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Honorable Scott E. Thomas
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AOR 1999-25

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: *The Democracy Network Request for Advisory Opinion*

Dear Chairman Thomas:

This letter requests an Advisory Opinion, pursuant to 2 U.S.C. § 437f(a)(1), for the Democracy Network ("DNet"), an online project of the League of Women Voters Education Fund (the "League") and the Center for Governmental Studies ("CGS"). The League is recognized as an independent 501(c)(3) incorporated entity acting in coordination with the League of Women Voters of the United States ("LWV"). The LWV is the country's premier non-partisan voter information and participation organization, having held candidate debates since its inception in 1920. In 1992, the state and local LWVs sponsored more debates than any other organization in the United States. CGS is a 501(c)(3) incorporated entity which is nationally recognized as a leader in the use of communications technologies to provide information about government and elections on a non-partisan basis. Formed in 1983, CGS has a history of creating innovative public interest projects. For example, it built the nation's largest non-profit television channel, the "California Channel," focusing on state government.

The League and CGS seek confirmation that DNet's provision of candidate-related information on its Internet website during the current election cycle are activities exempt from the definition of "contribution" or "expenditure" under the exemptions for (1) encouraging voting or registration of voters, (2) candidate debates, (3) press activity, (4) voter guides, and/or (5) candidate appearances on the premises of non-profit educational institutions. These activities, described below, are all engaged in on a non-partisan basis and include voting and voter registration information, substantive discussions and online debates in which candidates directly participate, biographical and other candidate information, and electronic links to websites of candidates or their committees.

I. BACKGROUND

A. The Role of the Internet and Interactive Computer Services

Congress has repeatedly expressed its support for a strong national policy of encouraging the continued growth of the Internet and refraining from unnecessary government regulation:

It is the policy of the United States (1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*¹

Affirming the logic underlying this policy, a recent Federal Communications Commission study concluded that “[t]he Internet, from its roots a quarter-century ago as a military and academic research tool, has become a global resource for millions of people. As it continues to grow, the Internet will generate tremendous benefits for the economy and society.”²

One of the most significant benefits of the Internet is its emergence as a powerful tool for enabling citizen access to and participation in government, public policy, and politics. It is estimated that 80 - 100 million Americans now use the Internet³ -- slightly more than the number that subscribe to daily newspapers.⁴ Furthermore, the Americans who are online are the same ones who are most likely to vote, according to a recent study by the Pew Foundation for the People & the Press.⁵ A survey taken following the 1996 election indicated that approximately 8.5 million voters said that information they obtained through the Internet influenced their vote.⁶

¹ Communications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 230(b) (emphasis added); Telecommunications Act of 1996 § 706 (directing FCC to remove regulatory barriers that discourage the development of advanced telecommunications capability, including Internet access); *see generally Digital Tornado: The Internet and Telecommunications Policy*, at ii, OPP Working Paper Series (March 1997) (“In passing the 1996 Act, Congress expressed its intent to implement a ‘pro-competitive deregulatory national communications policy.’”).

² *Digital Tornado: The Internet and Telecommunications Policy*, at i, OPP Working Paper Series (March 1997).

³ See NUA Internet Surveys (visited July 12, 1999) <http://www.nua.ie/surveys/how_many_online/n_america.html> .

⁴ In 1998, U.S. daily newspaper circulation was nearly 70 million. *1999 E&P Year Book Finds Daily Circulation Continues to Drop* (April 27, 1999) <<http://archives.mediainfo.com>> .

⁵ *Online Newcomers More Middle-Brow, Less Work-Oriented: The Internet News Audience*

DNet is committed to ensuring that the continued growth of the Internet and interactive computer services will also support noncommercial, non-partisan, efforts to use the new medium to help broaden the political involvement of American citizens. Through programming like that described below, DNet and the Internet will continue to improve online services and connect ordinary Americans to the institutions of democratic decisionmaking.

The continued experimentation, innovation, and growth of the medium as a tool to enhance democratic participation depends in large measure on DNet being able to provide political and candidate information without fear of having such coverage being deemed an illegal campaign contribution or expenditure. DNet therefore seeks assurance from the Federal Election Commission ("FEC") that the federal election laws do not inhibit DNet from continuing its work to ensure that the online medium fulfills its promise as a significant and unique source of political and public affairs content.

B. The Democracy Network

1. DNet's Background

DNet is an interactive website designed to improve the quality and quantity of voter information and to create a more educated and involved electorate. Launched in 1996 during the presidential elections, DNet has provided in-depth voter information on hundreds of campaigns. DNet has covered elections for the Presidency, Senate, House, statewide offices, state legislative offices, local offices, and ballot measures. DNet has received its funding from a number of prominent national foundations and charitable institutions, including Carnegie, Cummings Foundation, Ford Foundation, Hewlett Foundation, Irvine Foundation, MacArthur Foundation, Markle Foundation, Rockefeller Family Foundation, Schuman Foundation, and the Open Society Institute.

Through a unique set of design incentives, DNet encourages candidates to address a wider range of issues, and to address those issues in greater depth, than they might in other media. Essentially, DNet provides an online debate forum where candidates are invited to present their positions in detail on any issue they wish, to debate other candidates and rebut their positions, and/or directly to respond to voter questions. This design gives voters an opportunity to obtain information on candidate positions, compare competing candidates with each other, and make informed political judgments. By maintaining such a database, as well as by sponsoring ongoing candidate debates in an "electronic town hall" before an online audience, DNet seeks to:

- increase voter understanding of important public policy problems;
- foster greater civic participation and interaction between voters and candidates;

Goes Ordinary (visited July 12, 1999) <<http://www.people-press.org/tech98sum.htm>> .

