

AGENDA DOCUMENT NO. 04-03

APPROVED JANUARY 7, 2004

MINUTES OF AN OPEN MEETING

OF THE

FEDERAL ELECTION COMMISSION

THURSDAY, DECEMBER 18, 2003

PRESENT: Ellen L. Weintraub, Chair, presiding
Bradley A. Smith, Vice Chairman
David M. Mason, Commissioner
Danny L. McDonald, 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 10:15 A.M. on Thursday, December 18, 2003, with a quorum present.

I. MERIT AND SERVICE AWARDS

Chair Weintraub, assisted by Staff Director Pehrkon, presented the following service awards:

TEN YEAR SERVICE AWARDS:

Tracy L. Bloom, Office of General Counsel (OGC)
Lawrence L. Calvert, Jr., OGC
Dominique Dillenseger, OGC
Tyvice M. Holmes, Disclosure Division
Don M. Hufford, Finance Office
Kimberly A. Kaufhold, IT Division
Colleen T. Sealander, OGC

TWENTY YEAR SERVICE AWARDS:

Jonathan A. Bernstein, OGC
Mary W. Dove, Commission Secretary
Merita S. Johnson, OGC.

The Chair presented a citation to retiring Press Officer Ronald Harris, and "Going The Extra Mile" Awards to various staff members.

II. ELECTION OF OFFICERS

A. Election of Chairman

Chair Weintraub recognized Commissioner

Danny L. McDonald, who

MOVED to elect Vice Chairman
Bradley A. Smith to serve as
Chairman of the Federal
Election Commission beginning
January 1, 2004.

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

B. Election of Vice Chairman

Chair Weintraub recognized Commissioner

Toner, who

MOVED to elect Chair Ellen L. Weintraub
to serve as Vice Chair of the Federal
Election Commission beginning January 1,
2004.

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

III. FUTURE MEETING DATES

Agenda Document No. 03-104

Chair Weintraub recognized Vice Chairman
Smith, who

MOVED to approve the Future
Meeting Dates, as submitted
in Agenda Document No. 03-104.

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

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The meeting recessed at 10:55 A.M. and reconvened
at 11:05 A.M. with a quorum present.

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IV. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-30

Fitzgerald for Senate Committee and
Senator Peter Fitzgerald by counsel,
Benjamin L. Ginsberg and Glenn M. Willard

Agenda Documents No. 03-102
and No. 03-102-A (Submitted late)

IV. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-30
(continued)

The Chair recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-102-A.

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

The Chair recognized Ms. Esa Sferra of the
General Counsel's Office who presented draft Advisory
Opinion 2003-30, concerning the application of the
Federal Election Campaign Act of 1971, as amended
("the Act"), and Commission regulations to the
permissible uses of contributions designated for or
attributed to the 2004 primary election, for which
Senator Fitzgerald is no longer a candidate.

IV. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-30
(continued)

The Chair presented an overview of her proposed amendments, as contained in Agenda Document No. 03-102-A.

Chair Weintraub recognized Commissioner Toner,
who

MOVED to approve draft Advisory
Opinion 2003-30, as set forth
in Agenda Document No. 03-102-A.

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

B. Revised Draft Advisory Opinion 2003-31

Senator Mark Dayton by counsel,
Marc E. Elias and Brian Svoboda

Agenda Document No. 03-106
(Submitted late)

The Chair recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-106.

IV. ADVISORY OPINIONS (continued)

B. Revised Draft Advisory Opinion 2003-31
(continued)

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

The Chair recognized Ms. Esa Sferra of the General Counsel's Office who presented revised draft Advisory Opinion 2003-31, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain campaign expenses paid for by Senator Dayton with personal funds and later reimbursed by his principal campaign committee for the purposes of the "Millionaire's Amendment" of the Bipartisan Campaign Reform Act of 2002 ("BCRA").

A discussion followed, and Ms. Rosemary Smith and Ms. Mai Dinh of the General Counsel's Office and Mr. Barry Conway of the Reports Analysis Division responded to questions and comments.

