



AGENDA DOCUMENT NO. 04-51

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION**

THURSDAY, May 13, 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 10:05 A.M. on Thursday, May 13, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for April 29, 2004
Agenda Document No. 04-45**

Chairman Smith recognized Vice Chair Weintraub, who

MOVED to approve the minutes for the Open Meeting of Thursday, April 29, 2004, as submitted in Agenda Document No. 04-45.

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

II. DRAFT ADVISORY OPINION 2004-13

Allyson Schwartz for Congress by Ken Morley, Campaign Manager

Agenda Document No. 04-46

Chairman Smith recognized Vice Chair Weintraub, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document No. 04-46.

The motion carried on the vote of 6-0.

II. DRAFT ADVISORY OPINION 2004-13 (continued)

Chairman Smith recognized Mr. Robert Knop of the General Counsel's Office, who presented draft Advisory Opinion 2004-13, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to any transfer of personal funds from the primary election to the general election by Ms. Schwartz's general election opponent, Ms. Melissa Brown. Mr. Knop noted that counsel for the Brown campaign has commented on the draft Advisory Opinion, indicating that no money was transferred from the primary to the general election, and, therefore, the Office of General Counsel has recommended that an appropriate letter be sent to the requester stating the request presents a hypothetical situation and does not qualify as a proper advisory opinion request.

The Chairman recognized Vice Chair Weintraub, who

MOVED to approve the Office of General Counsel's recommendation as presented above.

The motion carried on the vote of 6-0.

**III. PROPOSED FINAL REGULATIONS REGARDING POLITICAL
COMMITTEE STATUS**

**Agenda Documents No. 04-44, No. 04-44-A,
No. 04-47, No. 04-48, and No. 04-49**

**(Executive Assistant Caroline Goodson
recused herself with respect to this
matter and was not present during the
discussion.)**

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. 04-44-A,
No. 04-47, No. 04-48, and No. 04-49.**

The motion carried on the vote of 6-0.

Chairman Smith recognized General Counsel Lawrence H.

**Norton who reviewed Agenda Document No. 04-48, which was
submitted by the Office of General Counsel for Commission
consideration.**

**Chairman Smith recognized Commissioner Thomas who
presented an opening statement and reviewed the proposed final
regulations offered by him and Commissioner Toner, as contained in
Agenda Document No. 04-44.**

**III. PROPOSED FINAL REGULATIONS REGARDING POLITICAL
COMMITTEE STATUS**

(continued)

The Chairman recognized Commissioner Toner who outlined the key parameters in the Toner/Thomas proposal, presented technical and clarifying amendments, and

MOVED to approve the proposed final regulations, as submitted in Agenda Document No. 04-44, as amended at the table.

A discussion followed.

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The meeting recessed at 11 :45 A.M. and reconvened at 11 :55

A.M. with a quorum present.

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**III. PROPOSED FINAL REGULATIONS REGARDING POLITICAL
COMMITTEE STATUS**

(continued)

At the conclusion of the discussion, the vote was taken to approve Agenda Document No. 04-44, as amended. The motion failed by a vote of 2-4 with Commissioners Thomas and Toner voting affirmatively. Commissioners Mason, McDonald, Smith, and Weintraub dissented.

**III. PROPOSED FINAL REGULATIONS REGARDING POLITICAL
COMMITTEE STATUS**

(continued)

Chairman Smith recognized Commissioner Toner, who

**MOVED to approve the allocation rules, as
set forth in Agenda Document No. 04-44,
beginning on Page 5, Line 5, through Page 11,
Line 11.**

A discussion followed.

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

The Chair recognized Commissioner Toner, who

**MOVED to approve the final regulations
regarding political committee status, as
submitted in Agenda Document No. 04-44,
as amended, effective as of January 1, 2005.**

**The motion failed by a vote of 2-4 with Commissioners Thomas
and Toner voting affirmatively. Commissioners Mason, McDonald,
Smith, and Weintraub dissented.**

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**The meeting recessed at 12 :55 P.M. and reconvened at
2 :30 P.M. with a quorum present.**

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**III. PROPOSED FINAL REGULATIONS REGARDING POLITICAL
COMMITTEE STATUS (continued)**

**There was a discussion of the General Counsel's document, as
contained in Agenda Document No. 04-48.**

Chairman Smith recognized Commissioner McDonald, who

**MOVED to approve the recommendation
submitted by the Office of General Counsel
in Agenda Document No. 04-48 on Page 11,
as follows :**

**"That within 90 days, the Commission
should either issue final rules, issue a
second NPRM that would offer
commenters a more focused proposal,
or decide - at least for now—to defer
the issuance of new rules and instead
look for guidance from Congress."**

The motion carried on the vote of 6-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 3:10 P.M.

Signed:

**Bradley A. Smith
Chairman of the Commission**

Attest:

**Mary W. Dove
Secretary of the Commission**