⁶ See Rajiv Chandrasekaran, *Politics Finding a Home on the Net: Post-Election Surveys Show the Web Gains Influence Among Voters*, WASH. POST, Nov. 22, 1996, at A4.

- provide day-to-day information concerning local, state, and federal government; and
- create new online political communities.

DNet was launched in 1996 by CGS, a Los Angeles-based non-profit, non-partisan public policy research organization. CGS is a nationally recognized leader in the areas of campaign finance and electoral reform. In addition to supporting DNet and the objectives listed above, CGS's goals are to:

- enhance the quality and quantity of governmental information available to citizens through the use of modern communications technologies;
- expand the opportunities of citizens to participate in the elective and governmental processes;
- improve the integrity of governmental decisionmaking;
- strengthen the government's responsiveness to the public's interests; and
- help restore public trust in government and the electoral process.

Beginning in 1997, the League joined CGS in operating DNet which resulted in a formal partnership between the two organizations in early 1999. The League is a non-partisan public policy education organization established in 1957 as an independent, 501(c)(3) organization to complement the activities of the LWV. The mission of the League is to encourage the active and informed participation of citizens in government and to increase the public's understanding of major public policy issues. The primary activities of the League include public education, research, and the provision of training and technical assistance to grassroots activists. These activities are in furtherance of the League's goals which are categorized into four projects:

- **Project Citizen:** reconnect citizens with government, build civic participation at home and abroad, reaffirm the necessary role of government;
- **Project Voter:** enhance voter participation, inform and motivate voters, make elections relevant to citizens;
- **Project Diversity:** engage the disengaged, include all voices in civic life, increase diversity of representation; and
- **Project Reform:** make the system work for citizens, enable voters to learn about candidates, strengthen the democratic process.

2. DNet's Role in the Online Community

DNet gained considerable national attention as a prominent part of Web White Blue Day on October 6, 1998. During the month preceding the 1998 elections, DNet covered all 50 states with nine full feature debate sites and 41 basic voter information sites.⁷ DNet's full feature sites were operated in partnership with the League in Florida, Illinois, Maryland, Massachusetts, Oregon, Texas, and Washington, and with the Earth Pledge Foundation in New York. CGS operated the DNet site in California. Additional DNet coverage included critical election and candidate links for the remaining 41 states, all ballot initiatives and referendums in the United States, and Spanish language coverage of Venezuela's presidential election. The success of this project is self-evident: DNet's "hit rate" jumped from 16,000 hits a day to a high of 768,000 hits a day on election day 1998. For the 1998 general election cycle overall, DNet received over 5.5 million hits.

DNet is part of a larger effort on the Web to create non-profit, non-partisan, interactive tools for local, state, and national political participation. America Online is cross-linking to DNet in cities where DNet and Digital Cities are both operational, and has announced that it will include DNet in its political coverage in the 2000 election cycle. In addition to its existence on the Internet, DNet has also cooperated with Time Warner's full service network in Orlando, Florida, to provide systems users with on-demand, digitized video statements from all candidates in selected 1996 election races.

C. DNet's Election-Oriented Coverage in the 2000 Cycle

1. Online Candidate Debates and Issue Statements

The heart of DNet is a database of textual, audio, and video statements, which candidates can directly and remotely update, and which voters can access according to their interests. Using an ID and a password, candidates can enter the website and write up to 1,000 words on any issue they wish, or respond to questions from other candidates or from members of the public following the debate on-line. The League will moderate the questions from the public in the manner of a radio talk show host, screening them to ensure that they are understandable and not redundant before posting them for the candidates to answer. Candidate positions are automatically entered in a Candidate Grid, which indicates that they have stated a position with a large red check and states "no comment" opposite their opponents' names. Candidates' positions are then e-mailed to their opponents who are thereby encouraged to submit statements and, for security purposes, returned to the submitting candidate for confirmation of the entry.

Rather than serving merely as a conduit for candidates' statements, DNet provides a forum designed to encourage more dynamic and interactive debate. DNet's database allows candidates to continually update their statements, as well as comment on other candidates'

⁷ DNet intends to maintain and expand these sites with DNet partners in 1999 and 2000, including coverage of all federal candidates and a number of state candidates in the 2000 elections.

positions. As a result, voters have access to a current and constantly developing debate between and among candidates. In the 2000 elections, voters will be able to view individual candidate statements on specific issues, compare two candidates' positions on a single issue, or watch a debate between all candidates on a selected issue. Voters will also be able to provide questions for candidates on specific issues, with the opportunity to have their questions publicly posted. And, voters will be able to review any candidate answers to the questions posed. In other words, DNet will create thousands of simultaneous online candidate debates in hundreds of races and in every state in the nation.

One of the most important features of DNet is that it encourages candidates to address a far broader range of issues than they typically do on television and in paid advertising, and to address those issues at a significantly greater length. In the California gubernatorial election, for instance, the candidates addressed over 35 issues. Thus, DNet debates are richer, deeper, and broader than comparable discussions can be on television. DNet's goal is to increase and improve the political dialogue, rather than merely to transfer the current television dialogue to the Internet.