IV. ADVISORY OPINIONS (continued)

B. Revised Draft Advisory Opinion 2003-31
(continued)

Chair Weintraub recognized Vice Chairman
Smith, who

MOVED to approve revised draft
Advisory Opinion 2003-31, as
submitted in Agenda Document
No. 03-106.

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

C. Revised Draft Advisory Opinion 2003-32
(Alternative Drafts)

Ms. Inez Tenenbaum by counsel,
Marc E. Elias

Agenda Document No. 03-107
(Submitted late)

The Chair recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-107.

IV. ADVISORY OPINIONS (continued)

C. Revised Draft Advisory Opinion 2003-32
(Alternative Drafts) (continued)

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

The Chair recognized Mr. Michael Marinelli of the
General Counsel's Office who presented revised Drafts A
and B and new Draft C of Advisory Opinion 2003-32, concern-
ing the application of the Federal Election Campaign Act of
1971, as amended ("the Act"), and Commission regulations to
the use of funds remaining from Ms. Tenenbaum's 2002 State
campaign account.

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to approve revised Draft A of
Advisory Opinion 2003-32, as set forth
in Agenda Document No. 03-107, amended
as follows:

Page 4, delete the sentence
which begins on Line 18 and
ends on Line 20;

IV. ADVISORY OPINIONS (continued)

C. Revised Draft Advisory Opinion 2003-32
(Alternative Drafts) (continued)

Amend the end of Footnote 6,
on Page 5 to read: "11 CFR
100.24 (defining the statutory
phrase 'in connection with an
election in which a candidate
for Federal office appears on
the ballot')." "

The motion failed by a vote of 3-2 with
Commissioners Mason, Smith, and Toner voting
affirmatively. Commissioners McDonald and Weintraub
dissented.

The Chair recognized Commissioner McDonald,
who

MOVED to approve revised
Draft B of Advisory Opinion
2003-32, as submitted in
Agenda Document No. 03-107.

The motion failed by a vote of 2-3 with
Commissioners McDonald and Weintraub voting
affirmatively. Commissioners Mason, Smith, and Toner
dissented.

IV. ADVISORY OPINIONS (continued)

C. Revised Draft Advisory Opinion 2003-32
(Alternative Drafts) (continued)

The Chair recognized Vice Chairman Smith,
who

MOVED to approve Alternative C
of Advisory Opinion 2003-32, as
submitted in Agenda Document
No. 03-107, amended as follows:

Page 4, delete the sentence
which begins on Line 18 and
ends on Line 20;

Amend the end of Footnote 6,
on Page 5 to read: "11 CFR
100.24 (defining the statutory
phrase 'in connection with an
election in which a candidate
for Federal office appears on
the ballot')." "

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

IV. ADVISORY OPINIONS (continued)

D. Draft Advisory Opinion 2003-34

Viacom, Inc., Networks, Inc. (Showtime),
and TMD Productions, Inc., by counsel,
Jan Witold Baran

Agenda Document No. 03-103

Chair Weintraub recognized Mr. Albert Kiss of the General Counsel's Office who presented draft Advisory Opinion 2003-34, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the funding, production, airing, and other distribution of a "reality documentary series" entitled *American Candidate*.

Following discussion, the Chair recognized Vice Chairman Smith, who

MOVED to approve draft Advisory
Opinion 2003-34, as submitted in
Agenda Document No. 03-103.

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

V. ENFORCEMENT TREASURER POLICY - OFFICIAL AND
PERSONAL CAPACITIES

Agenda Document No. 03-105

The Chair recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-105.

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

The Chair recognized Ms. Rhonda Vosdingh of
the General Counsel's staff who presented an overview
of the subject document.

A discussion followed.

Chair Weintraub recognized Commissioner McDonald,
who

V. ENFORCEMENT TREASURER POLICY - OFFICIAL AND
PERSONAL CAPACITIES (continued)

MOVED to approve the Enforcement Treasurer Policy, Official and Personal Capacities, as submitted in Agenda Document No. 03-105, as amended pursuant to the meeting discussion, for publication in the *Federal Register*, to seek comments for a thirty-day period.

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

VI. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 12:20 P.M.

Signed:



Ellen L. Weintraub
Chair of the Commission

Attest:



Mary W. Dove
Secretary of the Commission