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January 7, 2000

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**RE: FEDERAL ELECTION COMMISSION NOTICE OF INQUIRY 1999-24**  
**USE OF INTERNET FOR CAMPAIGN ACTIVITY**

**CAPTN's Membership and Mission**

The Communications and Policy Technology Network (CAPTN) is a Washington, DC-based non-profit association, which provides support and career development for professionals using the Internet and other new and emerging technologies for public affairs, policy and political work. Members include Internet professionals from public affairs, public relations and advocacy groups, non-profit organizations, unions, political parties, candidate campaigns, think tanks, research institutions and universities, Capitol Hill and the federal government. Our advisory board counts among its members Internet political professionals considered by the media and others as opinion leaders in the field of the Internet and politics who were trailblazers in some of the first successful presidential, gubernatorial, congressional, non-profit, and other web site ventures. CAPTN members thus have diverse and substantial experience – both practical and theoretical – in politics and the Internet.

CAPTN appreciates the opportunity the Commission has afforded the public to comment on Internet and politics ("e-politics"), and particularly on the application of the First Amendment and the Federal Election Campaign Act ("the Campaign Act") to Internet campaign activities. CAPTN believes that the collaborative approach the Commission has taken sets a good tone for this and future inquiries.

CAPTN's comments do not necessarily reflect the unanimous view of the entire CAPTN membership, the organizations we represent, nor our corporate sponsors.

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**Summary of Comments**

CAPT N believes, as described more fully below, that the Internet promises to be perhaps the single most important communications media to expand political communication and civic participation in American democracy. As such, CAPT N urges the Commission:

- to use this Inquiry to gather facts about the Internet and the political process, and to educate the public on how the Campaign Act does – and in the majority of cases, *does not* – impact individual online political activity
- to continue this Inquiry into 2001, so it may draw on the complete record of the 2000 election cycle;
- to await the establishment of that record before engaging in any major actions to adapt -- in either a restrictive or exemptive way – regarding application of the Campaign Act to the Internet.

CAPT N further urges the Commission, to the extent it is in any Advisory Opinions or takes other action, to first and foremost be vigilant of First Amendment interests as well as other fundamental rights and compelling public interests, embodied by other parts of the Constitution and by the Campaign Act.

*CAPT N would strongly oppose any actions that would restrict protected First Amendment rights. At the same time, CAPT N would oppose any broad permanent exemptions being granted which would threaten online privacy or other compelling state interests – from governmental as well as non-governmental entities -- or take action that would undermine existing disclosure requirements.*

**Background on the Internet and Politics**

The Internet enables unparalleled communication, including political communication, between individuals, candidates, and organizations. Such communications range from low cost email and web sites to more elaborate and costly commercial portals and real time stream video and audio communications over broadband communications systems.

The Internet's impact on politics is already substantial. It is being used for key campaigning activities: (1) organizing, see, e.g., The New Republic, "Virtual Politics," July 5, 1999; (2) fundraising, see, e.g., Slate, "The Five Minute Activist," December 22, 1999 (article on online fundraising site Moveon.org); and, (3) communicating. It is now being tested for online registration, see, e.g., Newvoter.com, and online voting, see, e.g.,

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Slate, "Eruption Over E-Voting in Arizona," December 17, 1999 (Arizona Democrats online primary).

Perhaps the Internet's most fundamental aspect at present is its dynamism: Internet technology is evolving so rapidly that nobody is able to predict with precision exactly what direction it will take next. The pace of its demographic expansion and technological evolution has been explosive beyond prediction. Indeed, in 1994 there were virtually no campaign web sites; in 1996 there were a few sites; by 1998, a majority of campaigns had sites; and it is projected that virtually all bona fide candidates in contested races in 2000 will have sites. See generally, Kamarck, "Campaigning on the Internet in the Off-Year Elections of 1998," Kennedy School of Government Monograph, <http://www.ksg.harvard.edu/visions/kamarck2.htm>, (visited January 5, 2000). In that same time span, data transmission speeds have increased from 2.4k baud to 56k to full broadband -- such that now the Internet can carry real time video and audio -- technology that was unthinkable a few years ago.