2. Additional Program Features

In addition to the primary database manifested by the Candidate Grid, DNet offers many other program features. It has candidate biographies (provided by the candidates), information on how to contact each campaign, and information provided by candidates on endorsements by individuals and organizations. For each elected office in contention, there is an index of issues as well as a national "issue of the day" feature. Furthermore, depending on programming decisions, DNet may again, as it did in 1998, provide opportunities for citizens to utilize interviews, polls, bulletin boards, and a chat area to enhance their interaction with candidates, elected officials, community leaders, and other citizens.

DNet also provides an e-mail form that allows citizens to communicate directly with campaigns. Other than providing the e-mail form and the candidate's addresses, DNet has no involvement or role in citizens' direct communications with, contributions to, or volunteering for campaigns. Links are also provided to sites with reports of official campaign contribution data for candidates and ballot measures (where available on-line). Additionally, DNet furnishes official ballot measure information, and local voting information (including registration deadlines, absentee ballot information, and links to polling place information). Finally, DNet is a central online source for links to editorials, news, and updated listings of debates and political events, including links to local, state, and national news services. To the extent that DNet links to any editorial endorsements of candidates, great care will be taken to ensure that the newspapers listed include all local papers which have made endorsements in a race, or in the case of national candidates that a representative assemblage of large papers across the country is included.

3. Lessons Learned from Trials

Public opinion polls show that public cynicism about government is at an all-time high. These polls also show that increased information and communication can help quell that cynicism and allow people to feel hopeful about government. DNet creates a noncommercial forum where

people can engage in politics in ways that will help them become more effective, participatory citizens.

As a result of its national, state, and local trials, DNet has begun to accumulate significant evidence to suggest that:

- political candidates will participate in DNet in significant numbers;
- candidates will address a broader range of issues, in greater depth, and with fewer negative appeals, than in other media;
- voters will eagerly use these new tools to inform themselves about issues and to connect with others in their communities;
- local organizations and the media will partner in building such systems;
- local government agencies will participate with content and coordination; and
- the Internet will offer citizens an extremely flexible and effective means to spur interaction about important issues of community concern.

DNet looks forward to expanding upon these initial findings to enhance its nationwide system of political debate in the years to come.

II. FEDERAL ELECTION LAW ISSUES

The League and the CGS believe that DNet's dissemination of election-related debate and commentary in the manner described above is not barred by the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), or FEC regulations, and is fully consistent with previous FEC Advisory Opinions. The Requestors seek confirmation of these conclusions.

As a general rule, the Act bars corporations from making a contribution or expenditure in connection with any federal election.⁸ However, the Act and FEC regulations provide exemptions from § 441b for non-partisan activity that is designed to encourage people to vote or register to vote,⁹ non-profit organizations to stage candidate debates,¹⁰ the provision of news,¹¹ non-profit organizations to prepare and distribute voter guides,¹² and non-profit educational

⁸ 2 U.S.C. § 441b.

⁹ *Id.* § 431(9)(B)(ii); 11 C.F.R. § 100.8(b)(3).

¹⁰ 11 C.F.R. § 110.13.

¹¹ 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) & 100.8(b)(2).

¹² 11 C.F.R. § 114.4(c)(5).

institutions to provide for candidate appearances on their premises.¹³ In fact, the entire cluster of exemptions for candidate-related activities by 501(c)(3) organizations under the Commission's regulations appear designed to protect and encourage activities exactly like DNet's, albeit in contexts envisioned prior to the creation of the Internet.

A. Exemption to Encourage Voting or Registration of Voters

Expenditures made for the purpose of engaging in "non-partisan activity designed to encourage individuals to vote or to register to vote" are specifically excluded from the definition of prohibited "expenditures" by a corporation in the Act.¹⁴ Consistent with this statutory provision, the FEC's regulations provide that "[a]ny cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote."¹⁵ Recently, the Commission concluded that the furnishing of free hyperlinks to individual candidates' websites from the Minnesota Secretary of State's own website were exempted under this provision.¹⁶

DNet's activities are substantially similar to the Minnesota Secretary of State's actions. Specifically, DNet allows candidates to post links to their own websites and hosts limited biographical information supplied by candidates. It makes information provided by candidates more accessible to DNet visitors as a "method [to] encourag[e] participation in the political process" which, the FEC concluded in the Minnesota Advisory Opinion, "is viewed by the Commission as non-partisan activity 'designed to encourage individuals to vote or to register to vote.'"¹⁷ DNet also provides voter registration information, absentee ballot information, polling place locations, and election dates. In some states, DNet provides downloadable voter registration forms which voters can fill in and mail to state officials.

Like the Minnesota Secretary of State's hyperlinks, DNet's interactive services are available to all ballot qualified candidates participating in elections covered by DNet and the purpose of these services is to promote informed voter participation in a non-partisan manner. Accordingly, the Commission should find that these activities fall within the voting or voting registration exemption, as it found with Minnesota's provision of hyperlinks.

DNet recognizes that its status as a not-for-profit 501(c)(3) corporation is also relevant to this determination under the FEC's regulations. 11 C.F.R. § 114.4(c) & (d) contain additional

¹³ *Id.* § 114.4(c)(7).

¹⁴ 2 U.S.C. § 431(9)(B)(ii).

¹⁵ 11 C.F.R. § 100.8(b)(3).

¹⁶ FEC Advisory Opinion 1999-7, 1999 WL 260750 (F.E.C.).

