



Alliance for Justice

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NAN ARON, *president*
JAMES D. WEILL, *chair*

December 3, 2001

Rosemary C. Smith
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Federal Election Commission Notice of Proposed Rulemaking 2001-14: Use of the Internet for Campaign Activity

Dear Ms. Smith,

The Alliance for Justice welcomes the opportunity to submit comments in response to the Notice of Proposed Rulemaking ("NOPR") issued on October 3, 2001. We are pleased that the Commission has carefully considered the ramifications of regulating Internet communications pursuant to the Federal Election Campaign Act ("FECA"). In general we appreciate that these proposed regulations reflect the careful approach we urged in our January 4, 2000 comments, written in response to FEC Notice of Inquiry 1999-24 ("NOI"). The Alliance believes that any regulation should foster the Internet's potential to be a low-cost, democratic forum for greater participation in the political process.

The Alliance is a national association of environmental, civil rights, mental health, women's, children's and consumer advocacy organizations. These organizations and their members support legislative and regulatory measures that promote political participation, judicial independence, and greater access to the justice system. While most of the Alliance's members are charitable organizations, a significant number also work with or are affiliated with social welfare and advocacy organizations that engage in political activity.

Internet Activity by Individuals

Because the Commission's proposed rule does not directly impact nonprofit organizations that are of greatest concern to the

MEMBERS

American Society for the Prevention of Cruelty to Animals
Asian-American Legal Defense & Education Fund
Baselon Center for Mental Health Law
Business and Professional People for the Public Interest
Center for Digital Democracy
Center for Law and Social Policy
Center for Law in the Public Interest
Center for Reproductive Law & Policy
Center for Science in the Public Interest
Children's Defense Fund
Community Law Center
Consumers Union
Disability Rights Education & Defense Fund
Eardrington Legal Defense Fund
Education Law Center
Employment Law Center
Equal Rights Advocates
Food Research & Action Center
Hammon, Gurnan, Spielberg & Eisenberg
Human Rights Campaign Foundation
Institute for Public Representation
Juvenile Law Center
League of Conservation Voters Education Fund
Legal Aid Society of New York
Madame Justice Center—Drug Policy Foundation
Mexican American Legal Defense and Educational Fund
National Abortion and Reproductive Rights Action League Foundation
National Association of Criminal Defense Lawyers
National Center for Lesbian Rights
National Center for Youth Law
National Center on Poverty Law
National Education Association
National Employment Lawyers Association
National Immigration Forum
National Immigration Law Center
National Law Center on Homelessness and Poverty
National Legal Aid & Defender Association
National Mental Health Association
National Partnership for Women and Families
National Veterans Legal Services Program
National Women's Law Center
National Youth Advocacy Coalition
Native American Rights Fund
Natural Resources Defense Council
New York Lawyers for the Public Interest
NYU Legal Defense
Physicians for Human Rights
Physicians for Social Responsibility
Planned Parenthood Federation of America
Public Advocates
Public Justice Center
The Tides Center
University of Pennsylvania Law School
Public Service Program
Violence Policy Center
Welfare Law Center
The Wilderness Society
Women's Law Project
Youth Law Center

Alliance, we offer only limited comments on this proposal. Nonetheless, we are pleased that proposed 11 CFR 117.1 is in tune with the suggestion from our January 2000 comments that the Commission largely deregulate these activities. We likewise applaud the application of 11 CFR 114.9(a) which will allow for an individual's "occasional, isolated or incidental" use of corporate or labor computer facilities without subjecting to the organization to contribution or expenditure regulations under FECA.¹ We urge the Commission to explicitly state that the proposed regulation also exempt the use of equipment and services made available to the public use, such as free terminals in libraries and rental terminals in airports and Internet cafés. In addition, we urge the Commission to state that these exemptions extend to equipment and services that universities make available to students, staff, and faculty for personal use.

