary of the Commission