¹⁷ *Id.*

regulatory provisions designed to ensure that corporate and labor activities to encourage voting and registration of voters is nonpartisan. Likewise, under the rules of the Internal Revenue Service for 501(c)(3) entities everything DNet does must be non-partisan—it may not engage in political activity. Thus, as noted herein, DNet does not expressly advocate any candidate's or party's election or defeat nor does it impermissibly coordinate its speech with any candidate or party, which are the two criteria for non-partisan corporate activity under § 114.4. Accordingly, DNet's non-partisan activity to encourage individuals to vote or register to vote should be fully consistent with both § 100.8(b)(3) [relied on in the Advisory Opinion 1999-7 to Minnesota] and § 114.4.¹⁸

B. Candidate Debates Exemption

Non-profit 501(c)(3) organizations “which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).”¹⁹ As stated above, DNet was launched by CGS, a qualified 501(c)(3) entity, and is now operated in conjunction with the League, also a qualified 501(c)(3) entity. DNet's online debates are non-partisan exchanges between candidates which are open to all ballot qualified persons. Thus, DNet believes its candidate debates are consistent with this section of the Commission's regulations.

The “structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organizations(s) [sic], provided that: (1) Such debates include at least two candidates; and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.”²⁰

In order to produce the most comprehensive and dynamic debates possible, DNet's online debates invite all ballot qualified candidates in the races covered to participate. After the filing deadline has passed, DNet obtains lists of all the properly registered candidates from the appropriate election officials. DNet then contacts all the qualified candidates and provides them with an ID and password so they can prepare their online biographies, contacts, and endorsements. They then may begin submitting policy positions and replying to questions and statements from the public and other candidates. In an effort to keep the debate vibrant, DNet operates a weekly “outreach” program throughout the election season. DNet contacts candidates to inform them that other candidates have taken positions on particular issues and prompts them to respond to these positions, as well as other questions and comments. DNet's extensive efforts

¹⁸ See 11 C.F.R. § 114.4(c)(2).

¹⁹ *Id.* § 110.13(a)(1). 11 C.F.R. § 114.4(f) simply states that a non-profit organization described in 11 C.F.R. § 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations to stage candidate debates.

²⁰ 11 C.F.R. § 110.13(b).

to include all registered candidates and to keep them all equally engaged in this protracted virtual debate meets the broad requirements of 11 C.F.R. § 110.13(b).²¹

Section 110.13(c) requires that pre-established objective criteria be used to determine which candidates may participate in the debate, and that nomination by one party may not be the sole criterion in general election debates. As noted above, DNet expects to not only permit but encourage all ballot qualified candidates to participate in the DNet virtual debates. In the event that this proves impractical (*e.g.*, presidential candidates who qualify for ballot access in some states but not others), DNet will have in place the required preexisting objective criteria. At a minimum, DNet will include in its presidential debates all those candidates for president in the general election who are on the ballot in enough states to obtain a majority in the Electoral College. Thus, DNet satisfies this prong of the debate exemption.

Though the Internet is a new medium over which candidate debates can now take place, the direct exchange between candidates exemplified by the Lincoln-Douglas Debates persists on DNet.²² Because all candidates' views are accessible in the same place on DNet—the candidate issue grid—the face-to-face nature of the debate is simulated in an online context. The debate on DNet, however, is not limited to a single session lasting only a couple of hours. Rather, the debate continues throughout the campaign, with candidates logging-on and addressing the other candidates' questions and comments as often as they see fit. This longevity allows for the discussion of a greater number of issues, and a debate of these issues that goes into greater depth than the traditional model allows. This format also provides an opportunity for the debate to adapt to changes in lines of questioning or current events. In 2000, DNet will allow members of the public to post questions to the candidates and view any answers submitted. DNet users in the 2000 elections will also be able to compare the positions of any two candidates they choose on any issue under debate, with a few simple clicks of the mouse. Finally, DNet's virtual debate has a more democratic quality to it by including the public in the commenting and questioning of the candidates' policy positions.

In sum, the candidate debate exemption applies to DNet because its activities satisfy all three of the requirements set-forth in the Commission's debate exemption while maintaining the confrontational character of the traditional Lincoln-Douglas Debates model.

²¹ In California's 1998 gubernatorial primary election, for example, seventeen candidates appeared on the ballot. The *Los Angeles Times* hosted a television debate between the four "leading" candidates (three Democrats and a Republican), but DNet created an online debate with participation from all seventeen candidates covering dozens of issues.

²² See generally FEC Advisory Opinion 1986-37, Fed. Election Camp. Fin. Guide (CCH) ¶ 5875 (1986) (individual appearances by candidates at separate times did not satisfy the Commission's debate regulations which were drafted with the face-to-face confrontational prototype of the Lincoln-Douglas Debates in mind).

C. News Exemption

The Act's exemption of news coverage from the definition of an expenditure is also relevant to DNet's coverage of candidates and their positions on issues. The term "expenditure" does not include "[a]ny news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."²³

Thus, the FEC's regulations provide that "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure."²⁴ The FEC regulations similarly provide that any "cost incurred in covering or carrying a news story, commentary, or editorial" does not constitute a "contribution" for purposes of FECA.²⁵

The news exemption applies when a contribution or expenditure is made in connection with

- (1) a news story, editorial, or commentary
- (2) that is distributed through the facilities
- (3) of a qualified press entity.²⁶

DNet's election coverage satisfies these three requirements.

