

Republican
National
Committee

Counsel's Office

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM

2000 JAN -7 10 1:57

January 4, 2000

JAN 7 2 40 PM '00

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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

Dear Ms. Smith:

These comments on the Federal Election Commission's ("the Commission") Notice of Inquiry ("Notice"), 64 Fed. Reg. 60360 (1999), regarding Use of the Internet for Campaign Activity, are submitted on behalf of the Republican National Committee ("RNC").

I. BACKGROUND

Since its introduction, the Internet has grown at a remarkable pace. In October of 1997, 56.7 million Americans were using the Internet. Current Population Reports: "Computer Use in the United States," U.S. Census Bureau, October 1997. By October of 1999, that number had grown to 113 million Americans. Nielsen//Netratings, *October Internet Ratings*, (visited December 15, 1999) <http://www.nielsen-netratings.com/press_releases/pr_111699.htm>. Current projections indicate that by the end of the year 2000, there will be 133 million Internet users in the United States. Sharon Machlis, *U.S. to have 133M Internet users next year* (visited December 15, 1999) <<http://cnn.com/TECH/computing/9907/08/netusers.idg>>. This growth rate outpaces even that seen with the introduction of the television, one of the last major paradigm-shifting technologies introduced onto the political landscape.

Consistent with the overall growth of the Internet, the use of the Internet as a source for political news and information has also grown. In December 1998, 64 percent of Internet users accessed news information on-line at least once a week. The Pew Research Center For The People & The Press, *The Internet News Audience Goes Ordinary*, (visited December 14, 1999) <www.people-press.org/tech98sum.htm>. This same study found that 11 million people used the Internet for election-related news in 1998, which was up from 7 million in 1996. *Id.*; see also CyberAtlas, *The Net and the 2000 Election*, (visited December 14, 1999) <http://cyberatlas.internet.com/big>

[picture/demographics/article/0,1323,5971_153241,00.html](http://www.people-press.org/tech98sum.htm) (finding that 12 percent of Internet users regularly access the Internet to locate information about political candidates). More importantly, thirty-four percent of Internet users indicated that their vote was substantially influenced by information they found using the Internet. The Pew Research Center For The People & The Press, *The Internet News Audience Goes Ordinary*, (visited December 14, 1999) <www.people-press.org/tech98sum.htm>. The far-reaching influence of the Internet in the political arena is not surprising given the remarkable saturation of Internet availability among the voting public. Dataquest recently conducted a survey finding that more than half of all voters in 10 of the 13 "Super Tuesday" States has Internet access. CyberAtlas, *The Net and the 2000 Election*, (visited December 14, 1999) <http://cyberatlas.internet.com/big_picture/demographics/article/0,1323,5971_153241,00.html>.

The technologies involved in the provision of Internet services and content are also changing rapidly. Only a few years ago, the idea of receiving audio and video over the Internet seemed impossible. Today, many Americans use the Internet to access audio, video and still-image graphics, in near real time. The task of predicting the growth of the use of the Internet and its new associated technologies is monumental. Corporations, academics, entrepreneurs, and others are constantly seeking to expand the reach and breadth of the Internet. Virtually every day, new ventures are being launched to investigate new ideas and strategies to use the Internet and Internet-related technologies.

Political parties, organizations and campaigns are also seeking to use this new and growing medium to disseminate political ideas, discussion and debate. See generally Jacob Weisberg, *Will Net politics explode in 2000?* (visited December 15, 1999) <http://cnn.com/TECH/computing/9909/24/campaign.2000.idg/>. Virtually all of the current presidential campaigns are using the Internet to reach out to voters in new and innovative ways. *The battle for the White House: America's presidential election campaign is in full swing, not least on the Internet*, *The Economist*, Sept. 18, 1999 at 6. In addition to soliciting contributions from on-line visitors to campaign web pages, Presidential candidates are making all sorts of information available to the voters, from policy statements, to wedding photographs, to personal journals. Darrell Rowland, *Windows on 2000 World Wide Web Will be Important Election Battleground*, *Columbus Dispatch*, May 2, 1999 at B1. The use of the Internet is not limited to national campaigns. Candidates for offices at all levels of government are making use of this new medium; from congressional races to numerous state and local contests. *Id.*

Political parties and other participants are also using the Internet to reach out to new groups of Americans. One such example can be seen in a new website recently unveiled aimed specifically at Latino voters. See *New Web Site Targets Latinos in Effort to Get Out Their Vote*, *The Los Angeles Times*, December 11, 1999 at A25. With continued freedom from regulation, the Internet will be used not only for the dissemination of news and political information, but also as a tool to help involve more Americans in their democracy.

