



Faiyaz Dean <deanf@seattleu.edu> on 11/12/2001 04:59:46 PM

To: internetprn@FEC  
cc:

Subject: Re: Proposed Rulemaking Concerning Use of Internet in Federal Elections

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Hi,

Attached is my comments to the proposed rulemaking.

Thanks,

Faiyaz Dean



- att1.htm



- Admin Law - Calls for comments2.doc

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October 15, 2001

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

VIA ELECTRONIC MAIL

Dear Ms. Smith:

RE: Notice of Proposed Rulemaking, No. 2001-14

I am writing in response to the Notice of Proposed Rulemaking ("NPRM") published by the Federal Election Commission ("FEC" or "Commission") on October 3, 2001. The three main issues that were addressed by the Commission in the NPRM were as follows: (1) Application of the volunteer exemption in 2 U.S.C. 431(8)(B)(ii) to Internet activity by individuals; (2) Hyperlinks placed on corporate or labor organization web sites; and (3) Candidate endorsements announced on corporate and labor organization web sites. I will discuss each of those issues separately below, after a brief background description of the FEC.

### BACKGROUND OF FEC

The FEC was created in 1975 by Congress. 2 U.S.C. 437. Its function was to administer and enforce the Federal Election Campaign Act ("FECA" or "Act") - the statute that governs the financing of federal elections. 2 U.S.C. 431. The duties of the FEC, which is an independent regulatory agency, are to disclose campaign finance information, to enforce provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections. Federal Elections Commission, *About the Federal Election Commission*, <<http://www.fec.gov/about.html>> (accessed Oct. 11, 2001).

### DISCUSSION OF ISSUES

#### I. INTERNET ACTIVITY BY INDIVIDUALS

##### A. Background

The FEC is proposing to create a new part in its regulations, 11 CFR 117, which would include Sec. 117.1. Sec. 117.1 would describe certain types of individual Internet activities that would not be treated as contributions or expenditures. Proposed Sec. 117.1(a) and (b) would state that "no

contribution or expenditure results where an individual, without receiving compensation, uses computer equipment, software, Internet services or Internet domain name(s) that he or she personally owns to engage in Internet activity for the purpose of influencing any election to Federal office." These exceptions would apply regardless if the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

The exception would not apply however if services or software were owned by an individual's employer, even if the individual was using them as part of volunteer activity conducted on his or her own time.

The result of the imposition of the act as stated by the FEC would be that individuals would be able to engage in a significant amount of election-related Internet activity without being subject to the Act. The costs incurred in activities that fall within the contribution exception would not count toward the limits on individual contributions to candidates and party committees.

## B. Analysis

The rationale behind the Act are four-fold: (1) to limit contributions so as to ensure that wealthy individuals and special interest groups do not have a disproportionate influence on federal elections; (2) to prohibit certain sources of funds for federal campaign purposes; (3) to control campaign spending, which tends to fuel reliance on contributors and fundraisers; and, (4) to require public disclosure of campaign finances in order to deter abuse and to educate the electorate.

I do not feel that the part of the section that says, "whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee" should be included. I feel that having this language in the section could potentially cause some political parties and organizations to use the Internet to circumvent the FECA. If this language were kept in the section, candidates, in trying to stay below certain spending caps, could ask its volunteers, who were going to do some Internet campaigning for him or her at the candidate's headquarters, to instead do such campaigning at his or her own home, thus freeing up funds for other forms of campaigning.

I have another problem with the proposed exception not applying to equipment, services or software owned by an individual's employer, even when the individual used them on his or her own time. I agree that the exception should not apply when the individual engages in political campaigning during working hours, but I do not believe that the exception should not apply on the employees own time. I feel that an individual's use of his employers' computer, etc., would further the purposes of the section in allowing the individual to contribute his or her resources with no effect on the candidate. I feel that an individual using his employers computer is in essence contributing his or her own resources, since he or she would have needed to obtain permission to use the equipment, and since the equipment is not available and accessible to everyone. He or she is in fact making use of the resources which they have available to them, much in the same way as if they were using their own home computer.

I think another strong policy consideration for not having the exception apply to employer's equipment is equal access to the political process. If someone were not able to afford the

necessary equipment, but were still very interested in participating in the process, this provision may in fact limit their ability to participate. This would be a limiting factor, because a candidate may not want the contribution from that person, if he or she could get a contribution from someone who owned his or her own computer, if the allocated costs may be too high for the candidate. We should be trying to encourage the greatest number of people, from all parts of society, from many different social, and socio-economic backgrounds to participate in the process, and this provision may hinder that.

