



January 15, 2015

**VIA ONLINE SUBMISSION**

Ms. Amy L. Rothstein  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 204

**RE: Comments of the Electronic Frontier Foundation and the Center for Democracy & Technology on Advance Notice of Proposed Rulemaking 2014-01: Earmarking, Affiliation, Joint Fundraising, Disclosure, and Other Issues (McCutcheon)**

Dear Ms. Rothstein:

On behalf of the Electronic Frontier Foundation (EFF) and Center for Democracy & Technology (CDT), we respectfully submit the following comments to the Federal Election Commission (FEC) on Advance Notice of Proposed Rulemaking 2014-01: Earmarking, Affiliation, Joint Fundraising, Disclosure, and Other Issues (McCutcheon). EFF and CDT's comments relate solely to the question of whether the FEC should re-examine its current approach to the Internet and other emerging technologies, as recently suggested by Commissioner Ann Ravel.<sup>1</sup>

In 2006, the FEC declared that it would take a “restrained regulatory approach” with regard to online political activity.<sup>2</sup> The narrow approach adopted in 2006 remains the appropriate approach today. Although many new technologies have been developed and adopted over the past ten years, the concerns raised a decade ago regarding regulation of the Internet are equally valid today.

Unlike political advertisements in the offline world, the Internet is not merely a tool of the wealthy political elite. Ordinary individuals can purchase Internet ads, create YouTube videos, and post banners on their personal websites to express support for particular candidates or parties—all for little or no cost. Extending campaign finance regulation to free and low-cost Internet speech will discourage individual citizens from engaging in such forms of political expression. Campaign finance rules should *encourage*—not discourage—participation in the online political debate.

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<sup>1</sup> See MUR 6729 (Checks & Balances), Statement of Reasons of Vice Chair Ann M. Ravel at 1 (Oct. 24, 2014) (calling for a total “re-examination of the Commission’s approach to the Internet and other emerging technologies”).

<sup>2</sup> *Internet Communications*, 71 Fed. Reg. 18,589, 18,603 (Apr. 12, 2006).

The FEC should not modify its current approach for a number of reasons:

**(1) Increased regulation of online speech will chill speech of ordinary Internet users.**

The application of complicated campaign finance rules to online speech risks inhibiting the enhanced civic participation promised by political discourse on the Internet. Political speech on the Internet demands substantial breathing space to ensure robust online debate. The Commission's current—and narrow—regulatory approach provides such breathing space and thereby ensures that campaign finance laws do not chill the online speech of the millions of ordinary people who communicate about politics online. As noted in our joint comments to the Commission back in 2005, submitted by CDT pursuant to Notice of Proposed Rulemaking 2005-10, without such breathing space, the mass and complexity of campaign finance regulations—and the attendant record-keeping and disclosure requirements—will likely discourage many individual speakers from expressing their political views online.<sup>3</sup> With more people online today than ever before, the concern for chilling speech of ordinary Internet users is even more significant than it was ten years ago.

The application of complicated campaign finance rules to online speech will also inevitably lead to abuse of the FEC's complaint process—abuse which will further chill online political speech.

**(2) Increased regulation of online political speech will threaten the privacy and anonymity rights of Internet users.**

Increased regulation of political speech on the Internet will likely involve imposing complicated and burdensome record-keeping and disclosure requirements on ordinary Internet users. This will not only discourage speech, but it will also harm privacy and anonymity. The Commission should not force individuals to disclose sensitive personal information—such as an address or telephone number—without a clear need for the information in order to address an overt threat to the integrity of the campaign finance system. Furthermore, the United States has a long tradition of anonymous political speech, dating back as far as Thomas Paine's "Common Sense" and many of the Federalist Papers. The Commission should not adopt rules that would thwart the ability of individuals to speak anonymously on the Internet.

**(3) Increased regulation of online political speech will undermine the goals of campaign finance reform.**

Campaign finance reform should be aimed at protecting freedom of political speech and expanding political opportunity and participation. Through chilling speech and threatening privacy and anonymity, increased regulation of online political speech will achieve just the opposite.

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<sup>3</sup> Comments of the Center for Democracy & Technology on Notice of Proposed Rulemaking 2005-10, The Internet: Definitions of "Public Communication" and "Generic Campaign Activity" and Disclaimers, at 4 (June 3, 2005) (available at <https://cdt.org/files/speech/political/20050603cdtcomments.pdf>) (last visited Jan. 14, 2015).

CDT and EFF, along with various other civil liberties organizations, raised each of these concerns back in 2005. The concerns are even more relevant today, given the ever-increasing number of ways for ordinary people to join in the political debate online.

We appreciate the past efforts of the Commission to limit the impact of its rules on the online speech of ordinary individuals. As we stated back in 2005, “the Internet provides a counter-balance to the undue dominance that ‘big money’ has increasingly wielded over the political process in the past half-century.”<sup>4</sup> This is even more true today. We hope the Commission remains dedicated to ensuring that its regulatory approach promotes—rather than hinders—robust political debate online.

Respectfully Submitted,

/s/ Lee Tien  
Lee Tien, Senior Staff Attorney  
Jamie Williams, Frank Stanton Legal Fellow  
Electronic Frontier Foundation

/s/ Emma Llansó  
Emma Llansó, Director, Free Expression Project  
Center for Democracy & Technology

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<sup>4</sup> *Id.* at 3.