



FEDERAL ELECTION COMMISSION  
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Washington, DC 20463

**Statement on Internet Rulemaking**  
**Commissioner Hans A. von Spakovsky**  
**March 27, 2006**

Today, I very reluctantly voted to revise the FEC's 2002 regulation that excluded all Internet communications from the definition of "public communication." The revised regulation extends coverage to paid political advertisements placed on a third party's website. There is no question in my mind that Congress did *not* intend the Bipartisan Campaign Reform Act of 2002 to include communications over the Internet. However, the District Court for the District of Columbia ruled in *Shays v. FEC* that Congress sought to regulate *some* Internet communications and ordered the FEC to extend its regulation. The FEC (prior to my appointment as a commissioner) did not appeal this decision, and I am therefore casting my vote to comply with the court's instructions.

In 2002, Congress introduced a new term of art, "public communication," and defined that term to include communications made through "any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." Congress exhaustively listed the types of media covered as communications, but notably did *not* include the Internet. I do not believe that this was an oversight, and I find it even harder to believe that Congress specifically intended to capture the Internet with the generic phrase "general public political advertising." The court, however, disagreed, which brings us to today's actions.

The Internet is a revolutionary medium that has provided us with some of history's greatest advances in communications technology. In the political arena, the Internet allows individual citizens to give voice to their views and opinions, and to exercise their First Amendment right to free speech to a virtually unlimited audience at almost no cost. The Internet gives ordinary American citizens who are not part of the Washington political establishment the ability to shape opinions and influence issues, and to participate in our democracy's process of choosing its leadership. No longer are citizens who want their voices heard at the mercy of the so-called "big media," the established newspapers and broadcast networks. Through the Internet, individuals are now able to express their opinions on political issues without being forced to pay for access to the traditional mass media or rely on the beneficence of a newspaper to publish a letter to the editor. The virtual monopoly on the dissemination of political views once held by the editorial pages of newspapers and the programs of broadcast and cable stations has ended.

What is most ironic about this development is that the Internet restores a remarkable feature of the political culture of the early days of our Republic: the importance of the expression of individuals' political opinions. During America's Founding Era, political views and opinions on candidates and the issues of the day were often expressed through letters and pamphlets written by individual citizens. These works were copied and circulated throughout the 13 colonies, and some were published in broadsheets and fledgling newspapers. One of the most influential of these works was *Common Sense*, a

pamphlet written in 1776 by an obscure Philadelphian named Thomas Paine. Paine’s pamphlet quickly sold over 100,000 copies, and everyone from ordinary citizens of Philadelphia to George Washington was soon familiar with it. This pamphlet helped galvanize opposition to the English crown. Later, the letters of Alexander Hamilton, James Madison, and John Jay, which were published throughout our new country and became known as the *Federalist Papers*, generated the popular support necessary to ratify our Constitution. These are but two shining examples of how the political speech of individuals has shaped our culture and history. In fact, these works are so well-written and so remarkable in their analysis of public policy and the problems of governing that they are still consulted and referred to today.

The ability of individual citizens to influence the political culture became much more limited as our nation grew in size and population and its means of mass communication evolved. It became more and more difficult for one person to circulate a letter or publish his political opinions and reach a sizeable audience. The newspaper publishing business, which began as one-man operations in small printing shops, became an expensive and large-scale undertaking. The advent of broadcast and cable communications only magnified this trend. Today, though, anyone sitting at home in front of a computer can post his views on any subject, and those views may potentially be seen and read by millions in this country and around the world. The Internet gives an ordinary citizen with cogent ideas a far more expansive reach than people had in years past. In fact, the arrival of the Internet makes it possible for anyone to be a Thomas Paine or a James Madison, and this is one of the most positive and welcome developments in our political culture in almost 200 years.

Yet despite the possibilities the Internet provides, some want to regulate political speech on the Internet in the apparent belief that such unregulated expression somehow “corrupts” our political system. Nothing could be further from the truth. In the landmark cases of *Buckley v. Valeo* and *McConnell v. FEC*, the Supreme Court ruled that the compelling governmental interest that validates campaign finance regulation is that we prevent corruption and the appearance of corruption by limiting large contributions to candidates and political committees. Where there is little or no money involved, as in the case of the Internet, where is the threat of corruption? There is none.

I have no intention of voting to regulate the Internet any more than is absolutely legally required by the unappealed decision in *Shays v. FEC*. The regulation approved today is limited in scope and reaches only paid political advertisements placed on another person’s website. Importantly, though, while we extended regulation in one area, we provided strong new protections in others. For example, bloggers and those who email their friends about political issues and candidates will not be subjected to regulation because we enacted significant protections for individual speech over the Internet. We also extended the media exemption to protect those who publish news, opinions, and editorials about political issues and candidates on the Internet and their websites.

In my view, though, this is not enough. I urge Congress to protect *all* Internet communications by approving H.R. 1606 and ratifying the FEC’s previous regulation that was overturned by the *Shays* court. This will provide the vital protection needed for the political speech of our citizens and rescue the still evolving Internet from burdensome government oversight, regulation, and censorship.

“Freedom of the press is guaranteed to those who own one.” A.J. Liebling