

AGENDA DOCUMENT NO. 03-52

MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION

THURSDAY, JULY 17, 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  
Alison Doone, Deputy Staff Director  
for Management, representing  
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 11:07 A.M. on Thursday, July 17, 2003, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for July 10, 2003

Agenda Document No. 03-47

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Minutes for the Open Meeting of Thursday, July 10, 2003, as submitted in Agenda Document No. 03-47.

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

II. DRAFT ADVISORY OPINION 2003-12

Stop Taxpayer Money for Politicians Committee ("STMP") and Representative Jeff Flake by counsel, Benjamin L. Ginsberg

(Continued from the meeting of July 10, 2003)

Agenda Documents No. 03-46, No. 03-48, No. 03-48-A, No. 03-48-B, and No. 03-48-C

Chair Weintraub recognized Vice Chairman

Smith, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 03-48, No. 03-48-A, No. 03-48-B, and No. 03-48-C.

The motion carried on the vote of 6-0.

The Chair recognized Mr. Albert Kiss of the General Counsel's Office who summarized Draft C of Advisory Opinion 2003-12, as set forth in Agenda Document No. 03-48, concerning the application of the Federal Election Campaign Act of 1971 ("the Act"), and Commission regulations to a ballot measure campaign that STMP and Representative Flake plan to undertake for the November 2, 2004 election in Arizona.

II. DRAFT ADVISORY OPINION 2003-12 (continued)

A discussion followed.

The Chair recognized Vice Chairman Smith,  
who

MOVED to approve Draft C of Advisory  
Opinion 2003-12, as submitted by  
Commissioner Toner in Agenda Document  
No. 03-48-C.

The Chair recognized Commissioner Mason,  
who

MOVED IN A SUBSTITUTE MOTION to  
approve Draft B of Advisory Opinion  
2003-12, as submitted in Agenda  
Document No. 03-46.

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

II. DRAFT ADVISORY OPINION 2003-12 (continued)

The Chair recognized Commissioner Thomas, who

MOVED IN A SUBSTITUTE MOTION to  
approve Draft A of Advisory Opinion  
2003-12, as submitted in Agenda  
Document No. 03-46.

The substitute motion failed by a vote of 1-5

with Commissioner Weintraub voting affirmatively.

Commissioners Mason, McDonald, Smith, Thomas, and Toner  
dissented.

The Chair recognized Vice Chairman Smith,

who

MOVED to amend Agenda Document  
No. 03-48-C by deleting the  
affiliation analysis, on Page 12,  
Line 1, through Page 13, Line 4.

The motion failed by a vote of 1-5 with

Commissioner Weintraub voting affirmatively.

Commissioners Mason, McDonald, Smith, Thomas, and  
Toner dissented.

II. DRAFT ADVISORY OPINION 2003-12 (continued)

Following discussion, Chair Weintraub  
recognized Vice Chairman Smith, who

MOVED to amend Agenda Document  
No. 03-48-C by deleting the  
sentence which begins on Page 10,  
Line 8 and ends on Line 14.

The motion carried by a vote of 6-0.

The Chair recognized Vice Chairman Smith,  
who

MOVED to amend Agenda Document  
No. 03-48-C by incorporating  
the amendments, as submitted  
in Agenda Document No. 03-48-B.

The motion carried by a vote of 6-0.

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The meeting recessed at 12:25 P.M. and  
reconvened at 12:40 P.M. with a quorum present.

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II. DRAFT ADVISORY OPINION 2003-12 (continued)

The discussion resumed.

The following amendments to Agenda Document  
No. 03-48-C were accepted:

1. Reword the language on Page 16, Line 7,  
after "\$ 300.2(c)," to read:

..."any solicitation of funds by  
Representative Flake on STMP's behalf  
must comply with section 441i(e)."

2. Drop a footnote on Page 20, at the end of  
the sentence on Line 3 which reads:

"This \$5,000 limit is separate and distinct  
from the limitations on contributions to  
Representative Flake's PCC; thus, for example,  
it would be permissible for an individual to  
donate \$5,000 per calendar year to STMP and  
\$2,000 per election to Representative Flake's  
PCC."

3. Insert the word "solicitation" on Page 18,  
at the end of Line 15.
4. Insert the words "from any donor" after  
"STMP" on Page 20, Line 3.

II. DRAFT ADVISORY OPINION 2003-12 (continued)

5. Combine Questions 11.(a) and 11.(b), which begin on Page 20, Line 17, through Page 22, and answer the question as follows:

"No, STMP may not raise money that is not legal under the Act. See the response to question 9, above."

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The meeting recessed at 12:55 P.M. and reconvened at 2:15 P.M. with a quorum present.

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II. DRAFT ADVISORY OPINION 2003-12 (continued)

There was further discussion with a continuation of amendments offered to Agenda Document No. 03-48-C.

The following amendments were accepted:

6. Change the word "provides" to "provide" on Page 18, Line 11.



II. DRAFT ADVISORY OPINION 2003-12 (continued)

7. Rewrite the sentence on Page 23, Lines 12 and 13 to read:

"However, any solicitation of funds by Representative Flake on STMP's behalf must comply with section 441i(e)(1)."

8. Separate Question 13 on Page 23 into two parts to read as follows:

"13. (a) May Representative Flake raise funds for STMP for the ballot initiative campaign?"

"Yes. See the response to question 9, above."

"13. (b) Does STMP's form of organization as a section 527 political organization, or as a section 501(c)(4) organization affect the answer to this question?"

"No."

9. Amend Footnote 15, Line 2, on Page 17, by deleting the word "applicable" and substituting the word "dispositive" in lieu thereof.
10. Delete the first word "must" on Page 27, Line 13, and substitute the word "may" in lieu thereof.

II. DRAFT ADVISORY OPINION 2003-12 (continued)

11. Change the words "doing so" on Page 28  
Lines 13 and 18 to "so doing."
12. Delete Lines 9 and 10 on Page 30; amend  
Line 11 to begin as follows: "No;  
because..."; delete Lines 16 through 19.
13. Change the word "can" to "may" on Line 1,  
Page 15.
14. Insert the phrase "and electioneering  
communications" after the words "Federal  
election activities" on Page 7, Line 3.
15. Change the word "an" to "any" on Page 10,  
Line 16 before the word "election."
16. Amend the previous amendment (see No. 4,  
Page 7) by inserting the word "permissible"  
before the word "donor."
17. Delete the words "Federal officeholder  
and/or" on Page 27, Line 3.
18. Insert a footnote at the end of Line 16 on  
Page 18 which reads: "The provisions of  
2 U.S.C. 441i(e)(4) only apply to those 501(c)  
organizations that are not 'established,  
financed, maintained or controlled' by a  
covered individual."

II. DRAFT ADVISORY OPINION 2003-12 (continued)

19. Delete the sentence which begins on Line 9 through Line 12, Page 15, and replace with the following:

"Note the definition of agent at 11 CFR 109.3(b)."

The earlier motion offered by Vice Chairman Smith, who

MOVED to approve Draft C of Advisory Opinion 2003-12, as set forth in Agenda Document No. 03-48-C, was modified to include all of the amendments made at the table; to authorize the Office of General Counsel to incorporate any necessary technical and conforming amendments; and to circulate the revised draft on a tally vote basis for final approval.

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

III. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 3:00 P.M.

Signed:

Ellen L. Weintraub  
Chair of the Commission

Attest:

Mary W. Dove  
Secretary of the  
Commission