

AGENDA DOCUMENT NO. 02-71

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, SEPTEMBER 26, 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
Alison Doone, Deputy Staff Director
for Management, representing
James A. Pehrkon, Staff Director,
for a portion of the meeting
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, September 26, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for September 12, 2002
Agenda Document No. 02-66

Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve the minutes for the open meeting of Thursday, September 12, 2002, as submitted in Agenda Document No. 02-66.

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

II. REPORT OF THE AUDIT DIVISION ON THE REFORM
PARTY 2000 CONVENTION COMMITTEE (RPCC)

Agenda Document No. 02-67

Chairman Mason recognized Mr. Martin Favin and Mr. Joseph Stoltz of the Audit Division, and Ms. Beth Mizuno, Mr. Peter Blumberg, and Mr. Gregory Baker of the Office of General Counsel. Mr. Favin presented the subject audit report. A discussion followed. The Chairman recognized Vice Chairman Sandstrom, who

MOVED to approve the report of the Audit Division on the Reform Party 2000 Convention Committee (RPCC), as set forth in Agenda Document No. 02-67.

The motion carried on the vote of 6-0.

III. FINAL RULE, INTERIM FINAL RULE, AND EXPLANATION
AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS

Agenda Documents No. 02-68, No. 02-68-A,
No. 02-68-B, No. 02-68-C, No. 02-68-D,
No. 02-68-E, and No. 02-68-F (Submitted late)

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. 02-68, No. 02-68-A, No. 02-68-B,
No. 02-68-C, No. 02-68-D, No. 02-68-E,
and No. 02-68-F.

The motion carried on the vote of 6-0.

The Chairman referred to a letter which had been
received by all Commissioners from Senators John McCain,
Russell D. Feingold, Olympia Snowe, Jim Jeffords, and
Representatives Christopher Shays and Martin Meehan regarding
the Electioneering Communication rulemaking. After conferring
with the General Counsel, he stated the letter would be treated
as an ex parte communication and would be placed in the
administrative file.

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

Chairman Mason recognized Ms. Mai Dinh of the General Counsel's Office who presented the subject draft. The Chairman stated they would work through the amendments in the order as they appear in the document. Vice Chairman Sandstrom was recognized to present an amendment at § 100.29 (a) (Electioneering Communication), as set forth in Agenda Document No. 02-68-E. Following discussion, the Vice Chairman

MOVED to amend Agenda Document No. 02-68 on Page 82, at the end of Line 15 (before the semi-colon) by inserting the words "and the candidate referenced is seeking the nomination of that political party."

The motion carried on the vote of 6-0.

Chairman Mason recognized Commissioner Toner who referred to amendments at § 100.29(b) (3) (Definition of "Publicly Distributed"), as submitted in Agenda Document No. 02-68-B, stating he was withdrawing his first two

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(continued)

amendments on Page 2, which had been included in the amendments submitted by the Office of General Counsel. It was agreed without objection, to accept his third amendment in Agenda Document No. 02-68-B, on Page 2 to delete the word "proving" and insert the word "providing" on Page 15, Line 3 in Agenda Document No. 02-68. The last four amendments on Page 2 of Agenda Document No. 02-68-B were presented, and following discussion, the Chairman recognized Commissioner Toner, who

MOVED to amend Agenda Document No. 02-68 on Page 15, Lines 4-20, as set forth in Agenda Document No. 02-68-B on Page 2.

The motion carried on the vote of 6-0.

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There was a recess at 11:25 A.M., and the meeting reconvened at 11:40 A.M. with a quorum present.

III. FINAL RULE, INTERIM FINAL RULE, AND EXPLANATION
AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

Chairman Mason recognized Commissioner Smith who stated he was withdrawing his proposed amendments at § 100.29 (b) of the Interim Final Rule, as set forth in Agenda Document No. 02-68-C, Page 2, as they are included in the General Counsel's Errata Sheet in Agenda Document No. 02-68-D.

The Chairman recognized Commissioner Toner who presented amendments at § 100.29 of the Interim Final Rules, as contained in Agenda Document No. 02-68-B on Page 4.

Mr. Anthony Buckley and Ms. Rosemary Smith of the General Counsel's staff participated in the discussion which followed.

Chairman Mason recognized Commission Toner, who

MOVED to amend § 100.29(b)(6) by deleting the language in Agenda Document No. 02-68 of the Interim Final Rules beginning on Page 17, Line 11, through Page 18, Line 5, and substituting the language set forth in Agenda Document No. 02-68-B, Page 4, as amended, in lieu thereof.

The motion carried on the vote of 6-0.

There was a recess at 12:30 P.M., and the meeting reconvened at 2:05 P.M. with a quorum present.

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III. FINAL RULE, INTERIM FINAL RULE, AND EXPLANATION
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(continued)

Chairman Mason recognized Commissioner Toner who reviewed his proposed amendment at § 100.29(c)(3) (Exemption for expenditures and independent expenditures), as set forth in Agenda Document No. 02-68-B. Following discussion, the Chairman recognized Commissioner Toner, who

MOVED to amend § 100.29(c)(3) in Agenda Document No. 02-68, Page 35, at Line 4, by inserting the language found in Agenda Document No. 02-68-B on Page 3.

The motion carried on the vote of 6-0.

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(continued)

Chairman Mason recognized Commissioner Thomas who presented his proposed amendments at § 100.29(c)(5) (Popular name of legislation), which relates to exceptions for certain grass roots lobbying ads, as set forth in Agenda Document No. 02-68-A. A discussion followed.

The Chairman recognized Commissioner Thomas, who

MOVED to amend § 100.29(c)(5) by deleting the language in Agenda Document No. 02-68 beginning on Page 38, Line 10, through Page 40, Line 10, and substituting the language in Agenda Document No. 02-68-A on Page 2 in lieu thereof.

