

AGENDA DOCUMENT NO. 02-96

MINUTES OF AN OPEN MEETING

OF THE

FEDERAL ELECTION COMMISSION

THURSDAY, DECEMBER 5, 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

* Because of inclement weather, Commissioner McDonald participated in this meeting telephonically. He followed live television coverage of the proceedings, commenting and voting through the telephonic connection set up to a speaker in the meeting room.

Chairman David M. Mason called the Federal Election Commission to order in an open meeting at 10:10 A.M. on Thursday, December 5, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for November 21,
2002, and its continuation
on November 25, 2002

Agenda Document No. 02-89

Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve the minutes for the open meeting of November 21, 2002, and its continuation on November 25, 2002, as submitted in Agenda Document No. 02-89.

The motion carried on the vote of 5-0 with Commissioners Mason, Sandstrom, Smith, Thomas, and Toner voting affirmatively.

II. A PLAN FOR IMPLEMENTING THE 2002 VOTING
SYSTEM STANDARDS

Agenda Document No. 02-85

Chairman Mason recognized Ms. Penelope Bonsall of the Office of Election Administration who reviewed the subject document. During the discussion, several technical amendments were noted.

The Chairman recognized Vice Chairman Sandstrom, who

MOVED to approve the Implementation Plan for the Voting System Standards, as set forth in Agenda Document No. 02-85, as amended.

The motion carried on the vote of 5-0 with Commissioners Mason, Sandstrom, Smith, Thomas, and Toner voting affirmatively.

Without objection, the agenda was reordered
to consider Item IV. before Item III.

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IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON COORDINATED AND INDEPENDENT EXPENDITURES

Agenda Documents No. 02-90,
No. 02-90-A, No. 02-90-B,
No. 02-90-C, and No. 02-90-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. 02-90,
No. 02-90-A, No. 02-90-B,
No. 02-90-C, and No. 02-90-D.

The motion carried on the vote of 5-0 with
Commissioners Mason, Sandstrom, Smith, Thomas, and
Toner voting affirmatively.

Chairman Mason recognized Mr. John Vergelli
of the General Counsel's Office who presented an overview
of the subject document.

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(continued)

The Chairman recognized the following members of the General Counsel's staff: Ms. Rosemary Smith, Mr. Richard Ewell, and Mr. Mark Allen.

Chairman Mason stated the amendments would be considered in the order that they appear in the regulations.

The first amendment offered for consideration was by Vice Chairman Sandstrom at § 100.16. A discussion followed.

The Chairman recognized Vice Chairman Sandstrom, who

MOVED to approve the amendments
in Agenda Document No. 02-90-B
on Page 3.

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

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
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(continued)

Chairman Mason recognized Commissioner Thomas who presented his amendment at § 109.21. Following discussion, the Chairman recognized Commissioner Thomas, who

MOVED to approve the amendment at § 109.21, as set forth in Agenda Document No. 02-90-A.

The motion failed in a vote of 2-4 with Commissioners McDonald and Thomas voting affirmatively. Commissioners Mason, Sandstrom, Smith, and Toner dissented.

Chairman Mason recognized Commissioner Smith, who

MOVED to approve the following amendment to Agenda Document No. 02-90 on Page 24:

The sentence which begins on Line 11 to the middle of Line 13 to read:

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(continued)

"The Commission concludes that when read as whole sentences, 2 U.S.C. 441a(a)(7)(B)(i) and (ii) require that for a contribution to exist three requirements must be met:"

The motion carried on the vote of 6-0.

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The meeting recessed at 12:15 P.M. and reconvened at 2:05 P.M. with a quorum present.

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The first item to be considered in the afternoon session was the draft Advisory Opinion.

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III. DRAFT ADVISORY OPINION 2002-12

American Medical Security, Inc. by counsel,
Brady C. Williamson and Mike B. Wittenwyler

Agenda Documents No. 02-83,
No. 02-83-A (withdrawn), and
No. 02-83-B

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. 02-83-B.

The motion carried on the vote of 5-0 with
Commissioners Mason, Sandstrom, Smith, Thomas, and
Toner voting affirmatively.

Chairman Mason recognized Ms. Anne Weissenborn
of the General Counsel's Office who presented draft
Advisory Opinion 2002-12 concerning the application of
the Federal Election Campaign Act of 1971, as amended
("the Act"), and Commission regulations to the relationship

III. DRAFT ADVISORY OPINION 2002-12

(continued)

of American Medical Security, Inc. PAC and the Blue Cross & Blue Shield United of Wisconsin Political Action Committee. During her presentation, Ms. Weissenborn noted that Agenda Document No. 02-83-A had been withdrawn and replaced by Agenda Document No. 02-83-B.

Chairman Mason recognized Vice Chairman Sandstrom,
who

MOVED to approve draft Advisory Opinion 2002-12, as set forth in Agenda Document No. 02-83, as amended by Agenda Document No. 02-83-B.