1. "News Story, Editorial, or Commentary"

DNet's website is comprised of candidate information and policy positions, as well as containing links to news stories, editorials, and commentaries. Much of the content consists of statements about a candidate's past experience, activities, speeches, and policy positions, similar to the information provided by such journalistic entities as *National Journal's Hotline Weekly* or ABC News. Accordingly the provision of this material clearly qualifies as the distribution of news stories and the links to newspaper endorsements of candidates fit squarely within the exemption for editorials and commentary.

Likewise, DNet's provision of links to candidate websites, posting of limited biographical information supplied by candidates, hosting live discussions or debates in which candidates

²³ 2 U.S.C. § 431(9)(B)(i).

²⁴ 11 C.F.R. § 100.8(b)(2).

²⁵ *Id.* § 100.7(b)(2).

²⁶ See FEC Advisory Opinion 1996-16, Fed. Election Camp. Fin. Guide (CCH) ¶ 6197 (1996).

participate, and other means of making information provided by candidates more accessible to visitors to DNet falls within the category of “commentary” as interpreted by previous FEC Advisory Opinions. The Commission has concluded in numerous contexts that material can be “commentary” even where the press entity simply provides access to material that originated with a candidate or partisan organization.²⁷ For example, the Commission quite recently found that even the provision of program time to candidates in a federal election falls within the media exception as a form of guest commentary.²⁸

Similarly, the FEC also concluded that a cablecast television station could provide free time to the Republican and Democratic parties so that each could air a two-hour party presentation.²⁹ The FEC concluded that this was not a contribution because the activity was a form of “commentary” by the parties as outside commentators. “In the opinion of the Commission, ‘commentary’ was intended to allow the third persons access to the media to discuss issues.”³⁰

Thus, DNet’s provision of links to candidate home pages, as well as other means of making information provided by candidates more accessible to DNet users, satisfies the first prerequisite of the news exemption.

2. “Distributed Through the Facilities”

DNet’s election coverage also meets the “facilities” requirement for the news exemption. It is clear that a press entity satisfies the “facilities” element of the test when it uses its routine

²⁷ See, e.g., FEC Advisory Opinion 1996-48, Fed. Election Camp. Fin. Guide (CCH) ¶ 6226 (1996) (allowing candidate-produced video biographies and campaign commercials to be broadcast by non-profit corporation on cable television networks); FEC Advisory Opinion 1996-41, Fed. Election Camp. Fin. Guide (CCH) ¶ 6220 (1996) (permitting a corporation to produce and air a series of television programs featuring federal and state candidates answering journalists’ questions in taped segments).

²⁸ FEC Advisory Opinion 1998-17, Fed. Election Camp. Fin. Guide (CCH) ¶ 6270 (1998).

²⁹ FEC Advisory Opinion 1982-44, Fed. Election Camp. Fin. Guide (CCH) ¶ 5691 (1982).

³⁰ *Id.* The FEC determined that the news story exemption “is available where in the exercise of its responsibility to serve the public interest, convenience, and necessity, the station carries a film produced by [the congressman] as a public service announcement.” *Id.*; see also Advisory Opinion 1992-5, Fed. Election Camp. Fin. Guide (CCH) ¶ 6049 (1992) (Congressman may participate in cable television program in his elected capacity to discuss issues concerning his district).

means of distribution and publication.³¹ This interpretation is consistent with the underlying purpose of the press exemption as recognized by the Supreme Court—to prevent the FEC from inhibiting the press' ability to comment on politics as it sees fit.³² Accordingly, "facilities" is a term that protects the media's use of its existing and usual capabilities.

Additionally, DNet publishes a news magazine, called "DNetizen" which provides recipients with news and commentary on Internet-related matters.³³ The magazine covers electronic voting proposals, online disclosure of campaign finance information, etc. and is distributed exclusively through the Internet.³⁴ Thus, DNet is already the publisher of a type of publication specifically referenced in the press exemption, and DNet's other online activities could be viewed merely as an extension of this publishing activity.

In the instant case, DNet makes information available online to its users in various subject-matter areas, including links to related sites on DNet or the World Wide Web, so that users can access that information after logging into the service. Accordingly, DNet's proposed activity falls within its normal mechanism for the dissemination of news and related information and thereby satisfies the second requirement of the news exemption.

3. "Qualified Press Entity"

Finally, DNet should be considered a "qualified press entity" entitled to operate under the news exemption. The news exemption "was intended to apply to election related communications by a broadcaster, newspaper, or other form of recognized public media."³⁵ In past decisions, the FEC has deemed this element of the exemption satisfied not only when the organization in question is a "recognized" press entity, but also when it is "acting as a press entity in performing the media activity."³⁶ Applying this analysis, the FEC has already determined that the news

³¹ See *Reader's Digest Ass'n v. FCC*, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981) (noting that the press exemption exempts "those kinds of distributions that fall broadly within the press entity's legitimate press function").

³² See, e.g., *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 668 (1990) (citing the exemption's legislative history, which describes the statute as "assur[ing] the unfettered right of the . . . media to cover and comment on political campaigns").

³³ See Attachment.

³⁴ One issue of DNetizen (Dec. 7, 1998), for example, published the comments of Marty Edlund, Project Director, Campaign 98 Internet Study, on voter uses of the Internet. Another issue of DNetizen (Dec. 21, 1998), reprinted readers' comments on the technique of political "spamming" on the Internet.

