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AOR 2000-09
Late Comments

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OFFICE OF GENERAL
COUNSEL
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Re: AOR 2000-09

Dear Mr. Noble:

These comments are submitted jointly by the Republican National Committee ("RNC") and the Democratic National Committee ("DNC") on the above-referenced Advisory Opinion Request submitted by Voter.com, Inc. on May 2, 2000.

At the outset, it should be noted that the national party committees have no interest in having the Commission use the campaign finance regulatory regime to promote or inhibit the efforts of any company or organization to undertake business activity related to use of the Internet for political communication. In that regard, the national party committees do not favor or disfavor any particular "business model" for such activity. Rather, the parties' interests lie in ensuring that the Commission's regulations and rulings account for the unique features of the Internet as a medium of political communication with the potential for increasing grassroots citizen involvement and participation in the political process, and for strengthening the parties as institutions. See, e.g., Comments of RNC, January 4, 2000, on FEC Notice of Inquiry Regarding Use of the Internet for Campaign Activity.

AOR 2000-09 raises two questions of principal concern to the DNC and RNC. First, the AOR questions whether, and under what circumstances, a web site sponsored by a for-profit entity may provide dedicated space to federal candidates and party committees. Second, the AOR questions whether, and under what circumstances, such a for-profit site may provide, free of charge, links to the web sites of candidates and party committees.

The first question was directly addressed by the Commission in Advisory Opinion 1999-24, 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 6306 (Nov. 15, 1999). That A.O.

concerned a for-profit website that proposed to offer space for candidates to reply to questions posed by viewers. The candidates' responses were to be posted without any editing or other restriction other than word length. In addition, the website proposed to offer a "candidate chat zone," in which candidates could have live discussions with voters, and an "on-line debate zone," in which candidates would debate each other online. The website did not propose to charge candidates for dedicated space on its site, but planned to seek sponsorship or advertising revenues from commercial entities.

The Commission concluded that the provision of space to candidates free of charge for these purposes did not constitute a contribution or expenditure under the Federal Election Campaign Act of 1971, as amended, because the provision of such space should be considered a "nonpartisan activity designed to encourage individuals to vote or to register to vote," within the meaning of 2 U.S.C. §431(9)(B)(ii). In reaching this conclusion, the Commission relied on the following factors:

- (1) All ballot-qualified candidates would be invited to participate except in the case of presidential elections, in which the Commission's regulations for voter guides would be applied;
- (2) In the online chat zone and online debate areas, time/space would be apportioned equally to all candidates, with no candidate purposely given a more active or more popular time slot than another;
- (3) The website would be available for viewing and interaction by the general public, with no effort by the website to determine the political party or candidate preference of viewers;
- (4) Each political party would have an opportunity to post its website, which the Commission noted "is consistent with an effort by [the requestor] to communicate on a nonpartisan basis," 1 CCH ¶ 6306 at p. 12,490;
- (5) The website would have commercial advertisements, not including parties, PACs or other social, political or ideological sources;
- (6) Coordination with candidate and campaigns would be limited to ensuring that candidates' responses to questions meet the neutral website guidelines. While communication with candidates and campaigns would not include any discussion of any campaign's specific political plans, projects or needs, it would include discussions of why particular campaigns would find such services desirable.

The RNC and DNC believe that A.O. 1999-24, while not purporting to address every conceivable question that could arise in connection with a for-profit website, provides a sensible framework for the provision of dedicated space on a for-profit website to candidates and party committees, free of charge by the website to such candidates and party committees. That A.O. appropriately addresses the first issue raised

by AOR 2000-09, and we see no reason for the Commission to revisit its conclusions in A.O. 1999-24.

In that regard, AOR 2000-9 appears to question whether A.O. 1999-24 is consistent with several previous Commission Advisory Opinions. In A.O. 1998-17, 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 6270 (Sept. 10, 1998), the Commission approved the provision of free broadcast time voluntarily provided by a cable television operator to all qualified candidates for the U.S. House in certain congressional districts, and to U.S. Senate candidates, all on a nonpartisan basis. The Commission ruled that the provision of such free time fell within the media exemption of 2 U.S.C. § 431(9)(B)(i). A similar conclusion was reached earlier in Advisory Opinion 1982-44, CCH Fed. Elec. Camp. Fin. Guide ¶ 5691.

