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From: MarkJaskulski @ AOL.com  
To: internet@fec.gov  
CC: internettestify@fec.gov

2005 JUN -2 A 11:19

Hello~MR Deutsch,

Attached you will find comments regarding the Internet rule changes. I would like the opportunity to testify on this matter. Attached is a paper in which I am completing.

Thanks.

Mark Jaskulski  
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**Comments Regarding Proposed Rule Changes**

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***The FEC Should Expand the Coverage of the Media Exemption***

In 2003, the FCC did away with the bans on cross-ownership of newspapers and television stations in the same cities. The FCC believed “new media technologies had created a competitive media environment where restrictions on ownership were no longer necessary to protect the public interest.”<sup>1</sup> “The new Cross Media Ownership Rule, permitting newspaper and broadcast cross-ownership in most major markets, promises to continue a disturbing trend toward concentration of mass media ownership [and ideas] in America.”<sup>2</sup> An examination of the current situation of the mass-media field in America finds that there has been a convergence of media organizations. A field that was once controlled by more than fifty companies is now owned and operated by six large media conglomerates.<sup>3</sup> Under the rules of the media exemption, this small number of media outlets can cover and comment on the campaigns and elections taking place without any limits or restrictions.<sup>4</sup>

The decreasing numbers of media organizations means fewer distinctive views are heard in the media.<sup>5</sup> In the past, a candidate or election would have been covered with a

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<sup>1</sup> Daniel C. Moore, Double Crossed: Why the Newspaper/Broadcast Cross-Ownership Ban Remains Necessary in the Public Interest, 88 MINN. L. REV. 1697, 1700 (2004).

<sup>2</sup> See, Moore, supra note 1, at 1701.

<sup>3</sup> Id. at 1720. “While collusion may lead to price-fixing in the market for peanuts or potatoes, its implications for the mass media market, and the marketplace of ideas, are far more profound.” Id.

<sup>4</sup> Id. “The massive corporations that own the media ... possess the power to dictate, or limit, public discourse.” Id.

<sup>5</sup> See, Moore, supra note 1, at 1715. “As the number of independently owned broadcast television stations and newspapers dwindles, and existing media owners continue to diversify and expand their holdings, the potential for conflicts between owners and editorial staffs increases. It is almost a truism that large

hundred different organizations presenting a myriad of different views, but now the number of views has decreased to six or even fewer. Voters are less likely to make an informed decision because the number of different views being disseminated as a result of the rigid media exemption is small. Enforced diversification and increasing the number of those covered by the media exemption “is the only reliable means to ensure that when a conflict or issue arises adequate media outlets are available to expose them.”<sup>6</sup>

When many cities were blanketed by a couple of daily newspapers, people were presented with many diverse views on the same issue or candidate. Now, it is all too common for cities have one newspaper, which owns and operates a local television station and also has a news radio station. The effect is the repurposing of the same material throughout various media outlets, and people presented with the same thing in each medium.

Average citizens, not conscious of this convergence and a small number of companies running things, are unaware that the same story they hear on the television and radio and read in the newspaper may be coming from one person’s viewpoint. Under these previous circumstances, the media exemption was properly written and applied, but now there is an escalating need to reexamine the regulation and update it. The real differences of opinions begin to develop when one tries to distinguish how the law should be rewritten based on the technological advancements available to the average American who has a computer and Internet access.

### ***Campaign Finance vs. The Internet***

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corporations will tend to hold political views that favor their own self-interest, and the interests of their shareholders.” *Id.*

<sup>6</sup> See, Moore, *supra* note 1, at 1716.

State, district and local political party committees are required, by BCRA, to use only federal funds<sup>7</sup> for certain types of federal election activity. The term “federal election activity” includes any “public communication that refers to a clearly identified candidate for federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office . . . .”<sup>8</sup>

When Congress defined “public communication” the characterization included a wide variety of communications including “broadcast, cable, or satellite communication[s], newspaper[s], magazine[s], outdoor advertising facilit[ies], mass mailing[s], or telephone bank[s], to the general public . . . .”<sup>9</sup> However, Congress did not integrate the Internet into the statutory definition of “public communication,” be it by accident or as part of a conscious decision. As a result, the FEC exempted<sup>10</sup> the Internet from campaign finance laws,<sup>11</sup> and Representatives Christopher Shays and Martin Meehan, both sponsors of the McCain-Feingold law, filed a lawsuit in 2002. “The lawmakers sued the Commission because they thought the FEC exemption misinterpreted the campaign finance law through loopholes that had allowed soft money to corrupt federal elections, according to court records.”<sup>12</sup> Following a September 2004 decision by U.S. District Judge Koller-Kotelly siding with the Congressmen, the Commission was

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<sup>7</sup> “Federal funds” are funds subject to the limitations, prohibitions, and reporting requirements of the Act. See 11 CFR 300.2(g). “Non-Federal funds” are funds not subject to the limitations and prohibitions of the Act. See 11 CFR 300.2(k).

<sup>8</sup> 2 U.S.C. 431(20)(A)(iii).

<sup>9</sup> 2 U.S.C. 431(22).

<sup>10</sup> [http://news.com.com/Political+Web+ads+may+be+curtailed/2100-1024\\_3-5577493.html](http://news.com.com/Political+Web+ads+may+be+curtailed/2100-1024_3-5577493.html) “The FEC concluded. . . the [campaign finance] law did not extend to the Internet. Because Congress included the Internet and the World Wide Web elsewhere in the statute, the omission was intentional, the FEC reasoned.”