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

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

Chairman Mason recognized Vice Chairman Sandstrom who presented his amendment at § 100.29(c)(7), as set forth in Agenda Document No. 02-68-E on Page 5. Discussion followed.

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There was a recess at 4:00 P.M., and the meeting reconvened at 4:20 P.M. with a quorum present.

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(continued)

The discussion resumed regarding the Vice Chairman's amendment at § 100.29(c)(7).

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

Chairman Mason recognized Vice Chairman Sandstrom,
who

MOVED to amend § 100.29(c)(7) in
Agenda Document No. 02-68 by
inserting the language in Agenda
Document No. 02-68-E on Page 5.

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

On behalf of Chairman Mason, Vice Chairman
Sandstrom was recognized, who

MOVED to amend the Explanation
and Justification in Agenda
Document No. 02-68 on Page 45
and Page 46 to reverse the
conclusion by stating that State
candidates are governed by Title I
and are exempt from Title II.

The motion carried on the vote of 4-2 with
Commissioners Mason, Sandstrom, Smith, and Toner voting
affirmatively. Commissioners McDonald and Thomas dissented.

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(continued)

Chairman Mason recognized Vice Chairman Sandstrom, who presented his amendment at § 100.29(c)(9), as set forth in Agenda Document No. 02-68-E on Page 7. Ms. Rosemary Smith of the General Counsel's Office participated in the discussion which followed.

The Chairman recognized Vice Chairman Sandstrom, who

MOVED to amend §100.29(c)(9)
in Agenda Document No. 02-68,
as set forth in Agenda Document
No. 02-68-E, Page 7.

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

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

Chairman Mason recognized Vice Chairman Sandstrom,
who

MOVED to amend § 100.29(c)(6)
in Agenda Document No. 02-68,
as contained in Agenda Document
No. 02-68-E, Page 4.

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

The Chairman recognized Vice Chairman Sandstrom,
who

MOVED to amend § 100.29(c)(8)
in Agenda Document No. 02-68,
as set forth in Agenda Document
No. 02-68-E, Page 6.

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

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(continued)

There was a discussion of tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986, and Vice Chairman Sandstrom withdrew his proposed amendment in Agenda Document No. 02-68-E on Page 3, stating he would support Commissioner Smith's amendment.

Chairman Mason recognized Commissioner Smith who introduced his proposed amendment in Agenda Document No. 02-68-C on Page 3. There was discussion.

The Chairman recognized Commissioner Smith,
who

MOVED to amend § 100.29 in
Agenda Document No. 02-68
on Page 85 at Line 7, by
inserting the language in
Agenda Document No. 02-68-C
on Page 3, as amended to
include the following
sentence:

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(continued)

"Nothing in this section shall be deemed to supersede the requirements of the Internal Revenue Code for securing or maintaining 501(c)(3) status."

The motion carried on the vote of 4-2 with Commissioners Mason, Sandstrom, Smith, and Toner voting affirmatively. Commissioners McDonald and Thomas dissented.

Chairman Mason recognized Vice Chairman Sandstrom who reviewed his proposed amendments to the Explanation and Justification of the Final Rule, as set forth in Agenda Document No. 02-68-E, Pages 8 and 9. Ms. Mai Dinh of the General Counsel's Office participated in the discussion which followed.

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

The Chairman recognized Vice Chairman Sandstrom,
who

MOVED to amend Agenda Document
No. 02-68 on Pages 57, 58, 59,
and 60, as set forth in Agenda
Document No. 02-68-E on Page 8
and Page 9.

The motion carried on the vote of 4-2 with
Commissioners Mason, Sandstrom, Smith, and Toner voting
affirmatively. Commissioners McDonald and Thomas dissented.

Chairman Mason recognized Vice Chairman Sandstrom,
who reviewed proposed amendments at § 114.2(b) (Prohibitions
on contributions and expenditures), as submitted in Agenda
Documents No. 02-68-E and No. 02-68-F.

A discussion followed.

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

The Chairman recognized Vice Chairman Sandstrom,
who

MOVED to amend § 114.2(b) in
Agenda Document No. 02-68, as
set forth in Agenda Document
No. 02-68-E on Pages 10 and 11,
and Agenda Document No. 02-68-F,
subject to the deletion of the
last sentence.

The motion carried on the vote of 6-0.

On behalf of Chairman Mason, Commissioner Smith
offered an amendment at § 114.10(e) (Qualified nonprofit
corporations; reporting requirements), as submitted in Agenda
Document No. 02-68-C on Page 4. A discussion followed.

It was agreed without objection to instruct the
Office of General Counsel to prepare an amendment to the
regulatory text which provides protection only to those
organizations that have a court order.

III. FINAL RULE, INTERIM FINAL RULE, AND EXPLANATION
AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

The Chairman recognized Commissioner Smith,

who

MOVED to amend § 114.14(a)(2)
in Agenda Document No. 02-68,
as set forth in Agenda Document
No. 02-68-C on Page 5.

The motion carried on the vote of 6-0.

Chairman Mason recognized Commissioner Smith,

who

MOVED to approve the Final Rule
and the Interim Final Rule for
Electioneering Communications,
as set forth in Agenda Document
No. 02-68, as amended at the
table, and to incorporate the
amendments in the General Counsel's
memorandum, as set forth in Agenda
Document No. 02-68-D.

The motion carried on the vote of 4-2 with

Commissioners Mason, Sandstrom, Smith, and Toner voting
affirmatively. Commissioners McDonald and Thomas
dissented.

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AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS
(continued)

It was agreed without objection that this matter
would be continued at the next open meeting.

IV. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 6:55 P.M.

Signed:

David M. Mason
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission

