

AGENDA DOCUMENT NO. 04-18

MINUTES OF AN OPEN MEETING

OF THE

FEDERAL ELECTION COMMISSION

WEDNESDAY, FEBRUARY 18, 2004

PRESENT: Bradley A. Smith, Chairman, presiding

 Ellen L. Weintraub, Vice Chair

 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

Chairman Bradley A. Smith called the Federal Election Commission to order in an open meeting at 10:10 A.M. on Wednesday, February 18, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

A. Minutes for January 29, 2004
Agenda Document No. 04-15

B. Minutes for February 5, 2004
Agenda Document No. 04-16

The Chairman recognized Vice Chair Weintraub,
who

MOVED to approve the minutes
for the Open Meetings of
Thursday, January 29, 2004,
and Thursday, February 5, 2004,
as submitted in Agenda Documents
No. 04-15 and No. 04-16, respectively.

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

II. DRAFT ADVISORY OPINION 2003-37

Americans for a Better Country by
Keith A. Davis, Treasurer

(Held over from the Meeting of February 5, 2004)

Agenda Documents No. 04-11, No. 04-11-A,
No. 04-11-B, No. 04-11-C, No. 04-11-D,
No. 04-11-E, No. 04-11-F, and No. 04-11-G

Chairman Smith recognized Vice Chair Weintraub,

who

MOVED to suspend the rules on the
timely submission of agenda documents
in order to consider Agenda Documents
No. 04-11-C, No. 04-11-D, No. 04-11-E,
No. 04-11-F, and No. 04-11-G.

The motion carried on the vote of 6-0.

The Chair recognized General Counsel Lawrence H.

Norton who presented draft Advisory Opinion 2003-37,
concerning the application of the Federal Election Campaign
Act of 1971, as amended ("the Act" or "FECA"), and Com-
mission regulations to a variety of political activities
on behalf of Americans for a Better Country ("ABC").

II. DRAFT ADVISORY OPINION 2003-37 (continued)

During his presentation, Mr. Norton noted the following change to Agenda Document No. 04-11-A:

On Page 3, delete the proposed new footnote on Page 23, Line 24.

A discussion followed.

On behalf of Chairman Smith, Commissioner Mason

MOVED to adopt the Chairman's revised version of the draft, as submitted in Agenda Document No. 04-11-G, as amended, as the base line document, subject to additional amendments.

The discussion resumed.

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The meeting recessed at 11:30 A.M. and reconvened at 11:40 A.M. with a quorum present.

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II. DRAFT ADVISORY OPINION 2003-37 (continued)

The Chair restated the motion on the floor, and the discussion continued.

Chairman Smith recognized Vice Chair Weintraub, who

MOVED in a substitute motion to decline to answer the request as improvidently granted and to address all the issues in the rulemaking context.

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

The vote was taken on the main motion to approve Agenda Document No. 04-11-G, as amended, as the base line document, subject to further amendments.

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

II. DRAFT ADVISORY OPINION 2003-37 (continued)

The Chairman recognized Vice Chair Weintraub,
who

MOVED to approve Agenda Document
No. 04-11-D, submitted by the
Vice Chair, as the base line
document, subject to further
amendments.

The motion carried on the vote of 4-2 with
Commissioners McDonald, Thomas, Toner, and Weintraub
voting affirmatively. Commissioners Mason and Smith
dissented.

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The meeting recessed at 12:20 P.M. and reconvened
at 2:05 P.M. with a quorum present.

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II. DRAFT ADVISORY OPINION 2003-37 (continued)

Chairman Smith recognized Vice Chair Weintraub
who presented the following amendments to Agenda Document
No. 04-11-D:

Page 6, line 1 through Page 7, line 7:
move to Page 9, line 5

Page 7, line 8: delete "Finally,"

Page 13, Footnote 13: delete "for any purpose
whatsoever. This prohibition is absolute and
does not contain any statutory exceptions."

Page 35, line 8: replace "includes not only"
with "is not limited to"

Page 35, line 9: delete ", but also ballot
measures and other types of elections"

Page 35, lines 10 - 13: delete starting with
"The Act..."

Without objection, the foregoing amendments were
accepted.

Without objection, Footnote 22, on Page 28, of
Agenda Document No. 04-11-D, was deleted.

II. DRAFT ADVISORY OPINION 2003-37 (continued)

Without objection, the italic language on Page 4, lines 9 through 14, of Agenda Document No. 04-11-D was changed to regular text.

Chairman Smith recognized Commissioner Toner,
who

MOVED to approve his proposed amendments, as submitted in Agenda Document No. 04-11-F, subject to the following items which were withdrawn:

"Page 5, line 7 strike "only"

"Page 5, line 19 after 'committees.'
Insert 'Accordingly, in light of BCRA and the McConnell ruling, it is appropriate for the Commission to require as a matter of law that all communications made by political committees that 'promote, support, attack, or oppose' a Federal candidate be paid for entirely with funds subject to the limits, prohibitions, and reporting requirements of FECA.' Also, after 'FECA...' (NOTE: The footnote was retained in the amendments.)

"Page 15, line 27 through page 16, lines 1-5 strike

"Page 16, line 23 strike 'and do not refer to any non-Federal candidates.'

II. DRAFT ADVISORY OPINION 2003-37 (continued)

"Page 17, lines 23-24 strike 'for the following reasons.'

"Page 18, lines 4-6 strike beginning with 'Moreover' through the end of line 6

"Page 18, line 20 through Page 19, line 2 restore deleted text

"Page 22, line 18 through Page 23, line 2 restore deleted text."

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The meeting recessed at 2:25 P.M. and reconvened at 2:40 P.M. with a quorum present.

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II. DRAFT ADVISORY OPINION 2003-37 (continued)

There was further discussion. Without objection the following items were withdrawn in Agenda Document
No. 04-11-F:

The proposed substitute language for Page 17, lines 9-12

II. DRAFT ADVISORY OPINION 2003-37 (continued)

"Page 18, lines 9-10 restore deleted text

"Page 18, lines 18-20 strike beginning with
'Allocation' through 'above.'"

Without objection, the following amendments were
included in Agenda Document No. 04-11-F:

Page 21, line 14 change "paragraphs [26],"
to "paragraphs [52]"

Page 21, Footnote 17, replace with the
footnote referenced in Agenda Document
No. 04-11-F at "Page 22, line 5"

Move Footnote 18 from Page 23 to the end
of line 17 on Page 22

Insert a footnote in question 21 that it
is not clear from the request that 2 U.S.C.
441h(b) is not at issue here

Page 34, Footnote 29, change the cite to
106.6(d).

The vote was taken on Agenda Document
No. 04-11-F, as amended at the table, and the motion
carried on the vote of 4-0 with Commissioners McDonald,
Thomas, Toner, and Weintraub voting affirmatively.
Commissioners Mason and Smith abstained.

II. DRAFT ADVISORY OPINION 2003-37 (continued)

Chairman Smith recognized Vice Chair Weintraub,
who

MOVED to approve Agenda Document
No. 04-11-D, as amended, and as
further amended by Agenda Document
No. 04-11-F, as amended at the
table.

The motion carried on the vote of 4-2 with
Commissioners McDonald, Thomas, Toner, and Weintraub
voting affirmatively. Commissioners Mason and Smith
dissented.

The Chairman recognized Vice Chair Weintraub,
who

MOVED to direct the Office of General
Counsel to make any technical amendments,
as necessary.

The motion carried on the vote of 6-0.

III. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 3:20 P.M.

Signed:

Bradley A. Smith
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission