



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
ACTING STAFF DIRECTOR
ACTING GENERAL COUNSEL
FEC PRBSS OFFICE
FEC PUBLIC DISCLOSURE

FROM: OFFICE OF THE COMMISSION SECRETARY *[Signature]*

DATE: June 13, 2011

SUBJECT: Comment on Draft AO 2011-09
(Facebook)

Transmitted herewith is a timely submitted comment from Robbin Stewart regarding the above-captioned matter.

Draft Advisory Opinion 2011-09 is on the agenda for Wednesday, June 15, 2011.

Attachment

202 219 3923
202 208 3333

Public comment on DRAFT ADVISORY OPINION 2011-09.

To: Federal Election Commission
From: Robbin Stewart.
Date 6/10/2011
Re: AO 2011-09

I am writing concerning efforts by your staff to urge you to adopt illegal and unconstitutional policies about disclaimers. I first wrote to you on this topic in 1998 as comment on the AO 1998-22 Leo Smith issue. At that time you chose to ignore my concerns, and issued an advisory opinion that ignited a firestorm of opposition. In the subsequent rulemaking on internet policy, you received over 1000 comments, a then-record. The gist of those comments was to say "hands off the internet!"

I incorporate by reference my earlier comments filed in the Internet rulemaking and Leo Smith matters.

In 1960, in Talley v California, the United States Supreme Court ruled that disclaimer requirements such as your staff is seeking to apply to facebook, violate the Constitution, and are void. That ruling has been upheld in McIntyre, ACLF v Buckley, and Watchtower v Statton. It has not been overturned by either McConnell v FEC or Citizens United. Citizens created an exception to Talley for speech by corporations, not at issue here. Facebook here is the publisher, not the funder, of the ads in question.

You each have sworn an oath of office to uphold the constitution. So has each of your staff. You would be violating that oath if you vote to require facebook to follow a void statute. You would be engaging in conduct which is illegal under the anti-ku klux clan act, by interfering in protected speech by facebook and its millions of members, of whom I am one. When your staff urges you to violate your oath and act in a manner the courts have ruled unconstitutional, they are acting in opposition to the rules of professional ethics which govern their conduct as attorneys. I am guessing it is the DC bar which has jurisdiction? I invite you to refer this matter to the appropriate authorities.

I have a vague impression that your staff are civil service employees, and that the commission members do not directly control their hiring and firing. Still, when in the draft opinion your legal staff is encouraging you to act in an illegal and unethical manner, it may be time to look for staff more able to handle the job requirements, which is to carry out the FECA and related statutes, only to the extent that they are constitutional, as guided by the rulings of the nation's courts. Facebook should be granted its exemption. I do not know whether the federal government has a procedure similar to Attorney General Opinions here at the state level, where government officials can obtain rulings about whether a given statute, or a proposed application, is constitutional. Presumably there is some system for resolving such concerns.

For too many years the FEC has been operating as a rogue agency by failing to follow the commands of Talley and McIntyre, to not interfere with citizens' rights to publish political material without disclaimers.

