

Campaign Finance Regulation and The Internet Principles*

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We believe that the following principles should guide any consideration of the possible application of the campaign finance laws to Internet activity:

- The Internet is a unique and powerful First Amendment forum, which supports speech as "broad as human thought." It empowers ordinary people to be speakers and publishers with the ability to reach millions. As such, the Supreme Court has afforded speech on the Internet the highest constitutional protection

The First Amendment protects our right to speak freely and to gather information. Without it, true democracy would be impossible. The Supreme Court strongly disfavors laws that impinge on First Amendment rights and has been particularly protective of speech on the Internet. The Court declared in *ACLU v Reno* that speech on the Internet should receive the full protection of the First Amendment.

- Unlike the broadcast media, the Internet is a powerful engine for interactive, diverse, and robust democratic discourse, and it has broadened and increased the public's participation in the political process. The Internet's user-driven control and decentralized architecture support a multiplicity of voices and constrain the ability of any one speaker to monopolize attention or drown out other voices.

As the last election amply demonstrated, the Internet has become America's public square, a powerful forum where ordinary people spending small sums of money can express their political views, and be heard by millions of people. Unlike closely controlled forums like TV and radio, which are dominated by a few political speakers, no political speaker on the Internet can dominate the space or prevent others from being heard.

- Robust political activity by ordinary citizens on the Internet, including their monetary contributions, strengthens and supports the central underlying purpose of the campaign finance law: to protect integrity of our system of representative democracy by minimizing the corrupting influence of large contributions on candidates and office holders. Individuals' online political activity engages larger

numbers of citizens in the political and campaign processes and encourages an increase in smaller contributions.

Campaign finance laws are aimed at diminishing the impact of big money contributions in elections and guarding against their corrupting influences. The Internet can't stop wealthy interests from spending money, but it can help to diminish their influence, both by facilitating small contributions and by opening up avenues for information flow that are not dominated by big money. In the last election cycle, the Internet was responsible for an unprecedented increase in the number of small financial contributors to elections and an increase in the influence of ordinary voters.

- The Federal Election Commission should adopt a presumption against the regulation of election-related speech by individuals on the Internet, and should avoid prophylactic rules aimed at hypothetical or potential harms that could arise in the context of Internet political speech of individuals. Instead, the Commission should limit regulation to those activities where there is a record of demonstrable harms.

In the past, the Federal Communications Commission ("FCC") has written very broad rules to try to prevent wealthy interests from exerting a corrupting influence over the political process. Those rules have often been based on hypothetical or potential misconduct, not on clear evidence of a problem. We believe that this would be the wrong approach to campaign finance regulation of individuals' political speech on the Internet, where broad prophylactic rules would hurt millions of ordinary Americans exercising their First Amendment rights to speak out on elections and political issues. This principle urges the FEC to change its approach to regulation on the Internet and only regulate individual speakers where there is a real record of abuse by big money interests.

- If in the future evidence arises that individuals' Internet activities are undermining the purpose of the federal campaign finance laws, any resulting regulation should be narrowly tailored and clearly delineated to avoid chilling constitutionally protected speech. The Commission should eschew a legalistic and overly formal approach to the application of campaign finance laws to political speech on the Internet.

Speaking out during an election is a constitutional right. The government needs to be very careful when it tries to regulate political speech. For that reason, even if the FEC finds clear evidence that wealthy interests are engaging in practices that corrupt the political process, we believe it must write rules that are very narrow and clear, so that it does not also regulate or chill the online speech of small independent political speakers.

- Ordinary people should be able to engage broadly in volunteer and independent political activity without running afoul of the law or requiring consultation with counsel. The FEC should make clear that such activities are as a general matter beyond the scope of all campaign finance regulation (including disclaimers, thus preserving the right of individuals to engage anonymous online political speech).

We believe that there needs to be a “bright line” between the online political speech of big money interests, which may be subject to the campaign finance laws, and the online political speech of small and independent political speakers on the Internet which we believe should not be regulated. Individual Americans should be able to engage in election related political speech online and spend reasonable sums of their own money to support that speech, without having to disclose their identity, worrying about whether they are violating campaign finance laws, or having to hire a lawyer to advise them.

- Individuals should be able to collaborate with other such individuals to engage in a very substantial amount of independent election related political speech online without being deemed a “political committee.”

The Internet fosters communication, collaboration and community among people with common interests, many of whom never meet offline. In the last election, millions of people joined together to engage in election related activities on the Internet. We believe those people should be treated the same under the Campaign Finance laws as individual speakers acting alone. They should be able to engage in a substantial amount of collective political activity without being deemed a “political committee” under the campaign finance laws. Right now, the campaign finance laws treat people who join together to engage in election related activities as “political committees” with a number of reporting and disclosure requirements, if they spend or raise as little as \$1000. That doesn’t make sense on the Internet.

- The FEC should extend the media exemption to online media outlets that provide news reporting and commentary regarding an election, including those media outlets that exist only on the Internet. In the Internet context, the news media exemption should be construed more flexibly than in the off-line context, so that it can accommodate new technology and new forms of online speech. The Federal Election Commission should clearly articulate the criteria for qualifying for the news media exemption on the Internet;

The growth of online media has provided Americans with new sources of political information and alternative points of view. People are increasing turning to Internet sources of news and commentary, often from sources that only publish online (such as bloggers). The media exception to the federal campaign finance law allows the media to report and editorialize on federal elections without regard to the campaign finance rules. That exception needs to be clearly extended to Internet media and the criteria for qualification needs to be reexamined so that new forms of media on the Internet are covered.

- Independent bloggers and other Internet speakers who report or provide commentary on the Internet but who do not otherwise qualify for the media exemption should nevertheless be able to engage in a very substantial amount of online political speech without any regulation.

While some bloggers should qualify for the media exemption, some probably will not meet the criteria. But almost all bloggers should be exempt from the campaign finance rules to the same extent as other online citizen advocates, even if they don't qualify under the media exemption.

- The FEC should promulgate rules that permit independent Internet speakers or groups of speakers to incorporate for liability purposes without violating the prohibition on corporate political activity.

The campaign finance law prohibits corporations from endorsing or opposing federal candidates or making campaign contributions. But sometimes bloggers and other independent speakers on the Internet incorporate for a number of reasons such as protection from liability. We believe the adoption of the corporate form should not silence independent online political speakers.

- Any rules promulgated by the FEC with respect to Internet political activity should be technology neutral and not distinguish between or disadvantage forms of online speech. Similarly, rules must be sufficiently flexible so as to encourage innovation and the development of new forms of Internet speech.

The Internet is a dynamic and fluid medium. New technologies are constantly spawning new modes of speech on the Internet. We believe that it would be very damaging to the Internet if campaign finance laws were aimed at specific modes of speech like pod casting or blogging. Not only will the rules be quickly outdated, they may stifle innovation on the Internet.

** Gray text boxes contain background information for each principle*