The Internet's rapid pace of change must be a key consideration the Commission weighs as part of this and future proceedings. While we know it will be substantial, and we know many forms it will take, the Internet's ultimate impact in the 2000 election is in large part unknowable.

### E-Politics and the First Amendment

Online campaign activity is of course protected by the First Amendment. This was reaffirmed when the U.S. Supreme Court ruled that the Internet is due full protection by the First Amendment. American Civil Liberties Union v. Reno, 117 S. Ct. 2329 (1997).

The First Amendment's baseline libertarian value -- that freedom should be maximized by minimizing regulation -- has thus been affirmed by the Supreme Court.

The First Amendment, of course, promotes other values as well, such as maximizing political speech and information available to voters not only by minimizing regulation, but by minimizing regulation and by promoting speech and information through affirmative measures. Campaign Act provisions on disclosure, 2 U.S.C. 434 and the presidential matching fund system, 26 U.S.C. Sec. 9031 et. seq. for instance, serve those goals by "expanding the pool of information available to voters," Buckley v. Valeo, 424 U.S. 1, (1976), and such measures serve to expand, not abridge, First Amendment values, Buckley 424 U.S. 1, 93.

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CAPTN is keenly interested in other fundamental constitutional interests as well—including privacy and the integrity of the political process. The Congress and the Supreme Court have recognized that these are fundamental interests, see e.g. Privacy Act, 5 U.S.C. 522 et. seq., and/or compelling public interests, see e.g. Colorado Republican Federal Campaign Committee v. FEC 116 S. Ct. 2309 (1996)(affirming anti-corruption election laws serve compelling public interest). In the context of e-politics, privacy has been an issue, see Slate, "Banner Year," January 4, 2000 (concerning privacy and campaign's advertising efforts), as has political integrity, see Bradley for President Request for Advisory Opinion, AOR 1999-9 (detailing measures necessary to protect against use of Internet for making illegal foreign contributions).

**The FEC's Internet Decisions**

Under our federalist system of government, the Commission cannot legislate and fundamentally alter the Campaign Act vis a vis the Internet -- contrary to calls from certain commentators. That of course is Congress' responsibility, and CAPTN calls on Congress to commence its own hearings in this area. Instead, of course, the Commission's job is, consistent with the Constitution, the First Amendment, and other congressional acts, to implement the Campaign Act.

Still, implementing the Campaign Act often means applying the statute to new circumstances, and new communications media. Also contrary to a number of commentators, the Commission in the past adapted its regulations so as not to restrict political communication in new media. See, e.g. 11 CFR 100.8(b)(2), (cable TV).

The Commission's initial Internet advisory opinions and enforcement actions raised substantial concerns in the e-politics community. Those decisions did not recognize the First Amendment's full application to the Internet, and its legitimacy as a communications medium alongside newspapers, radio, etc. See, e.g., Advisory Opinion 1996-2 (CompuServe).

The Commission has changed course, and is to be commended, for more recent decisions, which have demonstrated a more careful protection of First Amendment and other interests. See, e.g., Advisory Opinion 1999-25 (Democracy Network) and Advisory Opinion 1999-24 (Election Zone)(clarifying that non-partisan web sites are exempt from the Campaign Act under the non-partisan exemption); Advisory Opinion 1999-17 (George W. Bush for President)(clarifying that campaign volunteers' online activity is exempt from the Campaign Act under the volunteer exemption); Advisory Opinion 1999-9 (Bill Bradley for President) and Advisory Opinion 1999-22

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(Aristotle Publishing)(allowing credit card contributions, including those made over the Internet, to be matched under the primary matching fund system).