³⁵ FEC Advisory Opinion 1980-90, Fed. Election Camp. Fin. Guide (CCH) ¶ 5538 (1980).

³⁶ FEC Advisory Opinion 1996-16, Fed. Election Camp. Fin. Guide (CCH) ¶ 6197 (1996) (citing FEC Advisory Opinion 1982-44, Fed. Election Camp. Fin. Guide (CCH) ¶ 5691 (1982)).

exemption extends to an online news and information service³⁷ and to cable television broadcasters.³⁸

In FEC Advisory Opinion 1996-16,³⁹ the Commission approved a proposal for the production and broadcast of "Electronic Town Meetings" coordinated by Bloomberg, L.P. Bloomberg proposed to invite presidential candidates to appear in a television studio and respond to questions both from a live television audience and from others linked to the program via electronic mail. The one-hour program would then be broadcast by other news organizations.

The FEC concluded that this proposal fell within the press exception for a number of reasons. First, it recognized that Bloomberg was not owned by a political party or a candidate. Second, it noted that Bloomberg "acts as a news and commentary provider via computer linkages, performing a newspaper or periodical publication function for computer users." As a result, the FEC concluded that Bloomberg was acting as a press entity in covering this event.⁴⁰

³⁷ *Id.*

³⁸ MUR 3657. In MUR 3657, the FEC took the position that a cable television provider could not use its billing system to send out express advocacy materials. However, in so doing, the FEC acknowledged that cable providers were "facilities" within the meaning of the press exemption. This conclusion was upheld by the district court in *FEC v. Multimedia Cablevision, Inc.*, No. 94-1520-MLB (D. Kan. 1995). The FEC ultimately voted to close the MUR before the 10th Circuit Court of Appeals ruled on Multimedia's appeal, causing the appellate court to vacate the district court decision as moot.

³⁹ Fed. Election Camp. Fin. Guide (CCH) ¶ 6197 (1996).

⁴⁰ *Id.* It is true that Bloomberg already performed press functions in another medium (wire services) prior to introducing its Internet news service. However, it would be unfair and improper for the FEC to discriminate in favor of existing news media companies that then establish Internet news services (*e.g.*, WashingtonPost.com and NewYorkTimes.com) at the expense of news services that are created specifically for this new medium (*e.g.*, Slate Magazine at Microsoft and the AOL News Division). Mere prior ownership of a printed, wire, or broadcast vehicle for the distribution of news cannot be a precondition for qualification for the press exemption on the Internet. If it were, the FEC would be establishing a monopoly on news on the Internet equivalent to saying that only carriage makers or buggy whip producers could legally manufacture automobiles.

The only other FEC Advisory Opinion concerning Internet access in this context involved materially different issues than those presented by this case and Bloomberg. *See* Advisory Opinion 1996-2, Fed. Election Camp. Fin. Guide (CCH) ¶ 6188 (1996). In Advisory Opinion 1996-2, CompuServe, an incorporated online information service, proposed *not* to provide news coverage or information about elections, but rather to offer free member accounts to all candidates for federal and statewide office for their use. The FEC concluded that such a program would be viewed as a corporate contribution unless the candidates were assessed the "usual and

DNet possesses the same attributes that led the FEC to conclude that Bloomberg was a qualified press entity. DNet is not owned or controlled by a political party or candidate. And, as discussed above, DNet provides access to a wide variety of news, commentary, and analysis that is functionally equivalent to the type of news information found in political periodicals. In short, through its news coverage, DNet “acts as a news and commentary provider via computer linkages, performing a newspaper or periodical publication function for computer users.”⁴¹ Accordingly, DNet, like Bloomberg, should be considered a qualified press entity—thus satisfying the third and final prong of the press exemption.

D. Voter Guides Exemption

Commission regulations also provide that corporations may prepare and distribute voter guides to the general public.⁴² The regulations provide that the corporation:

[M]ay prepare and distribute to the general public voter guides consisting of two or more candidates’ positions on campaign issues, including voter guides obtained from a non-profit organization The sponsor may include in the voter guide biographical information on each candidate such as education, employment positions, offices held, and community involvement.

(i) The corporation . . . shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates’ committees or agents regarding the preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and shall not encourage registration with any particular political party.

normal charge” for the online accounts. *Id.*

The FEC noted that the news exception was inapplicable because “neither CompuServe nor its described on-line services is a facility qualifying for the media exception.” In fact, CompuServe had not presented any information concerning its news activities (if any). DNet’s request stands in sharp contrast to the facts of the instant request. DNet is performing a news function. It is not making available to candidates a free subscription service for which others are charged, as CompuServe proposed to do.

⁴¹ FEC Advisory Opinion 1996-16, Fed. Election Camp. Fin. Guide (CCH) ¶ (1996).

⁴² 11 C.F.R. § 114.4(c)(5).

