

**Statement of Commissioner Ellen L. Weintraub
Before the Committee on House Administration
September 22, 2005
Political Speech on the Internet: Should it Be Regulated?**

Chairman Ney, Ranking Member Millender-McDonald, and Members of the Committee: Thank you for inviting me here today. I am always happy to have the opportunity to discuss the Commission's work with the Members of this Committee.

The topic of this hearing is whether political speech on the Internet should be regulated. This is an important question for Congress to debate because without Congressional action, the Commission has no choice. We are currently under a judicial mandate to issue a regulation addressing at least some aspects of political speech on the Internet. Barring a statutory change, we will do so, although I believe the Commission should and will take a very restrained approach to any such regulation.

How did we get here? Congress, in the Bipartisan Campaign Reform Act (BCRA), limited how one can pay for communications that are coordinated with political campaigns, including any form of "general public political advertising." In 2002, the Commission issued a regulation defining those communications so as to exempt anything transmitted over the Internet. A Federal judge struck down that regulation as inconsistent with the law.

Recently introduced legislation in both the House and Senate would exempt all Internet activity from regulation under BCRA, effectively codifying the Commission regulation that the court struck down. In a letter to the Commission, Senator Reid, who introduced the proposal in the Senate, stated that the Internet "has generated a surge in grassroots involvement in our government and has proven to be a democratizing medium in our political process."¹ And let me state for the record that if this amendment to BCRA passes, I will be delighted to move that we cease any attempt to qualify the exemption in our current rule.

In the absence of legislation, to comply with the judge's decision, we must issue a rule that provides something less than a blanket exemption. This does not mean that the FEC must regulate all, most, or even very much Internet activity. We are faced with a question of statutory interpretation, and the phrase we are interpreting is "general public political advertising." In March, we began the process of defining that term in the context of the Internet, with a Notice of Proposed Rulemaking. We have taken the statutory language as our guidepost and focused on paid advertising. We have also taken the opportunity to try to clarify various types of Internet communications that remain unregulated and to address what I believe to be an overbroad regulation currently on the books that requires disclaimers on certain group e-mails.

¹ Available at http://www.fec.gov/pdf/nprm/internet_comm/exparte02.pdf

In the course of preparing the Notice, and during the hearing that we held in June, some of the most spirited debates that have taken place concern how best not to regulate certain activities, such as blogging. Should we not regulate by not issuing a regulation about blogging or should we not regulate by issuing a regulation that specifically exempts blogging from other regulations? Some commenters have persuasively argued that we not focus on specific Internet communication technologies for fear that users of other emerging communication technologies might be left at risk. This debate has been helpful and has reinforced the importance of proceeding in a very careful and measured way so as not to stifle innovation and the free flow of ideas.

This is appropriate because the focus of the FEC is campaign finance. We are not the speech police. The FEC does not tell private citizens what they can or cannot say, on the Internet, or elsewhere. As stated by BCRA's main sponsors, Senators McCain and Feingold, "[t]his issue has nothing to [do] with private citizens communicating on the Internet. There is simply no reason - none - to think that the FEC should or intends to regulate blogs or other Internet communications by private citizens."² They are absolutely correct. It is my intent to preserve the Internet exemption to the greatest extent possible, and to make clear that our rulemaking is about paid advertising, and not an attempt to limit any individual's right to free speech on the Internet. It would be ironic indeed if, in the name of campaign finance reform, we were to squelch good old-fashioned grassroots political rabble-rousing in its new, inexpensive, on-line iteration. Fortunately, I am not aware of any intent to do so.

In its proposed rulemaking, the Commission has purposely taken a very restrained approach. The only Internet activity the proposed rules define as public communications are advertisements placed for a fee on another person's website. Additionally, the NPRM suggests that the FEC's current disclaimer requirements for certain e-mail communications are overbroad. Under current regulations, disclaimers are required if 500 substantially similar unsolicited e-mails are sent. The proposed rule seeks to add a provision eliminating the disclaimer requirement except in cases where the recipient list was acquired in a commercial transaction. This is not so much an attempt to restrict political "spam" (probably a futile endeavor) as an attempt to ensure that individuals may communicate freely with all of their personal contacts without fear of running afoul of government regulation. We may want to pursue this limitation of the disclaimer requirement, even if Congress acts to preempt the other aspects of the rulemaking. Based on the comments received, the proposed solution may not go far enough.

The proposed rules also specifically exempt a substantial amount of Internet activity from regulation. The proposal:

- makes clear that the media exemption applies to the Internet; and
- exempts any Internet activity by unpaid individuals or volunteers in their own residences, on their own equipment, on publicly available equipment, or in many

² Available at <http://feingold.senate.gov/~feingold/statements/05/03/2005308652.html>

instances, on corporate or labor union equipment to which they otherwise have access.

I cannot speak for my colleagues, but I am not aware of anyone who views this rulemaking as a vehicle for shutting down the right of any individual to use his electronic soapbox to voice his political views. For people who worry about the influence of money on politics, the Internet can only be seen as a force for good, for the simple reason that it is generally a very cheap form of communication. As the Internet becomes an increasingly effective political tool, a candidate may not need to raise large sums of cash to run television ads, if she can get her message out cheaply and efficiently over the Internet.

In the NPRM, we invited the commenters to look carefully at our proposals and tell us what we could do better to protect expression, while still complying with the court order that made the rulemaking necessary. We received some very detailed and insightful examinations of our proposals and will continue to consider these comments as we shape a final rule. I appreciate that many of the comments were generally supportive of the Commission's focus and precision in this sensitive area. I want especially to acknowledge the over eight hundred private citizens around the country who offered comments regarding the Commission's proposals.

The Internet can be an antidote to the cynicism that develops when citizens feel that they have no voice. Many of the comments provide firsthand insight into how the medium provides an outlet that many people believe is not otherwise available. The resounding message that has been conveyed by these commenters is that the Internet has emerged as the great equalizer in political debate, allowing ordinary citizens a potential audience limited only by the appeal of their arguments. As Chiara LaRotonda of Seattle, Washington wrote: "I used political blogs to enhance and expand my understanding of the issues pertaining to the 2004 presidential elections and honestly believe that I would not have been as informed a voter otherwise.... One of the best things about the internet for me is the multitude of voices to be found, from every perspective and standpoint."³

The Internet is a potent and dynamic tool for fostering political debate. Thus, any regulatory efforts must proceed on a "less is more" theory. The Internet has dramatically altered the political landscape in this country. It will undoubtedly continue to be an innovative, interactive medium for engaging the electorate in political debate. The Internet permits individuals who might otherwise never meet to get together and talk about the future of this nation. And why would anyone want to interfere with that?

³Available at <http://comments.fec.gov:62999/A/internetruling/bbb.nsf/38d46bf5e8f08834852564b500129b2c/11f9a84afe5941198525701c00527289?OpenDocument>