



December 3, 2001

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

Re: Notice of Proposed Rulemaking, Notice 2001-14
The Internet and Federal Elections: Candidate-Related Materials on Web Sites of
Individual, Corporations and Labor Organizations

Dear Ms. Smith,

OMB Watch, a nonprofit organization that promotes government accountability and citizen participation in public issues and decision-making, welcomes this opportunity to comment on proposed rules relating to use of candidate materials on the Internet. We are very pleased that the Commission has chosen to both limit the scope of the new rules and encourage continued development of the Internet as a low-cost, widely available communications tool.

The clarification provided by the proposed rules will avoid the chilling effect on constitutionally protected speech that could result from uncertainty and confusion about the activities of volunteers, how hyperlinks are treated and how organizational endorsements can be posted. At the same time, by limiting the scope of the proposed rules to these three well-defined areas, the Commission is allowing for continued development of Internet-based activities in the election process.

Volunteers: Proposed 11 CFR 117.1

We support the Commission's finding that no regulated campaign contribution or expenditure occurs when a volunteer uses his or her personal computer and Internet access for federal campaign activity, even if this activity is coordinated with a candidate or party. This application of the volunteer exception in Section 100.7(b)(4) is the most appropriate outcome, since it is consistent with a federal policy of only regulating Internet activity when fraud, abuse or criminal activity is involved. No such considerations are relevant to individuals volunteering in campaigns. To the contrary, citizens should be encouraged to participate in the democratic process.

Hyperlinks: Proposed 11 CFR 117.2

This proposed rule would allow corporations, including nonprofit organizations and labor unions, to place links to candidate and party websites on their own sites if the link or

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surrounding text does not contain express advocacy language and is placed at no charge or only a nominal amount is charged. The proposed rule recognizes that links merely direct web visitors to the information of others without adopting the content of the linked site. The conditions imposed by the rule are appropriate to protect against abuse by making links containing express advocacy regulated contributions or expenditures. Because links are crucial to effective use of web sites, the proposed rule takes an appropriate least restrictive approach.

Endorsement Press Releases: Proposed 11 CFR 117.3

Since some nonprofit corporations and labor unions are allowed to announce candidate endorsements to the press, who then pass on that information on to the public, an application of Section 114.4(c)(4) that restricts posting the press release on the public portion of a group's web site would serve no compelling state interest. By requiring that endorsement press releases be posted on the same basis as other press releases and be limited to an announcement of the endorsement and the reasons for it, the rule prevents use of the press release as a general public communication that would otherwise be prohibited by FECA. The proposed rule is practical and consistent with a least restrictive approach to regulation of Internet based communications.

Conclusion

We encourage the Commission to approve the proposed rules, and to take no further additional action on use of the Internet in campaigns through the next election cycle. The Internet is still an evolving medium that is only just beginning to find a place in campaigns and elections. A recent study by George Washington University's Democracy Online Project found that this medium "has clearly not reached its potential". For instance, the report points out that most Congressional campaigns in 2000 did not use the Internet for fundraising. It also found that Internet related costs in this year's gubernatorial campaign in Virginia were very small, with the winner, Democrat Mark Warner spending only 1.1% of the campaign budget on Internet services, and his Republican opponent spending only 0.2%. These small amounts support the theory that the Internet can have a positive impact on citizen participation in the democratic process, and does not currently present the potential for corruption and abuse found in expensive mass media campaigns. We hope the Commission will continue to allow citizens and their organizations to find new and creative ways to use this important medium to strengthen democracy.

Yours truly,

Kay Guinane
Counsel and Manager, Community Education Center
OMB Watch