

June 7, 1999

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AOR 1999-17

The Honorable Scott Thomas  
Chairman  
Federal Election Commission  
999 E Street, NW  
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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: Request for Advisory Opinion

Dear Chairman Thomas:

On behalf of the Governor George W. Bush for President Exploratory Committee, Inc. ("Bush Committee"), this letter seeks an Advisory Opinion pursuant to 2 U.S.C. § 437f concerning various uses of the Internet and a campaign's responsibilities under the Federal Election Campaign Act, 2 U.S.C. § 431 et seq., the Presidential Primary Matching Payment Act, 26 U.S.C. § 9031 et seq., and the Commission's regulations.

Specifically, the Bush Committee seeks clarification concerning a number of issues that have arisen with the expanded uses of the World Wide Web possible in the 2000 election cycle. The increased role of the Internet in American life, which has occurred since the adoption of the Act and the Commission's regulations, makes this clarification necessary for the 2000 cycle. After reviewing the questions at issue, the language of the Act and the authority of the Commission granted by the statute, we believe that the Commission can offer this advice upon its own authority and without a rulemaking procedure.<sup>1</sup>

### Background

The advances in the Internet give rise to several activities in which the Bush Committee wishes to engage. The Commission's prior rulings in AO 1995-9, AO 1995-35, AO 1997-16 and AO 1998-

<sup>1</sup> While the Committee applauds the Commission's recent decision to solicit comments on the impact of the Internet on the Act, the issues raised in this letter are ones that need to be addressed more expeditiously than the process begun by the Commission will allow. The issues raised here are ones that campaigns for the 2000 cycle are facing now.

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22, as well as the General Counsel's reports in Matters Under Review 4340 and 3980 address certain questions but do not provide comprehensive guidance on the permissible uses of the Internet under the statute and regulations, primarily because they occurred before the explosive growth of the Internet. While the activities discussed here are not inconsistent with the Commission's rulings, those rulings do not in all cases take into account the new ways a campaign may now utilize this virtually cost-free means of mass communications. We hope that the Commission can use this AOR to issue rulings that conform with the realities and potential of the Internet era in the 2000 cycle.

### Questions

In light of the advances in the use of the Internet that have occurred even since the Commission's decisions in the matters discussed above, the Bush Committee seeks clarification in several particular areas:

Value of a Web Site: Implicit in the Commission's earlier rulings is that web sites and links from one Internet site to another are something of value to a campaign. Must a campaign assess value for having its name mentioned by a web site that it does not control (and may not even know about)? How must a campaign treat a volunteer web site established by supporters of a campaign, but about which the campaign may know nothing? On what basis should the fair market value of a web site be determined if the owner has not placed a value on it? Suppose the web site changes messages on a regular basis, without the knowledge of the campaign?

How should a campaign assess the value of a link between two web sites? On this, and a number of issues, the Commission's precedent involving "normal accepted industry practice" seems most applicable. For example, in AO 1981-46, the Commission ruled that since the accepted practice among direct mail fundraisers is to exchange mailing lists with one being payment for the other, it is neither a contribution nor an illegal transaction when the exchange involves a corporate entity and a political committee. In the case of the Internet, it is "accepted industry practice" to provide links to other sites without cost. *See also*, AO 1979-36 (direct mail).

Vendors: An increasing phenomenon of the Internet is e-commerce – the selling of various products over the World Wide Web. Among the products being sold are such items as pins, bumper stickers, tee shirts, hats, etc. that advocate the election of a candidate. The issue is the campaign's obligations with regard to such vendors:

- May a campaign provide a link to a vendor selling materials about its candidate? If it may, must it place a value on that link? If it must, how does it value that link? What are the reporting obligations? Again, the practice of the industry would be to place no value on that link. *See*, AO 1981-46, AO 1979-36.

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- May a vendor selling a candidate's materials provide a link to the candidate's web site? What obligations does the campaign have under the Act in that situation?
- May a campaign pay a vendor for a link to the campaign's web site? How does it determine the value that link? What, if any, disclaimers are required?

Internet Polls: With increasing frequency, polls concerning the presidential candidates are appearing on the Internet. Many urge readers to cast votes for the candidates. Do these polls fall under the news media exception no matter what the source? Does the dissemination of their results cause a reportable event under the Act? Is the Act triggered if a campaign uses the Internet to urge its supporters to vote in a given poll? If yes, how does the campaign value that activity? What is the proper description for the purpose of that disbursement?

E-Mail: Even if the Commission takes the position that a web site has costs that must be taken into account by a campaign, how does a campaign determine the fair market value of the use of e-mail? Specifically, this arises in the context of a volunteer who solicits friends and associates to contribute to a campaign. While the cost of a mailing (stamps, stationery, etc.) would be a contribution to a campaign, there is no discernable value to an e-mail sent by a volunteer. Must the campaign report such activity? How would it value the activity? Must it be counted against the volunteer's contribution limit?

And if the Commission determines (as we think it must) that there is no reportable value to sending an e-mail, what is the result if the volunteer uses an e-mail system at his or her place of business? Is this a corporate contribution? Or does it fall within the "occasional, isolated, or incidental" category of volunteer activity? 11 C.F.R. § 114.9(a).

Matching of Credit Card Contributions: The Bush Committee, which is currently accepting and soliciting contributions at its web site (georgewbush.com) but has not decided whether to accept matching funds, applauds the Commission's efforts to permit the matching of contributions received over the Internet. AO 1999-09.

We would appreciate the Commission clarifying two other issues that arise from the Commission's deliberations. It appears that campaigns need confirmation from the Commission that e-mail may be used to request needed best efforts information whether or not the original contribution was solicited over the Internet.

Secondly, if a campaign contracts with a vendor to assist in the collection and matching of contributions received over the Internet, must that vendor provide each of its campaign clients with a separate and unique Merchant ID number or may the vendor simply capture all contributions in its regular corporate account and then distribute the proceeds to each campaign

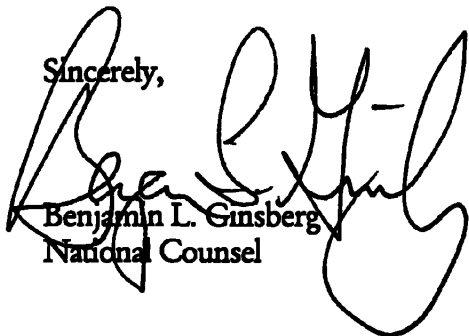
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it represents. If each campaign has an individual Merchant ID number, then the donations flow through Cybercash and the bank processor into the campaign's bank account at their designated bank. The credit card receipt shows a donation to the campaign, and the vendor bills the campaign for vendor's fee.

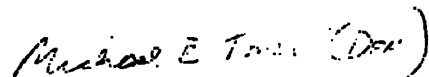
If the vendor uses its own Merchant ID number for its clients, the donations will flow into the vendor's account designated for each campaign. The vendor will deduct its 10 percent fee and then forward 90% to the designated campaign. The donor's credit card bill will show a charge to the vendor, rather than the campaign. Is this permitted under the Act or does it constitute a corporate donation?

We appreciate the Commission's review of these cutting edge issues, all of which are designed to use the Internet and other emerging technologies to increase participation and interest in campaigns at a time when citizen involvement seems to be diminishing rather than increasing. We urge the Commission to fully permit campaigns to take advantage of this new frontier of communications.

Sincerely,



Benjamin L. Ginsberg  
National Counsel



Michael Toner  
General Counsel