The NOPR was silent on whether this proposed rule supersedes Advisory Opinion 1998-22, despite the fact that the new rule would exempt the activities described in the AO from regulation.² We suggest that the Commission explicitly withdraw or revise the AO as it is inconsistent with this proposed rule.

Hyperlinks on Corporate & Labor Web Sites

The Alliance supports proposed 11 CFR 117.2 regarding hyperlinks from a corporate or labor organization website to the web site of a candidate or party committee. As stated in our previous comments, hyperlinks in and of themselves are not communications subject to the FECA regulation, because they do not contain substantive material. Hyperlinks merely provide access to communications and are an integral part of the Internet's structure. They are also not something of value and typically not vehicles for express advocacy. Exempting some hyperlinks from the FECA contribution and expenditure definitions reflects this reality.

The three conditions for contribution and expenditure exemption are reasonable.³ Hyperlinks that do not meet these conditions are rightfully subject to regulation by the Commission. The Alliance particularly supports the provisions allowing for a corporate or labor organization to selectively post hyperlinks based on candidate or party preference. This is a proper proposal considering current rules permit regulated organizations to publish or broadcast selected candidate information in the non-Internet context, so long as the communication does not contain express advocacy or is otherwise prohibited by the Act.

The Alliance also supports the limited exception to the prohibition on express advocacy in hyperlinks. If the prohibition were absolute, a corporation or a labor organization could not link to a web page with a URL containing express advocacy (i.e. "VoteForSmith2000.com"). The regulations rightly acknowledge that an organization has no control over a candidate or party's URL, and should not be precluded from linking based on

¹ 66 Fed. Reg. 50,362 (2001).

² Advisory Opinion 1998-22 held that a candidate web site created by an individual was something of value under FECA, and subject to its reporting requirements. The Alliance for Justice suggested in its January 2000 comments that this AO was inconsistent with the volunteer exception in the Act.

³ The conditions include no charge or nominal charge to the linked site, no coordinated linking and no use of express advocacy in graphics anchored to the link. 66 Fed. Reg. 50,364 (2001). The three conditions mirror current regulations in the non-Internet context.

the chosen web address. In keeping with this, we urge the Commission to modify the proposed rule so that merely identifying the link by referring to the URL in text near the link (i.e. "Click here to visit the VoteForJones.com website") will not constitute express advocacy.

Press Releases Announcing Candidate Endorsements

The Alliance for Justice also generally supports proposed 11 CFR 117.3, which would specifically permit a regulated organization to post a press release on its web site announcing a candidate endorsement and brief explanation for the position. The proposed rule recognizes the growing importance of press releases on the Internet, and is a natural companion to the regulation of corporate and labor endorsements in 11 CFR 114.4(c)(6).

While the conditions for posting the candidate endorsement press release on the Internet are generally reasonable, the Alliance asserts that the *de minimis* expenditure requirement is unnecessary. An endorsement press release is restricted under proposed 11 CFR 117.3(c) to be posted as other press releases are "ordinarily... available to the general public on its web site." Therefore, the other conditions provide sufficient protection from abuse of this proposed exception without the additional fiscal requirement.⁴ While it is clear that the Commission is taking care to avoid increased spending on such endorsement press releases, the other conditions are adequate to keep organizations from posting press releases that differ from the norm in any respect. As such, there is no threat to the spirit or letter of the Act, and the *de minimis* requirement should be removed.

Conclusion

The Alliance for Justice generally supports the regulations proposed in this NOPR. This is a positive step in providing guidance on how the Commission will be regulate Internet communications, while avoiding excessive regulation of this important low-cost communication tool.

Sincerely,



Nan Aron
President

⁴ See 60 Fed. Reg. 50,365 (2001). Proposed 11 CFR 117.3(c) requires the posting to be made in the same manner as other press releases. Should the cost of posting *any* press release for a regulated organization rise above the threshold *de minimis* levels contemplated by the proposed rules, the labor or corporate organization would be prohibited from posting an endorsement release based solely on the fiscal realities of posting on its own web site.