



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: OFFICE OF THE COMMISSION SECRETARY

DATE: MARCH 22, 2005

SUBJECT: *Ex Parte* COMMUNICATION
RE: NPRM – Internet Communications

MWD

Transmitted herewith is a letter received by the Chairman Thomas from Senator John McCain, Senator Russell D. Feingold, Representative Christopher Shays, and Representative Marty Meehan regarding the above-captioned matter.

Attachment

Congress of the United States
Washington, DC 20515

March 22, 2005

Scott Thomas
 Chairman
 Federal Election Commission
 999 E. Street NW
 Washington, D.C., 20463

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 FEDERAL ELECTION
 COMMISSION
 SECRETARIAT

Dear Chairman Thomas:

As the principal congressional sponsors of the Bipartisan Campaign Reform Act ("BCRA"), we write to comment on the recent controversy raised by the question of how BCRA applies to regulation of activity conducted on the Internet.

As you know, the undersigned House members were plaintiffs in a lawsuit, supported by the undersigned Senate members, that successfully invalidated a Commission regulation that created a *per se* exemption from the definition of "public communication" for any communications over the Internet. 11 C.F.R. § 100.26. We understand that the Commission will shortly be undertaking a rulemaking to revise its rules relating to how BCRA applies to communications over the Internet.


We believe that the growth of communications on the Internet about issues and politics is a positive and healthy development in our society. We are also encouraged by the fundraising conducted over the Internet by parties and candidates in the 2004 election which stimulated a huge increase in small dollar individual donors, a trend that we think is healthy for our political system and fully consistent with the provisions and goals of BCRA.


On the other hand, as the District Court ruled in the *Shays and Meehan v. FEC* case, the Commission's *per se* exclusion of all communications over the Internet from BCRA's statutory definition of "public communication" was wrong, and served to seriously undermine the law. This exclusion would exempt from regulation, for instance, large expenditures of corporate or union funds to buy paid advertising for a candidate on Internet web sites, even where those expenditures were fully coordinated with the candidate. It would also permit state parties to spend unlimited soft money funds to buy advertising on the Internet that promote or attack federal candidates.

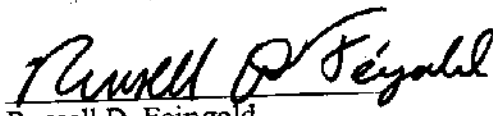
In both cases, these same communications would be illegal if made through any other media - broadcast, cable, newspaper, magazine, etc. The across-the-board Internet exemption opens huge loopholes in BCRA's ban on the spending of soft money to influence federal campaigns. That is precisely why the court found the *per se* exclusion of the Internet from the definition of "public communications" to be contrary to law.


We are confident that the Commission can find a way in its rulemaking to allow unregulated and robust political debate on the Internet, such as that seen on independent blogs, to continue, without creating loopholes for soft money to once again flow into federal campaigns. We look forward to working with you to achieve this goal.

Sincerely,


John McCain
United States Senate


Christopher Shays
Member of Congress


Russell D. Feingold
United States Senate


Marty Meehan
Member of Congress

cc: Each FEC Commissioner
Lawrence Norton, General Counsel