While the Commission did not rely on the media exemption in A.O. 1999-24, we believe the conclusions of A.O. 1999-24 are entirely consistent with those of A.O. 1998-17. In particular, the RNC and DNC believe that a for-profit website functioning as a media outlet, and which is not owned by a political party, committee or candidate, may disseminate information about candidates and parties on a nonpartisan basis without having the value of such communications count as a contribution or expenditure under the Act. Thus, we believe that commentary on a candidate or party in a web-based publication—for example, negative comment about a Democratic official or candidate in the Drudge Report, or negative comment about a Republican official or candidate in Salon.com—qualifies for the media exemption and does not constitute a contribution or expenditure under the Act. See, e.g., Center for Democracy and Technology, “Square Pegs & Round Holes: Applying Campaign Finance Law to the Internet at 21 (Oct. 1999). Similarly, we believe that webcasting of party events and meetings (including national convention proceedings) by websites operating for profit, and not affiliated with any candidate or party, including portal sites, internet service providers and similar entities, does not constitute a contribution or expenditure under the Act.

AOR 2000-09 also cites Advisory Opinion 1996-2, 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 6188 (April 25, 1996), in which the Commission ruled that the offering of free member accounts to all candidates for federal and statewide office would constitute an impermissible corporate contribution. Most individuals and entities were charged for such accounts. The Commission relied on the rule that provision by a corporation of something of value for less than the usual and normal charge constitutes a contribution. In that A.O. an Internet service provider was proposing, not to post information on a neutral basis on its own site, but simply to provide candidates, in effect, with their own commercial Internet service free of charge. A.O. 1996-2 appears to be inapposite to the situation and issues presented in A.O. 1999-24.

Finally, AOR 2000-09 cites Advisory Opinion 1978-9, which dealt with the slate card exemption, and is not relevant to any of the issues raised by AOR 2000-09.

The second issue raised by AOR 2000-09 which is of concern to the national party committees is the question of whether, and under what circumstances, such a for-

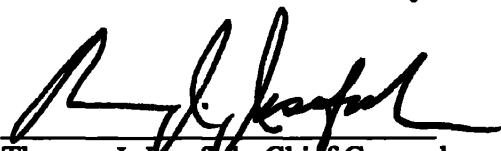
profit site may provide, free of charge, links to the web sites of candidates and party committees. That question was addressed by the Commission in Advisory Opinion 1999-17, 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 6308 (Nov. 10, 1999), as well as in A.O. 1999-24. In A.O. 1999-17, the Commission ruled that whether a website's link to a candidate web site would "turn on whether or not the owner of the web page providing the link would normally charge for the providing of such a link." 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 6308 at p. 12,497. In A.O. 1999-24, the Commission approved the potential posting by a for-profit website of links to political party and candidate sites. The links were to be posted to each participating candidate and, in the case of the parties, each political party would have an opportunity to post its website, free of charge. The Commission noted that, "This is consistent with an effort by [the for-profit website] to communicate on a nonpartisan basis." The site would be charging for links to its commercial advertisers.

Thus, it appears from these prior Commission rulings that a for-profit site which disseminates political content and earns its revenue from advertising, and does not normally charge any political candidate or committee for links, may post links to the sites of candidates and political party committees, free of charge, as long as no candidate or party is treated any more favorably than another. Nothing in AOR 2000-09 appears to provide any basis for revisiting this conclusion.

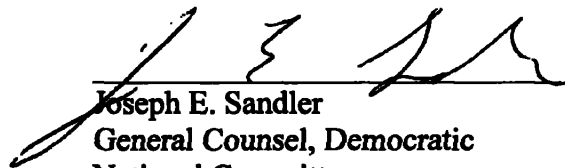
The national party committees, therefore, urge the Commission to re-affirm its conclusions in Advisory Opinion 1999-24 and 1999-17, and to build on and refine on the framework of those A.O.'s in appropriate future Advisory Opinions and in new regulations. AOR 2000-09 does not present any new issues or elements that provide an occasion to refine, elaborate on or in any other way revisit those Advisory Opinions.

We appreciate the opportunity to submit these comments.

Respectfully submitted,



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