(ii)(A) The corporation . . . shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, except that questions may be directed in writing to the candidates included in the voter guide and candidates may respond in writing;

(ii)(B) All of the candidates for a particular seat or office shall be provided an equal opportunity to respond⁴³

DNet's candidate information materials are consistent with the requirements and restrictions in the FEC regulations. Corporations are allowed to create their own voter guides, in addition to providing voter guides generated by non-profit 501(c)(3) and (c)(4) organizations.⁴⁴ DNet's pages include the sort of biographical information (*e.g.*, education, employment positions held) specifically referenced in the regulation. Moreover, DNet's grids of candidate positions on various issues fall squarely within the regulation's allowance for the provision of a "voter guide obtained from a non-profit organization."⁴⁵

Further, DNet voter guide materials are permissible in that they do not expressly advocate the election or defeat of any candidate or group of candidates. All information is provided on a non-partisan basis and no qualified candidate is excluded or given less than equal access, consistent with FEC regulations.⁴⁶

Finally, in preparing its voter guide biographical materials, DNet does not "act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide."⁴⁷ DNet obtains information from FEC records and/or asks candidates to submit their bios and statements to DNet remotely online. This candidate contact involves only the request for the submission of biographical information, and does not involve any consultation or coordination of DNet's activities with any candidate. Accordingly, any contact between DNet and candidates or political parties, solely for the purpose of obtaining this information, should be permissible.⁴⁸

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See id.* § 114.4(c)(5)(ii)(B).

⁴⁷ *Id.* § 114.4(c)(5)(ii)(A).

⁴⁸ The First Circuit Court of Appeals held that the portion of the voter guide regulation that

E. Exemption for Candidate Appearances on Educational Premises

11 C.F.R. § 114.4(c)(7)(ii) exempts certain activities by “any incorporated educational institution exempt from federal taxation under 26 USC 501(c)(3), such as a school, college or university.” This regulation does not limit “educational institutions” to colleges and universities, but merely cites those entities as examples. DNet, a joint project of the League of Women Voters Education Fund and CGS, may also qualify as an “educational institution.” Both the League of Women Voters Education Fund and CGS exist explicitly to educate the public, and both hold 501(c)(3) educational exemptions from the IRS. Additionally, Tracy Westen, President of CGS, is an Adjunct Professor at the USC Annenberg School of Communication, and DNet will be a useful tool for political science educators and students across the country.

11 C.F.R. § 114.4(c)(7)(ii) states that the “premises” of a non-profit 501(c)(3) “educational institution” may be used to sponsor appearances by candidates, or candidates’ representatives, before the general public and at no charge. In today’s information age, an organization’s “premises” necessarily includes its space on the Internet. The proprietor of a website in cyber-space controls access to the site and the activity that transpires from the site just as the proprietor of physical space would. Therefore, DNet’s provision of website access to political candidates is in accordance with the “premises” element of 11 C.F.R. § 114.4(c)(7)(ii).

The regulation further requires that the candidate appearances constitute speeches, question and answer sessions, or similar communications, and that the institution does not expressly advocate for any clearly identifiable candidate or party, or favor one candidate or party over another in allowing such appearances.⁴⁹ As stated above, DNet allows candidates to make online appearances, present statements on issues, answer questions from voters and other candidates, and make similar communications (*e.g.*, to provide lists of endorsers, contact information, etc). These activities certainly fall within those described by this requirement of the regulation. DNet’s conformity with 11 C.F.R. § 114.4(c)(7)(ii) therefore compels the application of the exemption to DNet.

III. CONCLUSION

For the foregoing reasons, The Democracy Network respectfully requests the FEC to determine that DNet’s coverage of election activities and debates qualifies for the exemptions to encourage voting or registration of voters, candidate debates, press activity, voter

prohibits “mere inquiries to candidates” is invalid. *Clifton v. FEC*, 114 F.3d 1309, 1316 (1st Cir. 1997). Even if the FEC does not consider this decision as binding on it in other circuits, asking candidates on a non-partisan basis to respond to requests for simple biographical information does not meet the “act in cooperation, coordination or consultation” standard of the FEC regulations.

⁴⁹ See 11 C.F.R. § 114.4(c)(7)(ii)(A)-(B).

guides, and candidate appearances on the premises of non-profit educational institutions under the Act and FEC regulations.

First, the encouragement of voting and voter registration issues surrounding FEC Advisory Opinion 1999-7 and DNet's service are extraordinarily similar, leading to the logical conclusion that DNet's impartial provision of candidate information should be treated as favorably as the Minnesota Secretary of State's. Second, DNet's compliance with FEC regulations and maintenance of the confrontational character of the Lincoln-Douglas Debates model brings DNet's activity squarely within the candidate debates exception and prior FEC Advisory Opinions. Third, the information provided by DNet, the method in which it is provided, and DNet's qualifications as a press entity are all in conformity with the press exemption and FEC Advisory Opinions interpreting it. Fourth, DNet's provision of candidate information over the Internet is simply a more technologically advanced version of the traditionally printed voter guides that are permissible under the voter guide exemption. Lastly, non-partisan candidate appearances on DNet's virtual educational premises qualifies for the exemption for candidate appearances on educational institution premises.

For all of the above reasons, we accordingly respectfully request that the FEC advise The Democracy Network that its proposed activities are permissible under the FECA.

Thank you very much for your consideration of this Advisory Opinion request. If you have further questions, or require additional information, please contact me at 202-719-4273.

Sincerely,



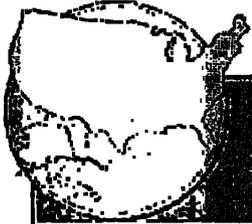
Trevor Potter

Counsel to Requester Democracy Network,
A Joint Project of The League of Women
Voters Education Fund and the Center for
Governmental Studies



|| DNet || Fri Aug 27, 1999

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What DNet tells us about the Internet and Politics in 1998

Three key lessons emerged from the experience of running DNet -- a national non-partisan public affairs and election information website -- through the 1998 election cycle. We wanted to share some of our initial findings with you.

