



Protecting Online Political Speech

Background: Online political speech nearly muzzled by campaign finance laws

The internet has arguably transformed politics more than any innovation since the rise of television - first made prominent by John Kennedy in his debates against Richard Nixon in 1960.

The internet was instrumental in discovering the Mark Foley page scandal, uncovering the Dan Rather forged document story, and exposing the controversy over the firing of U.S. attorneys by the Department of Justice.

Without doubt, the internet has allowed citizens of all ideologies to serve as government watchdogs, keeping a close eye on members of both parties.

Despite the revolutionary ability of the internet to serve as a 21st century version of the Fourth Estate, online political reporting and advocacy does not enjoy codified protection like those enjoyed by the traditional media outlets - protections that safeguard more than just straight news stories.

Newspapers can run opinion pieces on a daily basis, cable and network television shows can produce opinionated commentary every day, and radio hosts can pontificate up and down the dial - all without fear of running afoul of campaign finance laws.

A little more than three years ago bloggers nearly fell victim to regulatory overreach when the Federal Election Commission (FEC) considered issuing new rules related to online political activity.

Cnet.com recalls just how close the FEC came to regulating online activity in a March 24, 2005 story:

"Political bloggers and other online commentators narrowly avoided being slammed with a sweeping set of Internet regulations this week.

When the Federal Election Commission kicked off the process of extending campaign finance rules to the Internet on Thursday, the public document was substantially altered from one prepared just two weeks earlier and reviewed by CNET News.com.

The 44-page document, prepared by the FEC

general counsel's office and dated March 10, took a radically different approach and would have imposed decades-old rules designed for federal campaigns on many political Web sites and bloggers.

According to the March 10 document, political Web sites would be regulated by default unless they were password-protected and read by fewer than 500 people in a 30-day period. Many of those Web sites would have been required to post government-mandated notices or risk violating campaign finance laws."

Fortunately, after a public outcry from across the political spectrum, the FEC two years ago settled on regulations that protect bloggers from being hampered by campaign finance laws. But these regulations can change without congressional action.

Congress takes first steps to permanently protect online political activity

Bills that would essentially codify the FEC's current regulations and permanently protect the blogosphere have been introduced in both the 109th and 110th Congresses.

In Spring 2005, Rep. Jeb Hensarling introduced the "Online Freedom of Speech Act" and was joined by 9 co-sponsors from both sides of the political aisle, including Reps. John Conyers, Rick Boucher, and Tim Ryan.

The Act would have added a sentence to the definition of "public communication" in the Federal Election Campaign Act of 1971

(FECA). The sentence would declare, "Such term shall not include communications over the Internet."

By excluding communications made over the internet from the definition of "public communication" the Online Freedom of Speech Act would have explicitly excluded online activity from falling within the confines of regulable campaign finance activity.

Unfortunately, the Act died in committee.

On April 3rd, 2008 Rep. Jeb Hensarling introduced a bill in the 110th Congress that, like the Online Freedom of Speech Act, would protect internet activity from the reach of campaign finance regulation.

The "Blogger Protection Act of 2008" enjoyed more co-sponsors - 46 - than the previous bill, but has no democratic co-sponsors to date. The bill has been referred to the Committee on House Administration.

The proposed law amends FECA to protect uncompensated internet activity from treatment as a contribution or expenditure, and it adds blogs and other internet and electronic publications to the expenditure exemptions section of FECA which currently only exempts broadcasting stations, newspapers, magazines, and other periodical publications, not owned or controlled by any political party, committee, or candidate.

Next steps: Congress could move forward on legislation

The Blogger Protection Act of 2008 currently sits in committee with no action scheduled.

Congress could take the next steps in securing the online speech rights of Americans by continuing to add co-sponsors to the legislation and by scheduling hearings on the bill.

The internet is the modern version of the

town square. It is a cost-efficient vehicle that allows millions of Americans to easily speak out about the pending issues of the day.

Protecting such a democratic and First Amendment-friendly domain should receive robust and bipartisan support.