



Before the Maryland Joint Committee On Administrative, Executive & Legislative Review:

Hearing on Campaign Financing: Authority Line Requirements for Electronic Media

Tuesday, July 20, 2010
10 a.m.

Written testimony of:

Laura Renz

Government Relations & Research Director
Center for Competitive Politics
124 S. West St., Suite 201
Alexandria, VA 22314
<http://www.campaignfreedom.org>

Thank you for the opportunity to provide written testimony on the proposed State Board of Elections regulations for electronic media.

The Center for Competitive Politics (CCP) is a non-profit organization focused on promoting and protecting the political First Amendment rights of speech, petition and assembly. CCP was founded in 2005 by former FEC Chairman Bradley A. Smith and is active on campaign finance issues in all 50 states and federally.

CCP has concerns with both the intent behind the proposed regulations, and the practical effect they would have on state campaigns and, potentially, politically active individuals.

These regulations appear to be a solution in search of a problem and we are aware of no scandal or fraud that prompted the writing of these new guidelines. As such, the vague language in the draft and difficult task that policing internet communication entails is both dangerous and unnecessary. More than likely, state campaigns with limited staff, and particularly the campaigns of challengers seeking to unseat incumbents, will run afoul of the regulations and be subject to an inappropriate penalty. These types of unintended consequences should give the legislature pause before moving forward and potentially adversely impacting Maryland citizens by adopting the proposed regulations.

The Internet poses difficult jurisdictional and enforcement issues, and we wonder how the Board intends to proceed in light of them. Internet activity reaches across state and national lines, and physical distance poses no impediment to communication. We understand that the intent of the present draft is to allow the Board to proceed only against Maryland groups who use social media to advocate about Maryland candidates. Thus, speakers outside Maryland can engage in activity prohibited by the regulation, yet Maryland candidates and committees cannot.

In a more practical sense, it is not appropriate to subject electronic communication to the same blanket regulations under which bulk mail fall. A campaign sending unsolicited materials to any number of citizens who may appear on a given list is vastly different than an individual who “likes” a candidate’s Facebook page and thereafter receives updates through that page, or an individual who chooses to “follow” a candidate on Twitter and therefore sees that candidate’s message on their account. It is clear where those messages are originating and in the event that an individual starts receiving messages from those accounts that are not authentic, the campaign has a clear interest in stopping that activity. In this instance, the self-interest of candidate’s campaigns far outweighs the desire of the state of Maryland to prevent fraud of falsely identified communications.

The retention requirements also seem to equate electronic communication with more traditional bulk mail. It is unclear what the benefit is to the State Board of Election or Maryland citizens by requiring retention of any electronic communication for one year. What is clear, however, is the

burden that places on state campaigns and campaign officials - without clear guidelines but with significant penalties for noncompliance.

Any individual or group that makes an effort to falsely identify themselves via electronic communications is already committing an illegal act, and the types of onerous registration requirement within these regulations are far more likely to hurt legitimate campaigns than deter illegal activity.

Equally as troublesome is the option given the micro-blogs or other advertisements where the authority line cannot reasonably be included with the message of ad – under those circumstances, those entities may register with the State Board of Elections, which implicates constitutional issues and would, in our view, be found in violation of the First Amendment.

Additionally, there are issues with the vague language used through the proposed regulations. The definitions section includes “instant messages or email” within the definition of social media in question, but those terms are not found again. This lead to several questions for state campaigns regarding whether or not authority line language or retention requires apply to those types of communications as well as advertisements and other electronic communication. The regulations also do not clarify exactly to whom the proposed regulations would apply – one might assume they apply just to candidate committees and parties, but it is unclear when or if individuals who mention candidates in their electronic communications (email, micro-blog, Facebook, etc) would be subject to these requirements as well. These issues would have to be rectified by the Legislature, or else individuals will be faced with difficult questions should the regulations be adopted without clarification.

This vague language presents a difficult but important problem for the legislature to clarify. Failing that, individuals will be faced with making their best guess, and incurring penalties if they guess incorrectly. This scenario would undoubtedly have a chilling effect on important political speech in Maryland.

For example, an earlier version of this proposal exempted “an individual acting alone” from the authority line requirement, but this version omits that language. We would urge that you restore that exemption, and then some. We wonder whether you literally mean to apply the full force of the law to two people, or any ad hoc group such as a group blog, an individual’s Facebook page where “friends” converse with one another, or a group of people who follow each other on Twitter. What possible state purpose justifies sweeping such a broad range of speech within this regulation’s disclaimer and retention requirements?

We look forward to working with the legislature as you investigate this issue, and urge caution before adopting broad regulations such as these without appropriate consideration for unintended consequences and adverse effects on Marylanders First Amendment rights.