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May 18, 2005

The Honorable Scott Thomas
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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Dear Chairman Thomas:

I am writing with regards to the Federal Election Commission's (FEC) recent Notice of Proposed Rulemaking (NPRM). I believe that it is important for the FEC to examine the role of the Internet in terms political campaigns, but it is essential that the Commission do so in a cautious manner that ensures adequate protections on both free speech and privacy. I commend the FEC for its decision to undertake the rulemaking process, and would appreciate the Commission's consideration of my views of the NPRM.

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First, as a general principle, it is essential for regulations to be based on broad standards behavior, rather than focus on the specific forms of technology, which are rapidly evolving. This approach will prevent dynamic technological change from rendering potential rules obsolete in a short period of time.

Second, because I oppose regulations that stifle the right of people to express themselves by excessively regulating communication on the Internet, it is extremely important that the Commission thoroughly examine a range of potential issues surrounding protected political speech versus political activities that are subject to FEC regulation. For example, what if a group of people join together to create a blog that discusses political matters -- would the blog then be considered a "political committee" and need to file with the FEC? Would it receive a different classification if the group was provided with supplies from an official candidate committee? I am concerned that these uncertainties could result in the inadvertent violation of the regulations, or result in unnecessary restrictions on speech. There is widespread consensus that the intent of the Bipartisan Campaign Reform Act (BCRA) is to control the influence of large amounts of soft money on campaigns, thereby allowing a more equal platform for people to participate in the democratic process.

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The NPRM risks extrapolating BCRA in ways that would in effect regulate the free speech of bloggers. That would be inconsistent with the intent of BCRA, and would violate some of the most important principles on which our country was built.

Third, at various points throughout the NPRM, the Commission states specific dollar amounts at which point an action -- such as including a disclaimer -- is triggered. Rather than having a set number, the figure should be indexed to another medium, so as to appropriately change with inflation and other developments that impact the amount of money spent on campaigns.

Fourth, I am supportive of the Commission's decision to address the matter of unsolicited political bulk e-mails. I think the Commission should also require, at a minimum, a working "opt-out" option on these e-mails to protect consumers from a flood of undesired e-mails. The Commission asks for comment on whether a 500-e-mail threshold should continue to be one of the criteria for determining what is considered so-called political spam. The Commission should define a time period within which the 500 pieces of electronic mail are sent. In addition, I recommend a criterion of either a 500-e-mail threshold or a limit on the amount spent on acquiring and sending to smaller, more targeted e-mail lists. As mentioned in the *Washington Post* article "Consultants Deliver Politics to Voters' Inboxes, at a Price", last August "[F]or the first time, a nationwide list of registered voters has been cross-referenced with multiple lists of e-mail addresses collected from magazine subscribers, catalogue shoppers, online poll participants and the like. The result is that legislators, candidates for office and interest groups can buy more than 25 million e-mail addresses of registered voters and contact them at will." As political spam moves toward more sophisticated targeting, the result will be a more expensive means which yields fewer but highly-personalized emails, thereby clouding the definition of bulk e-mail as proposed by the Commission.

For a number of years, I worked with my colleagues to address the issues raised by spam including privacy concerns, the burden and cost of spam, and cyber-security. Two years ago, Congress passed the Can-Spam Act (P.L. 108-187), which was a good first step in reducing unsolicited e-mails. This bill also included provisions of the Hatch-Leahy Criminal Spam Act, which criminalized many of the methods spammers use to bypass filtering software.

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As I review the Commission's language concerning unsolicited political bulk e-mails, I am reminded of some of the concerns that led to the creation of anti-spam legislation and see those same concerns face recipients of so-called "political spam".

We share the same goal of ensuring that elections are truly democratic, open and honest. I appreciate your consideration of my views and look forward to hearing the testimony at your June 28th hearing.

Sincerely,



PATRICK LEAHY
United States Senator