Political parties have a unique role within the American political system. They represent a broad-based coalition of interests and individuals seeking to elect people of similar political beliefs to positions at all levels of government. The use of Internet websites allows national party committees to widely disseminate their message. As noted above, the Internet is now a vital tool of democracy in connecting people and providing information. For these reasons, the RNC supports a relaxed regulatory environment that will allow the political party committees to more widely disseminate information. In this way, the Internet can provide a centralized place on the Internet to locate information about the political parties, their philosophies and ideas.

National party committee websites are uniquely situated to broadly disseminate this information. All of the information that in the past required a telephone call or a piece of mail to convey can now be found on the party committee websites. These websites are constantly updated with information about the organization, press releases, upcoming events, and information about how to become involved.

II. THE INTERNET HAS FLOURISHED IN AN UNREGULATED ENVIRONMENT.

A. Government has properly taken a deregulatory approach to the Internet.

To date, government has generally allowed the Internet to develop with little or no regulatory intervention. Congress and the President have both indicated their desire to see the Internet grow in an unregulated environment. The 1996 Telecommunications Act outlined this sentiment:

It is the policy of the United States (1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulations.

47 U.S.C. § 230(b).

In particular, the Congress made the following findings:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens

(2) The Internet and other interactive computer services offer a forum for a true diversity of political discourse,

unique opportunities for cultural development, and myriad avenues for intellectual activity

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

47 U.S.C. § 230(a) (emphasis added).

Regulatory agencies have followed this statutory directive when considering regulations pertaining to the Internet. The Federal Communications Commission ("FCC"), in its report on Broadband Internet access, concluded that "[t]he Commission should forbear from imposing regulations and resist the urge to regulate prematurely." Federal Communications Commission, *Broadband Today* (Oct. 1999) at 41. The courts have also agreed that the purpose of Section 230 was "in part, to maintain the robust nature of the Internet communications and, accordingly, to keep government interference in the medium to a minimum." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

B. The Internet is distinguishable from other means of communication.

The most distinctive feature of the Internet, making it significantly different from radio, television, or even the telephone, is that the user is required to actively seek out the sites they wish to view. As the Supreme Court has recognized: "each medium of expression...may present its own problems." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557 (1975) at 557. The Court explained:

"[S]ome of our cases have recognized special justifications for regulation of the broadcast media that are not applicable to other speakers, see *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969); *FCC v. Pacifica Foundation*, 438 U.S. 726, 98 S.Ct. 3026, 57 L.Ed.2d 1073 (1978). In these cases, the Court relied on the history of extensive government regulation of the broadcast medium, see, e.g., *Red Lion*, 395 U.S., at 399-400, 89 S.Ct., at 1811-1812; the scarcity of available frequencies at its inception, see, e.g., *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 637-638, 114 S.Ct. 2445, 2456-2457, 129 L.Ed.2d 497 (1994); and its "invasive" nature, see *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 128, 109 S.Ct. 2829, 2837-2838, 106 L.Ed.2d 93 (1989). Those factors are not present in cyberspace. Neither before nor after the enactment of the CDA ("Communications Decency Act") have the vast democratic fora of the Internet been subject to the type of government supervision and regulation that has attended the broadcast industry.

Moreover, the Internet is not as "invasive" as radio or television messages."

Reno v. American Civil Liberties Union, 521 U.S. 844, 866 (1997) (emphasis added).

The entire regulatory apparatus has recognized the differences between the Internet and traditional methods of communication. With one exception, Congress has steadfastly refrained from passing legislation limiting the growth of the Internet. The one exception to this spirit of deregulation was the passage of the Communications Decency Act, which was ruled unconstitutional by the Supreme Court in *Reno*. 521 U.S. at 885.

Like the courts, the FCC also has a longstanding policy of promoting the development of the Internet through forbearance from regulation. Beginning in 1966 with *In the Matter of Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities*, 7 FCC 2d 11(1966) and continuing recently with *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Red 8776 (1998), the FCC has made a policy determination to refrain from issuing regulations governing the Internet. The Commission should follow the lead of the FCC and refrain from issuing regulations restricting the Internet. This forbearance, coupled with the recent deregulatory trend in the Commission's Internet-related advisory opinions, will help ensure the continued, unfettered development of the Internet.

III. POLITICAL COMMITTEE WEBSITES SHOULD BE EXEMPT FROM THE "TIME-SPACE" ALLOCATION REGULATIONS.

The Commission asked for comments on the "time-space" allocation method and its applicability to party committee websites. The "time-space" allocation method uses the "benefit reasonably expected to be derived" to determine the portion of the costs to be attributed to each candidate for multi-candidate expenses. 11 C.F.R. §106.1(a). For the reasons outlined below, the RNC argues that the Commission should exempt national party committee website expenses from the "time-space" allocation requirement.