1) Voters will seek out and use a non-partisan source of information

It is clear from our experience this year that voters desire and will use high quality information if it is available to them. A record number of voters turned to DNet for election information this year. DNet garnered over 5.5 million hits in the general election cycle -- over 1,000,000 hits just in the 48 hours preceding the election. Over 225,000 pages of information were displayed. DNet's site traffic increased over 2000% from early October to Election Day.

The experiences of other non-partisan websites, like Project Vote Smart and the traffic experienced by the "Web White and Blue" national election awareness site sponsored by the Markle Foundation and the Joan Shorenstein Center at Harvard University, also show that more and more people are seeking non-partisan political information on the web.

DNet received overwhelmingly positive response from DNet users. Users thanked DNet for collecting detailed candidate information in one place, presenting it in an easy to use format and taking a balanced and unbiased approach. DNet's coverage of the ballot measures was especially appreciated. Many voters reported sitting down with their voter pamphlets or absentee ballots and filled them out while using DNet as a resource.

One of the most beneficial aspects of our site, according to the feedback we received, is that DNet brought all of the information together in a single site.

2) Candidates are using the Internet more and more to communicate with voters. Several studies have found that more candidates than ever before are using the web. One of the most commonly cited studies is the Campaigns and Elections survey that found that 83% of the candidates who responded had or planned to have a website during the course of the election. Other studies confirmed the finding that more candidates had websites than ever before and that was especially true for competitive elections. Our experience with DNet supports these findings.

DNet enjoyed very high levels of candidate participation in the 1998

election cycle. In the nine "full-feature" DNet states, an average of 84% of statewide candidates provided issue statements for voters to review and 93% provided biographical and/or contact information. Candidate participation in each state ranged from a low of 60% to a high of 100%. Nearly 100% of the major party candidates for statewide offices covered participated.

3) DNet can improve the quality of political discourse. As a result of its national, state and local trials, DNet has begun to accumulate significant evidence to suggest that candidates will address a broader range of issues, in greater depth, and with fewer negative appeals, than in other media and that the Internet offers citizens an extremely flexible and effective means to spur interaction about important issues of community concerns.

This is an excellent case in which the exception proves the rule. Only one out of the hundreds of races that DNet covered this year descended into the rancorous and negative he said/she said that typifies much of modern political discourse on TV and in direct mail. In every other case, candidates set forth "positive" statements about their positions and agendas. The vast majority of statements about an opponent were in the context of a substantive discussion of an issue.

California's gubernatorial and senatorial elections are good examples of how DNet expanded the number and depth of issues discussed. Four to five issues dominated both races in paid advertising and press coverage. On DNet, the candidates for governor discussed 43 topics and the candidates for senate addressed 33 issue areas. We also found that many candidates, who were initially reluctant to address a particular issue on DNet, were very likely to participate once another candidate posted a statement.

Our experience this year leads us to expect that the Internet's impact on politics will continue to increase as we approach 2000.

Net News of Note from DNet

On Thursday, December 3, 1998, Area Madaras, Director of the Democracy Network, will be a panelist at the Kennedy School of Government Visions of Governance for the Twenty-First Century Project's POLITICS ON THE 'NET: A POST-MORTEM OF THE 1998 ELECTIONS conference. She'll join Catherine Clark, Program Director, The Markle Foundation; Leslie Goodman, President, Strategic Communications Services; Marion Just, Wellesley College; David King, Associate Professor of Public Policy, Kennedy School of Government; Andrew Kohut, Director, Pew Research Center for the People and the Press; and Larry Makinson, Executive Director, Center for Responsive Politics in a panel discussion titled "The Voters: Who's online, and what are they doing there? What was - and will be - the impact politically?"

Go to the site for more info:

(<http://ksgweb.harvard.edu/visions/netpolitics2.htm>)

On Monday, December 7, 1998, Tracy Westen, DNet's President, will moderate the Plenary Session of the Politics Online Conference hosted by the Graduate School of Political Management at George Washington University. The title of the plenary session is "Looking Towards 2000: A

moderator asks three visionaries and professionals to look towards 2000 about what to expect from online advocacy, lobbying and campaigning."

Go to their site for more info: (<http://www.gspm.org/politicsonline>)

Another Example of an Advocacy Group's Use of the Internet

In response to last week's issue, one reader submitted the following example of an issue advocacy group using the Internet for political purposes.

<http://www.responsiblechoices.org>

Californians for Responsible Choices, the political action committee of Planned Parenthood Affiliates of California, launched a website this election cycle that attempted to move beyond static "brochureware" and translate online activity into votes at the ballot box. In addition to providing newsworthy content in the form of timely original research on candidates' records, the site used cutting edge technologies to provide voters with innovative tools which assisted them in their 'offline' personal political participation and local persuasion activities.

The post election punditry in California's major newspapers noted "Abortion rights played a major role in the defeats of Lungren and Fong."

Planned Parenthood of California also maintains a non-campaign site which tracks state legislative and regulatory activity on these issues and provides tools for citizens to made themselves heard in the policy-making process: <http://www.ppacca.org>

For more information, please contact Stuart Trevelyan (510) 482-4444.

Please send us your comments!

We're always interested in feedback from our loyal readers!

Send your suggestions and any comments or letters to dnetizen@dnet.org.

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