

# American Medical Association

Physicians dedicated to the health of America



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November 30, 2001

Rosemary C. Smith  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Re: Notice of Proposed Rulemaking - The Internet and Federal Elections

Dear Ms. Smith:

I am writing on behalf of the American Medical Association ("AMA") to comment on the Commission's Notice of Proposed Rulemaking regarding the Internet and Federal Elections, Notice 2001-14, 66 Fed. Reg. 50,358 (October 3, 2001) (the "Notice").

The AMA is a membership organization that was established in 1847 and incorporated under Illinois law in 1897. It is exempt from federal income tax pursuant to §501(c)(6) of the Internal Revenue Code. Its membership consists of approximately 290,000 physicians and medical students. The AMA is the connected organization of the American Medical Association Political Action Committee ("AMPAC"), a separate segregated fund ("SSF") which is registered as a multi-candidate committee pursuant to the Federal Election Campaign Act ("FECA"). During 2000, AMPAC received contributions from approximately 54,272 individuals who are members or executive or administrative personnel of the AMA or affiliated state or county medical societies or medical association alliances.<sup>1</sup>

The Commission's proposals are basically sound. Given the low cost of communicating over the Internet it makes little sense to consider voluntary activities of individuals to be contributions or expenditures for purposes of the Federal Election Campaign Act ("FECA"). And the proposed rules regarding hyperlinks and press releases are, in general, logical applications of the Commission's regulations to the Internet.

However, clarification is needed regarding how the proposed rules apply to web sites maintained by a corporation or labor organization on behalf of its SSF and portions of a web site accessible only to members of the restricted class. The Commission should clarify that (a) a web site maintained on behalf of an SSF is deemed to be a web site of the sponsoring organization for purposes of the proposed regulations, and (b) the restrictions in proposed §117.2(a) are not applicable to a hyperlink to a candidate web site from a portion of a web site accessible only to members of the restricted class.

<sup>1</sup> The alliances are membership organizations whose members are spouses of medical society members. In Advisory Opinion 1981-55, the Commission held that the AMA Alliance (then called the AMA Auxilliary) is an affiliate of the AMA.

There are a number of reasons why a web site maintained by a corporation or labor organization on behalf of its SSF should be deemed to be a web site of the connected organization. First, the SSF is legally part of, and an instrument of, the sponsoring organization. Section 316(2)(C) of FECA, 2 USC §441b(2)(C), and §114.1 (a)(2)(iii) of the Commission's regulations provide that the terms "contribution" and "expenditure" do not include

...the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock. (emphasis added)

Section 114.5(d) of the Commissions states that a corporation, labor union or membership organization "may exercise control over its separate segregated fund." As the Supreme Court stated in *Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385, 414 (1972), "such a fund must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments." Accord, AO 2000-03 (March 17, 2000).

Furthermore, the distinction between a web site for an SSF and a portion of a corporate or labor union web site containing information about the SSF is, at best, artificial. The AMA, for example, maintains a web site for AMPAC at [www.ampaconline.org](http://www.ampaconline.org). The same pages could have been established as part of the AMA web site at [www.ama-assn.org/ampac](http://www.ama-assn.org/ampac). There would be no practical difference between these two alternatives, and there should be no legal distinction between them. Moreover, there is no practical difference between a link from a page of corporate or labor organization web site to a separate SSF web site and a link to other pages on the connected organization's web site which contains information about the SSF.

As stated above, the proposed regulations governing hyperlinks are sound when applied to hyperlinks from publicly accessible pages of a web site. But the restrictions in proposed §111.2(a) should not be applicable to hyperlinks on a portion of a web site which is accessible only to members of the restricted class.

Section 316(b)(2)(A) of FECA and §114.1(a)(2)(i) of the Commission's regulations provide that the terms "contribution" and "expenditure" do not include communications by an organization to its restricted class. The Commission recognized in AO 1997-16 (September 19, 1997) that communications via the Internet qualified for this exception if they were accessible only to members of the restricted class. See also AO 2000-7 (May 31, 2000).

Proposed §117.2(a) provides that

... the establishment and maintenance of a hyperlink from the web site of a corporation or labor organization to the web site of a candidate, political committee or party committee for no charge or for a nominal charge is not a contribution or expenditure, provided that:

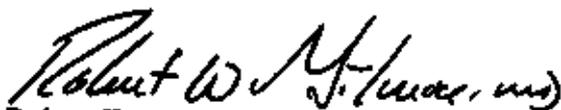
- (1) The corporation or labor organization does not charge or charges only a nominal amount for providing hyperlinks to other organizations;
- (2) The hyperlink is not coordinated general public political communications under §100.23 of this chapter; and
- (3) The following materials do not expressly advocate under §100.22 of this chapter:
  - (i) The image or graphic material to which the hyperlink is anchored; and
  - (ii) The text surrounding the hyperlink on the corporation or labor organization's web site, other than the text of a Uniform Resource Locator to which the link is anchored.

These restrictions are consistent with limitations in FECA and the Commission's regulations on general public communications by corporations and labor unions. Providing a service to a candidate or political committee without charge or for less than the usual or normal charge is both a contribution to that candidate or committee and an expenditure. 11 CFR §§100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(a). The same is true for general public political communications that are coordinated with a candidate. *Id.* §100.23. And a public communication by a corporation or labor union that expressly advocates the election or defeat of a clearly identified candidate is either a contribution or an independent expenditure.

A communication to members of the restricted class, however, is subject to different rules. Such communications may include express advocacy, *id.* §114.3(c), and may be coordinated with a candidate. *Id.* §114.2(c). Such a communication is excluded from the definitions of contribution and expenditure, even if it provides something of value to a candidate or political committee that would be considered a contribution or expenditure if provided directly by a corporation or labor union. Thus applying the restrictions in proposed §117.2 to such communications would be inconsistent with the Commission's current regulations.

I hope that these comments are useful. If you have any questions please contact Mr. Leslie J. Miller of the AMA's Corporate Law Division at (312) 464-4608 or by e-mail at [leslie\\_miller@ama-assn.org](mailto:leslie_miller@ama-assn.org).

Sincerely,

  
Robert W. Gilmore, MD