## II. HYPERLINKS ON CORPORATION AND LABOR ORGANIZATION WEB SITES

### A. Background

The Commission is proposing to add Sec. 117.2 to new part 117. This section would state 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 or party committee for no charge or for a nominal charge would not be a contribution or expenditure. In order to enjoy the benefits of this section however, three conditions must be met: (1) the corporation or labor organization must not charge or only charges a nominal amount for providing hyperlinks to other organizations; (2) the hyperlink may not be a coordinated general public political communication under Sec. 100.23 of the Commission's rules, and; (3) if the hyperlink is anchored to a image or graphic material it cannot expressly advocate, except if the hyperlink is just the text of the URL and it happens to expressly advocate.

This proposed rule would allow corporations and labor organizations that charge nominal or no fees to provide hyperlinks to candidates of their choice.

### B. Analysis

I agree with the Commission and fully support the Commissions' implementation of this rule. I feel that it serves the greatest good for society to allow people easier access to information. If we regulate hyperlinks in such a way as to preclude corporations and labor organizations from posting them on their web sites, it will make it more difficult for citizens to access the political candidates, parties, or committees web pages. This in turn will cause citizens to be less informed about the issues and policies of these groups, and even if citizens were to pursue and look for information on these groups, they would need to search harder, thus increasing the transaction costs of obtaining such information. One of the major goals of an efficient, democratic electoral system, would be to allow and promote the least costly, most abundant form of information transfer for the citizenry. Allowing citizens easy access to this information will allow the public to have the most information about the groups, thus allowing them to make the most intelligent decision when it comes time to vote.

In addition, the Internet promotes cleaner, more informed elections by reducing the importance of money and the need for fundraising, thereby improving the quality of debate and increasing competition. Having hyperlinks on corporation and labor organization web sites just further promotes this and allows for this easy exchange of information.

### III. PRESS RELEASES ANNOUNCING CANDIDATE ENDORSEMENTS

#### A. Background

The Commission is proposing to add Sec. 117.3 to new part 117. The new section would allow a corporate or labor organization to make a press release announcing a candidate endorsement available to the general public on its web site, provided that four conditions are met: (1) the corporation or labor organization makes press releases available to the general public on its web site; (2) the press release is limited to an announcement of the corporation or labor organization's endorsement or pending endorsement and a statement of the reasons therefore; (3) the press release is made available in the same manner as other press releases made available on the web site; and (4) the costs of making the press release available on the web site are de minimis.

The proposed rule would enable a corporation or labor organization to post a press release announcing a candidate endorsement on its web site without limiting access of the press release to a restricted class, like was discussed in Advisory Opinion 1997-16.

#### B. Analysis

Under Corporation Law a corporation is considered its own person. Taking this into consideration that imposing this section would unfairly limit and censor a corporation's right to the First Amendment. I do not see the need and the rationale behind such a rule. I feel that corporations and labor organizations (collectively called "Corporations" or "Organizations") should be free to endorse or support a candidate in any way that it deems fit. I do not think the Commission has the power or the authority to limit the Corporations right to choose which candidates to endorse and how they would like to convey that support to the public. Designating that Corporations need to post their endorsement of candidates a particular way on their web sites in order for it to be in compliance with the regulations, would be the same thing as designating the way in which the Corporations' directors or officers would speak about the corporations' support of candidates. Clearly, this is a direct violation of our First Amendment rights, and therefore should be deemed unconstitutional and not be admitted into law. The FEC should also take into account the policy underlying the First Amendment, and the FECA, which is to promote democratic institutions by increasing the quantity, diversity, and opportunities for political speech.

Another challenge to the Commission's attempt to implement this rule is that this rule would be arbitrary and capricious. In order to determine whether an agency's action is arbitrary and capricious, you need to determine whether the agency has articulated a rational connection between its factual judgments and its ultimate policy choice. *Center for Auto Safety v Federal Highway Admin.*, 956 F.2d 309 (1992). The Commission assumes that negative results will arise out of corporate endorsements of candidates. I feel that this is an unfounded and unsupported conclusion. The Commission has not put forth any information as to what the harmful effects of corporate endorsements would be, so I feel that it is an arbitrary and capricious rulemaking.

CONCLUSION

In conclusion, I would like to thank you for providing me with an opportunity to comment on these matters, and would urge you to contact me if you require any further clarification on any points that I have addressed.

Sincerely,

Faiyaz A. Dean