

**Statement of John B. Morris, Jr.
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**before the
Federal Election Commission**

**concerning
Notice of Proposed Rulemaking 2005-10
The Internet: Definitions of "Public Communication" and
"Generic Campaign Activity" and Disclaimers**

June 28, 2005

Chairman Thomas and members of the Commission, thank you for permitting the Center for Democracy & Technology to testify today. I am John Morris, Staff Counsel with CDT.

CDT is a non-profit public interest organization founded in 1994 to promote democratic values and individual liberties in the digital age. CDT works for practical, real-world solutions that enhance free expression, privacy, and democratic participation. We are guided by our vision of the Internet as a uniquely open, global, decentralized, and user-controlled medium. We believe the Internet has unprecedented potential to promote democracy, by placing powerful communications technology in the hands of individuals and communities.

Specifically with regard to the goals of the campaign finance laws, we believe that the Internet has been, and will continue to be, an overwhelmingly positive force. The Internet has dramatically broadened the nation's political conversation, and has enabled tens of millions of people to express their political views and receive political information from a vast array of sources. The political speech of individuals on the Internet is, in simple terms, part of the solution, and not part of the problems addressed by the campaign finance laws.

We do not argue that all political speech on the Internet should be free from regulation. We readily acknowledge that this Commission can regulate the Internet spending of candidates, political parties, and other core targets of the campaign finance laws. Our concern, however, is that in trying to extend to the Internet rules that apply in the offline world, the rules threaten to chill the remarkable explosion of online citizen participation in the political process.

In reviewing the more than 700 comments filed with the Commission in this rulemaking, it is striking that those comments are almost unanimous on one point: that the independent political speech of ordinary individuals should not be burdened by the campaign finance laws. In comments ranging from those filed by Senators McCain and Feingold and Congressmen Shays and Meehan, all the way to the most ardent individual bloggers, the message is the same: protect the speech of individuals. And that is the same message found in the Joint Statement of Principles that CDT helped to file on behalf of organizations such as the American Civil Liberties Union, the Electronic Frontier Foundation, the National Taxpayers Union, People for the American Way, and more than a thousand other organizations, bloggers, and individuals. And that goal – of protecting the online speech of individuals – is one that the Commission itself endorses in its Notice of Proposed Rulemaking.

So the critical question for the Commission is not *whether* to protect the speech of individuals, but *how best to do it*. And there is one absolutely crucial answer to that question: Keep it simple.

And although the NPRM strives to be narrow in its impact, it fails to articulate a simple exemption of individuals' online speech. This Commission should break out of the mold of existing campaign finance regulation, and should draft a *short and easy-to-understand* statement protecting individuals' speech.

If at the end of the day the Commission protects individuals by drafting 5 more pages of regulations and issuing a dozen new Advisory Opinions, then an opportunity to promote and protect democratic discourse will have been lost, and valuable online political speech will be chilled. It is crucial that individual speakers be able to determine that their speech is exempt from regulation without hiring an attorney, and without wading through the results of a case-by-case application of a new set of complex regulations.

In our comments, CDT offers a number of approaches to creating a clear and simple exclusion for individuals' online speech. First and most simply, the Commission can reorient its rules to only apply to candidates, political parties and other core targets of the law. By focusing first on *who* is regulated and not on *what* speech is regulated, the Commission can properly target its regulations at the problems addressed by the campaign finance laws. There is nothing in the *Shays* decision that requires the Commission to regulate the speech of individuals.

Alternatively, the Commission could create a significant monetary threshold below which individuals' online activities are wholly exempt from regulation. What is critical is that the Commission must do something to make the protection of individual speech both unmistakably clear, and readily accessible to the ordinary speaker.

Thank you again for the opportunity to testify, and we would welcome any opportunity to assist the Commission in achieving the goal of protecting individuals' online political speech.