

Testimony of Commissioner Karl J. Sandstrom
Before the Committee on Rules & Administration
United States Senate
May 3, 2000

Chairman McConnell and members of the Committee, I want to thank you for the opportunity to appear here today. I am here today in my individual capacity and the positions that I advocate are not necessarily the views of the Commission. The advent of the Internet heralds a change in how politics is practiced in this country. When it comes to politics on the Internet, I am an enthusiast with reservations. The Internet is a splendid medium. It is the most democratic means of publishing ever invented. It stands to enrich the political debate and make candidates and our democratic institutions more accountable. One need only visit the Freedom channel, Voter.com or the FEC's own web site, to appreciate the contribution that the Internet is already making to our democracy. Democracy movements across the world are flourishing in no small part due to the Internet. Governmental controls on information are becoming artifacts of a bygone era.

It is not only futile but unwise for government to impede the Internet as a medium for the exchange of political information. At the Federal Election Commission, I believe we are coming to realize that a humble display of restraint may be better for our democracy than a bold assertion of authority. The Commission's first forays into this area suggested an agency intent on holding on to old forms of regulation in the face of the challenges brought by the new medium. The assumption was that our regulations took precedence and Internet users would just have to adapt. Over time it has become apparent that the confidence with which we began regulation has begun to evaporate. This is because it has become increasingly clear that the Internet is not a mere variation on existing means of expression but a radically new form. A change in the makeup of the Commission may have sped up this recognition, but experience would eventually have brought us

the same understanding.

What then is the state of Internet regulation at the Commission? The Commission has recognized that our existing regulations will need to be amended to take into consideration the unique characteristics of the Internet. Prior to embarking on any revisions, the Commission thought the most prudent step would be to seek the opinion of the regulated community on a host of Internet related issues. It published a notice of inquiry, received thousands of comments in return, and is in the process of analyzing those comments. If you are interested, you can access the comments through our website. When the Commission has completed that process, it will most likely proceed to rulemaking. Rulemaking will require that the Commission draft a notice of proposed rules that would then be published and subject to public comment. Any resulting new rules would then be submitted to Congress for thirty legislative days. Consequently, I do not anticipate any new regulations on this topic in this election cycle.

Instead of new regulations, the Commission will be responding to discrete issues relating to the Internet raised by advisory opinion requests and during the course of enforcement matters. Those who see the Internet enriching our democracy, I think, should be encouraged by some of the Commission's recent actions. In an advisory opinion (AO 1999-9) given to the Bradley campaign the Commission approved contributions raised over the Internet for matching funds. Senator McCain was then able to take advantage of this change in Commission policy to raise substantial and critically needed funds in record time following his victory in New Hampshire. Most of the money he raised, it can be safely assumed, was from individuals who had never before contributed -- and who gave because of the Internet.

In another advisory opinion (AO 1999-17), the Commission responded to a request by Governor Bush's committee by making it clear that the committee would not have to police links being made to its website. Such links would not normally constitute contributions to a committee. An exception to this general rule might be a link that the committee has requested and for which a fee would generally be charged. The opinion read the exemption for volunteer activities to broadly cover a volunteer's use of home computer resources including the creation of a website. These activities would not result in a contribution and therefore, would not result in

a reporting obligation.

Further demonstrating the Commission's sensitivity to the practical demands made on committees engaging in Internet politics is AO 1999-37. There, the Political Action Committee for Generation X (X-PAC), which intends to engage in significant independent expenditure activity over the Internet, asked how it should handle the difficult reporting issues that arise when attempting to allocate costs of Internet activity among candidates. Without going into the details, the Commission simplified the reporting requirements for the committee. In doing so, I think the Commission demonstrated regulatory flexibility in a conscious effort to foster the Internet as a new medium for political participation.

In AO 1999-25 the Commission broadly read the statutory exemption from the prohibition on corporate political expenditures for nonpartisan get-out-the-vote activities to cover a host of Internet centered political activities contemplated by Democracy Network, a corporation formed by the League of Women Voters and the Center for Governmental Studies. The Commission then extended this reasoning to similar Internet political activities undertaken by a for profit corporation in AO 1999-24.

As these examples demonstrate, the Commission does not consider the Internet a threat to the continued vitality of our election laws. Quite to the contrary, the Commission is coming to see that our campaign disclosure laws and Internet politics serve the same purpose of providing the electorate with the information that it needs to make informed decisions.

At the beginning of these remarks, I alluded to some reservations that I had about Internet politics. Let me now offer some of those for your consideration. First, the architecture of the Internet is rapidly changing. There are some who, for primarily commercial reasons, want to control, however subtly, the information that you receive. I am a subscriber to a free Internet service. It is free because I have sold my attention. Most of the electorate are passive citizens whose political attention is short and whose "eyeballs" are treated as a commodity. I am concerned that future configurations of the Internet will be vehicles for the cyber equivalent of the thirty second commercial delivered to a selected audience with the pinpoint accuracy of the direct mail hit. Where today, politics on the Internet is democratic and participatory, I fear that tomorrow's architecture may be

more exclusive and manipulative.

As information technologies merge, broadband will bring us our entertainment, our news, and our civics. The question will then arise: who controls access to this new common? Current broadcasting laws require broadcasters to afford reasonable access to their facilities to Federal candidates and provide all candidates equal opportunity in the use of those facilities. If broadband is our future, will control be exclusively a contractual matter between the corporate owner and the viewer/recipient? Will control be exercisable to deny access to the disfavored?

These questions are outside the FEC's jurisdiction, so you need not worry about my own preferences. One area within the Commission's jurisdiction that does pose a challenge is the requirement that general public political communication must contain a disclaimer. Applying this requirement to Internet communications presents a difficult choice to the Commission. The Internet has allowed for anonymity and some would argue has treasured it. Around the world, anonymous speech over the Internet has been an effective and valued means for combating oppressive regimes. In a democratic society, however, anonymity can be the enemy of accountability. A candidate subject to a slanderous Internet political attack has no recourse if his or her attacker can hide behind technologically-enabled anonymity. What the Commission can and should do in this regard remains an open question.

In closing, there is no need for alarm. The Commission is displaying admirable restraint in addressing these issues. Your suggestions are welcome as we seek to carry out our statutory responsibilities over a medium that was not contemplated when Congress charged us with these responsibilities. We may occasionally misstep but those occasions can be minimized if the public and Congress take an active interest in our efforts to shape regulation in a manner that maximizes the benefits and minimizes the intrusion on the Internet as a political forum. So I invite your criticism and your praise as we go about seeking to enrich our politics with this wondrous new medium.