The Commission should adopt policies to promote the growth of the Internet as a source of information. The website is analogous to the lobby of a national party committee headquarters where the "time-space" allocation method does not apply to political information the committee may have available. If the national party committees are forced to allocate the expense of adding hyperlinks to the websites, the amount of information available to users will necessarily be reduced as the national party committees reach their contribution limits to individual candidates.

The Commission should not apply the "time-space" allocation requirement to national party committee websites for the following reasons. First, requiring the use of "time-space" allocation would limit the growth and dissemination of ideas. If the

national party committees are required to use the "time-space" allocation method, the committees will be severely restricted in the content and amount of information they make available on the committees' websites. The Internet should be a "forum for a true diversity for political discourse." 47 U.S.C. §230(a)(2). Requiring the use of the "time-space" allocation method will remove the national party committees from participation in this new medium of political speech. The national committee staffs will be forced to choose between using their limited funds per candidate for traditional methods of voter communication or for using these funds to place information on their websites. The Commission should adopt regulations that foster, not restrict, the use of this new medium in the political process.

Second, determining the cost to allocate to each candidate would be exceedingly difficult. The cost associated with individual candidates is conceivably so small that any "value" computation may easily lead to a determination of value of less than one penny per candidate. Even considering allocation of "more extensive" references to candidates on the websites under "time-space" allocation methods presents issues of the marginal cost that are almost incalculable. Regulating web activities under this framework would require the Commission to attempt to define the exact line between "minimal" and "extensive" references to candidates.

Furthermore, assessing the valuation becomes nearly impossible as websites can be updated and changed with a few strokes on a keyboard. Thus, the issue of assessing "value" to a website if "references" are changed regularly or even on a sporadic basis becomes problematic at best, and a byzantine impossibility at worst. Would adding a graphic have any more marginal cost than adding text? The text below is all that would need to be added to a web page to display the Republican National Committee logo as a "hypertext" link to the Republican National Committee website:

```
<a href="http://www.mc.org">Republican National Committee </a>
```

The cost of these changes and "references" are so marginal that determining the cost of these links and references would be almost impossible.

Therefore, the RNC urges the Commission to adopt an exemption from the "time-space" allocation method with regard to national party committee websites. Such a course of action would be consistent with the government's stated policy of promoting the growth of the Internet by avoiding the imposition of burdensome regulatory regimes.

IV. PARTY COMMITTEE §441A(D) COORDINATED EXPENDITURE LIMITS SHOULD NOT APPLY TO NATIONAL COMMITTEE WEBSITES.

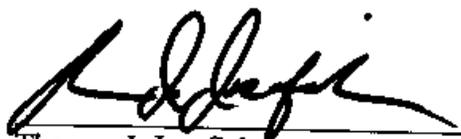
The Commission has also asked for comments on the coordinated expenditure limitations and the applicability of this provision to party committee websites. As the Commission is aware, there are many types of activities on a party committee website that would not fall under the scope of §441a(d). The RNC would ask the Commission to specifically identify which types of activity it proposed to include under this section before commenting further on this issue. In addition, the pending judicial action in *FEC v. Colorado Republican Federal Campaign Committee*, 41 F.Supp.2d 1197 (D. Colo. Feb 18, 1999), weighs in favor of deferring any discussion of §441a(d) until a final judicial remedy is announced.

V. CONCLUSION

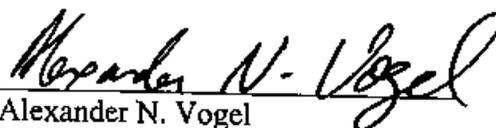
Any regulations implemented by the Commission while the Internet is in its early stages of development may prematurely stunt the growth of this new medium. With more and more Americans looking to the Internet for information, the Commission should seek to encourage the use of the Internet for the dissemination of political information. The Commission should conclude, as codified at 47 U.S.C. § 230(b), that the best strategy to assist the growth of the Internet is to allow it to proceed with minimal government interference.

Specifically, the Commission should exempt national party committee websites from the "time-space" allocation regulations. The RNC is withholding comment on the Commission's request for comment on the applicability of § 441a(d) to national party committee websites pending clarification from the Commission and/or a final judicial decision in *FEC v. Colorado Republican Federal Campaign Committee*.

Respectfully submitted,



Thomas J. Josefiak
Chief Counsel



Alexander N. Vogel
Deputy Counsel