The motion carried on the vote of 6-0.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
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(continued)

The Chairman recognized Vice Chairman Sandstrom who offered an amendment at 109.23(a). Following his presentation, he

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
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(continued)

MOVED to approve the amendments
in Agenda Document No. 02-90-B
on Page 1, No. 1, as amended to
change the reference from Page 152
to Page 155.

The motion carried on the vote of 6-0.

Chairman Mason recognized the Vice Chairman who
presented his amendment at § 109.35. Mr. John Vergelli
and Mr. Mark Allen of the General Counsel's staff
participated in the discussion which followed.

The Chairman recognized Vice Chairman Sandstrom,
who

MOVED to approve the amendments
in Agenda Document No. 02-90-B,
on Pages 1 and 2, No. 2.

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

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(continued)

Chairman Mason recognized Vice Chairman Sandstrom who presented his proposed amendments in Agenda Document No. 02-90-D. A discussion followed.

The Chairman recognized the Vice Chairman, who

MOVED to approve his proposed amendments, as set forth in Agenda Document No. 02-90-D, subject to the following revisions:

Page 1: Change the first line to read: "Page 126, lines 5-8...";

Page 1: Delete the last sentence in the first paragraph;

Page 2: The sixth line from the bottom change "(f)" to "other conditions";

Page 4: The eighth line from the top, change (f) to "other conditions."

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(continued)

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

Chairman Mason recognized Commissioner Smith who presented an amendment to § 109.23(b)(4). A discussion followed, and the General Counsel requested a brief recess in order to review the amendment.

Prior to the recess, Chairman Mason recognized Commissioner Toner, who

MOVED to delete the words "by
itself" on Page 16, Line 10
in Agenda Document No. 02-90.

The motion carried on the vote of 6-0.

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The agenda was reordered, and the next item to be considered was the future meeting dates.

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V. ROUTINE ADMINISTRATIVE MATTERS

FUTURE MEETING DATES

Agenda Document No. 02-91

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. 02-91.

The motion carried on the vote of 6-0.

The Chairman recognized the Vice Chairman,

who

MOVED to approve the future
meeting dates for January,
2003, as set forth in Agenda
Document No. 02-91.

The motion carried on the vote of 6-0.

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There was a recess at 3:20 P.M. and the
meeting reconvened at 3:30 P.M. with a quorum
present.

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IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
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(continued)

The amendment offered by Commissioner Smith at § 109.23 on the use of brief quotations of campaign materials was continued. Mr. Richard Ewell and Mr. John Vergelli of the General Counsel's Office participated in the discussion which followed.

Chairman Mason recognized Commissioner Smith, who

MOVED to amend Agenda Document
No. 02-90 at § 109.23(b)(4)
on Page 156, Lines 6 through 9,
to read as follows:

"(4) The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views;" and, further, to amend the Explanation and Justification as follows:

Page 89, Line 11: Delete all language after "rule" through "(emphasis added)" on Line 13.

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(continued)

Page 90 at Line 6, at the end of the sentence, insert the following new sentence:

"Additionally, the Commission believes that such legitimate benefits as would flow from a fair use exception are met through application of 11 CFR 109.23(b)(4)."

Page 90, Line 20, delete the words "continues to", add an "s" to "allow."

Page 90, Lines 20 and 21: delete the words "a corporation or labor organization to make."

Page 90, Lines 21-22: delete "its restricted class, as provided in 11 CFR 114.3(c)(1)" and replace with "illustrate a candidate's position on an issue."

The motion carried on the vote of 6-0.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
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(continued)

Chairman Mason recognized Mr. Richard Ewell of the General Counsel's Office who reviewed the amendments in Agenda Document No. 02-90-C, and offered the following additional amendments to Agenda Document No. 02-90, as follows:

Page 2, Line 21: Insert the word "was" after the word "hearing."

Page 39, Line 3 of Footnote 2, insert the word "be" before the word "'coordinated'."

Page 48, Line 10: Insert the word "suggestion" before the word "standard."

Chairman Mason recognized Commissioner Smith,
who

MOVED to approve Agenda Document No. 02-90-C, subject to the amendments noted above, and further amended on Page 1 of Attachment A, by deleting the parentheses in the cite for "441i."

The motion carried on the vote of 6-0.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON COORDINATED AND INDEPENDENT EXPENDITURES
(continued)

Chairman Mason recognized Commissioner Smith,
who

MOVED to approve the Final Rules
and Explanation and Justification
on Coordinated and Independent
Expenditures, as set forth in
Agenda Document No. 02-90, as
amended, and to incorporate any
additional technical and conforming
amendments, for publication in the
Federal Register and transmittal
to Congress.

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

V. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 4:10 P.M.

Signed:

David M. Mason
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission