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THE FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2003 OCT 30 A 10: 08

## AGENDA ITEM

For Meeting of: 11-06-03

### MEMORANDUM FOR THE COMMISSION

**FROM:** DAVID M. MASON  
COMMISSIONER

A handwritten signature in dark ink, appearing to read "DM", written over the name "DAVID M. MASON".

**SUBJECT:** PROPOSED AMENDMENT TO REVISED DRAFT AO 2003-23  
(WE LEAD)

**DATE:** OCTOBER 29, 2003

I propose to amend the revised draft of Advisory Opinion 2003-23 (Agenda Doc. No. 03-78) as follows:

1. Strike the sentence beginning on page 7, line 16: "The solicitations must also include the appropriate disclaimers pursuant to 11 CFR 110.11."

2. Strike page 7, lines 19 through 22 and insert:

- 1 Two additional issues arising from the proposed activity are whether WE LEAD's direct
- 2 costs of solicitation should be treated as in-kind contributions or independent
- 3 expenditures and the contents of any required disclaimer. If WE LEAD's solicitations in
- 4 this earmarking program were made independent of any candidate, candidate's authorized
- 5 political committee, or its agents, by virtue of this independence the direct costs of
- 6 solicitation incurred by WE LEAD would constitute independent expenditures. 2 U.S.C.
- 7 431(17); 11 CFR 100.16. Thus, to the extent that Advisory Opinion 1980-46 concludes
- 8 that the direct costs of the solicitation incurred would constitute an in-kind contribution to
- 9 the candidate's campaign merely on account of a candidate's subsequent acceptance of

10 earmarked contributions, it is overruled. Furthermore, if the solicitations are independent  
11 expenditures triggering the disclaimer requirements, the disclaimer shall clearly state WE  
12 LEAD's full name and permanent street address, telephone number, or World Wide Web  
13 address and that the communication is not authorized by any candidate or candidate's  
14 committee. 2 U.S.C. 441d(a)(3); 11 CFR 110.11(b)(3) and (c). Alternatively, if the  
15 solicitations are coordinated with a candidate, a candidate's committee, or its agents (11  
16 CFR 109.20), the direct costs of solicitations would constitute an in-kind contribution to  
17 the campaign and the disclaimer shall state that the communication has been paid for by  
18 WE LEAD and that the communication is authorized by such authorized committee. 2  
19 U.S.C. 441d(a)(2); 11 CFR 110.11(b)(2) and (c).