**The FEC's Inquiry and the 2000 Election Cycle**

CAPTN urges the Commission to proceed as it has in the Advisory Opinions noted above. Specifically, the Commission should continue to be responsive but vigilant of First Amendment interests as well as other fundamental rights and compelling public interests embodied by other parts of the Constitution and by the Campaign Act.

Generally, CAPTN urges the Commission to avoid sweeping action of any kind. CAPTN would strongly oppose any actions that would restrict individuals' ability to engage in their protected First Amendment rights. By the same token, CAPTN would oppose any broad permanent exemptions being granted which would threaten online privacy or undermine existing disclosure requirements.

While CAPTN would support limited rulemaking to modify existing rules to promote, rather than restrict e-politics, it generally urges the Commission not to undertake a substantial rulemaking during the 2000 election cycle. Instead, CAPTN urges the Commission to allow the 2000 cycle to establish a factual basis to review following the elections to determine how the Campaign Act's application to the Internet should be modified, if at all.

There is one exception to the foregoing: CAPTN urges the Commission, at its first opportunity, to vacate AO 1998-22 (Leo Smith). To the extent that decision requires persons to account for all expenditures on personal and home computer equipment in determining whether they trigger Campaign Act coverage, it should be reversed.

**CAPTN Urges the FEC to Educate the Public about Broad Exemptions for Online Activity Through Its Inquiry and by Making its Web Site More User Friendly**

In the meantime, CAPTN notes that one of the greatest problems for Internet campaign activity is the wide misperception that a substantial amount of individual Internet political activity is restricted by the Campaign Act. The Campaign Act's low cost exemptions, 2 U.S.C. 431(4), 2 U.S.C. 434(c), the volunteer exemption, 2 U.S.C. 431(8)(B)(i) and (x), the non-partisan exemption, 2 U.S.C. 431(9)(B)(ii), and the press exemption, 2 U.S.C. 431(9)(B)(i), mean that the large – in fact, vast – majority of individuals' online political activity is already totally exempt from the Campaign Act. The Commission should use this inquiry to educate the public about these exemptions. In

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addition, the Commission should further educate the public that the Non-Profit Exemption, see Massachusetts Citizens for Life v. Federal Election Commission, 479 U.S. 238 (1986), 11 CFR 114.10 -- an exemption which presumably applies to Internet campaign activity as well -- substantially exempts non-profit organizations from the Campaign Act restrictions and imposes only disclosure requirements to non-profits engaging in independent expenditures.

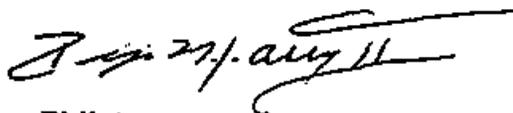
The Commission thus must make this Inquiry -- and its operations generally -- as much a public education effort one as a fact-finding investigation. To that end, CAPTN applauds the Commission's recent launch of its redesigned, more user friendly web site and encourages the Commission to continue with further efforts in this area. The Commission's making Advisory Opinions, Citizens Guides, and disclosure databases available in searchable form online, for instance, allows citizens to do what once required a lawyer or accountant. The Commission has thus shown it has the knowledge and ability to use the Internet in a positive manner to open up the political process to the public, and to expand and enhance speech and information available to voters, rather than to narrowly enforce the Campaign Act in a heavy-handed manner that threatens to chill civic participation.

CAPTn urges the FEC to take further action to make its site even more user friendly. For instance, the Commission should consider creating extensive FAQ features, incorporating state-of-the-art search engines for its Citizen Guides, and perhaps even offering online information specialist support, making information specialists available online.

### **Conclusion**

CAPTn again applauds the Commission for commencing this Inquiry. CAPTN hopes that it will serve to both clarify the issues requiring immediate action by the Commission, and also to educate the public on how the Internet promises to be the greatest tool ever for "uninhibited, robust, wide open" political communication, see New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

Respectfully Submitted,



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