

AGENDA DOCUMENT NO. 03-44

MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION

THURSDAY, JUNE 26, 2003

PRESENT: Ellen L. Weintraub, Chair, presiding  
Bradley A. Smith, Vice Chairman  
David M. Mason, Commissioner  
Danny L. McDonald, Commissioner  
Scott E. Thomas, Commissioner  
Michael E. Toner, Commissioner  
James A. Pehrkon, Staff Director  
Lawrence H. Norton, General Counsel  
Mary W. Dove, Secretary

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:20 A.M. on Thursday, June 26, 2003, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for June 19, 2003

Agenda Document No. 03-42

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Minutes for the open meeting of Thursday, June 19, 2003, as set forth in Agenda Document No. 03-42.

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

II. DRAFT ADVISORY OPINION 2003-05

National Association of Home Builders of the  
United States (NAHB) by counsel, Mark Braden

Agenda Documents No. 03-43 and  
No. 03-43-A

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 03-43-A.

The motion carried on the vote of 6-0.

The Chair recognized Mr. Anthony Buckley of the  
General Counsel's Office who presented draft Advisory  
Opinion 2003-05 concerning the application of the Federal  
Election Campaign Act of 1971, as amended ("FECA"), the  
Bipartisan Campaign Reform Act of 2002 ("BCRA") (collectively  
"the Act"), and Commission regulations to activities of  
NAHB and its separate segregated fund, BUILD-PAC, that  
entail appearances by Federal officeholders or candidates.

II. DRAFT ADVISORY OPINION 2003-05 (continued)

During his presentation, Mr. Buckley presented an amendment which would replace language at Page 11, Lines 16-20 of Agenda Document No. 03-43, or Page 13, Line 17 through the end of the sentence on Line 21 of Agenda Document No. 03-43-A, to read as follows:

"The Commission concludes that, to the extent that solicitations for the Voter Mobilization program would constitute solicitations for activities that fall within 2 U.S.C. 431(20)(A)(i) and (ii), including certain types of voter registration activity, such solicitations would constitute 'specific solicitations' as covered by 2 U.S.C. 441(e)(4)(B)."

The Chair presented an overview of her proposed draft, as contained in Agenda Document No. 03-43-A, and an accompanying amendment. During the discussion which followed, the amendment to modify language at Page 13, Line 4 through Line 10 was amended to read as follows:

II. DRAFT ADVISORY OPINION 2003-05 (continued)

"If the organization's principal purpose is not to conduct election activities, including certain voter registration, get-out-the vote (GOTV) or generic campaign activity described in 11 CFR 300.65(c), a covered person may make a 'general solicitation' of funds on behalf of the organization, even if it conducts such election activity from time to time. Such a solicitation may be made without regard to source prohibitions or amount limitations, but must not be used to obtain funds for use in connection with an election or any such activities. 2 U.S.C. 441i(e)(4)(A) and 11 CFR 300.65(a)(2)(i) and (ii)."

Further, on Page 13, Line 13, the reference to footnote 1 would be deleted and substituted with similar language as above.

The discussion resumed.

Chair Weintraub recognized Commissioner Mason who offered an amendment to Agenda Document No. 03-43-A, in Question 5, Page 14, at the end of Line 10, to insert the following sentence:

"If the covered person did not make solicitations for Voter Mobilization activities that person may participate in the event as described above."

II. DRAFT ADVISORY OPINION 2003-05 (continued)

The Chair recognized General Counsel Norton who presented proposed language to follow the sentence offered by Commissioner Mason at Page 14, Line 10:

"The Commission's analysis and opinions turn on the conduct of the covered person and would not be affected by advice or instruction received from NAHB."

Chair Weintraub recognized Commissioner Thomas who recommended that a reference to Advisory Opinion 2003-03 be inserted on Page 10 at the end of Line 11.

The Chair recognized Commissioner Toner who recommended amending the language of the last sentence on Page 10 at Line 10 after the word "solicitation" to read: "outside the restricted class or a solicitation or direction of non-Federal funds."

II. DRAFT ADVISORY OPINION 2003-05 (continued)

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to approve the revisions  
to draft Advisory Opinion 2003-05,  
as submitted in Agenda Document  
No. 03-43-A, as amended at the  
table, and subject to the final  
approval of the revised draft to  
be circulated on a tally vote  
basis.

The motion carried on the vote of 6-0.

III. ROUTINE ADMINISTRATIVE MATTERS

The Chair recognized Staff Director Pehrkon who  
announced that Chair Weintraub and Commissioner Toner would  
be publicly sworn in for their full terms by each other in a  
joint ceremony on Friday, June 27, 2003, in the Hearing Room.  
An invitation to all staff was extended.

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The meeting adjourned at 11:30 A.M.

Signed:

Ellen L. Weintraub  
Chair

Attest:

Mary W. Dove  
Secretary