<sup>11</sup> See <http://www.personaldemocracy.com/trackback/416> “When the Internet began being used for political activity, the FEC took a largely hands-off approach to the regulation, and it continued a mostly laissez faire but somewhat uncertain approach after the McCain-Feingold law passed in 2002.

<sup>12</sup> <http://www.montereyherald.com/mld/montereyherald/news/politics>

forced<sup>13</sup> to go back and revisit the issue because “leaving the medium out of the overall picture could undermine the whole purpose of [campaign finance] legislation.”<sup>14</sup>

As a result of the court’s decision, the FEC is revisiting regulations involving campaign finance laws because of the “absence of specific direction by Congress . . .”<sup>15</sup> Nevertheless, Congress had the capability to stop any FEC action on this issue by passing a bill to clarify this misinterpretation. Recently, Congressman Jeb Hensarling “introduced the Online Freedom of Speech Act to offer [such] direction, amending the federal election law to specifically exclude communications over the Internet from the definition of ‘public communication’ for purposes of regulation.”<sup>16</sup>

Making the Internet a facet of the campaign finance laws will mean that everyday things people do on the Internet might amount to a political donation if the media exemption does not apply.<sup>17</sup> The list of common Internet occurrences that might be affected includes the following: linking from a personal website to a candidate’s campaign website, forwarding candidate’s press releases or “e-newsletters” through an email list, political advertising (both coordinated and uncoordinated) on the Internet,<sup>18</sup> and the biggest headache, the growing phenomenon of bloggers.

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<sup>13</sup> *Shays v. FEC*, 337 F.Supp. 2d at 57-58 (2004). “The Commission’s exclusion of Internet communications from the coordinated communication regulations severely undermines FECA’s purposes. . . . To permit an entire class of political communication to be completely unregulated, irrespective of the level of coordination between the communication’s publisher and a political party or federal candidate, would permit an evasion of the campaign finance laws.” *Id.* at 57-58.

<sup>14</sup> [http://www.forbes.com/technology/personaltech/2005/05/16/cx\\_sm\\_0516blogs.html](http://www.forbes.com/technology/personaltech/2005/05/16/cx_sm_0516blogs.html)

<sup>15</sup> <http://redstate.org/story/2005/4/13/164333/833>

<sup>16</sup> *Flashpoints* CINCINNATI POST (KY), Apr. 14, 2004 at K4. Minority Leader Harry Reid introduced an identical bill (S.678) in the Senate.

<sup>17</sup> [http://news.com.com/The+coming+crackdown+on+blogging/2008-1028\\_3-5597079.html](http://news.com.com/The+coming+crackdown+on+blogging/2008-1028_3-5597079.html)

<sup>18</sup> [http://news.com.com/Political+Web+ads+may+be+curtailed/2100-1024\\_3-5577493.html](http://news.com.com/Political+Web+ads+may+be+curtailed/2100-1024_3-5577493.html) “In the 2004 election, advocacy groups or rich individuals were able to coordinate online advertising with a political campaign without having it count as a contribution- [that is] something that’s flatly not permitted for traditional media such as newspapers and television.”

## *Year of the Blog*

Emphasizing a rise in influence, publishers of the Merriam-Webster dictionary coined “blog” the word of the year in 2004. “The word [blog] is short for weblog, an Internet diary that makes anyone a published author and allows real-time discussions on any subject.”<sup>19</sup> A person visiting a web page will read the information in reverse, chronological order with the most updated story at the top of the blog.<sup>20</sup>

It is difficult to pinpoint exactly who was the first blogger, but “the catalyst for the movement was the appearance” in 1999 of the website called Blogger.com (now operated by Google).<sup>21</sup> Blogger was the initial place where computer novices, without any software knowledge, could type their thoughts and observations into their own site viewable by anyone with Internet access.<sup>22</sup>

Blogging became a more commonplace function of the Internet in 2000. In the months preceding the presidential election of 2004, there “was a rapid rise in the popularity and proliferation of blogs.”<sup>23</sup> According to a recent (January 2005) study, thirty-two million U.S. citizens now read blogs.<sup>24</sup> “However, sixty-two percent of online Americans still do not know what a [blog] is.”<sup>25</sup> This number is sure to decrease as more people turn to the Internet for campaign news.<sup>26</sup> “[A]nother report from the same project

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<sup>19</sup> Dictionary Notes Blog Boom THEAUSTR, Dec. 14, 2004.

<sup>20</sup> Rhymer Rigby, MEDIA: Niche Appeal of the Blogging Business Fin. Times USA, Jan. 4, 2005 at 7.

<sup>21</sup> Id.

<sup>22</sup> <http://www.blogger.com/about> (In a description of their history and mission, their main objective remains “focusing on helping people have their own voice on the web and organizing the world’s information from the personal perspective.”)

<sup>23</sup> Lada Adamic, The Political Blogosphere and the 2004 Election: Divided They Blog, Mar. 4, 2005.; See also Rhymer Rigby, MEDIA: Niche Appeal of the Blogging Business Fin. Times USA, Jan. 4, 2005 at 7. (saying that during that 2004 elections the mainstream media began to take notice of bloggers “when online commentators were often scooped their print rivals”).

<sup>24</sup> Lada Adamic, The Political Blogosphere and the 2004 Election: Divided They Blog, Mar. 4, 2005.

<sup>25</sup> Lada Adamic, The Political Blogosphere and the 2004 Election: Divided They Blog, Mar. 4, 2005.

<sup>26</sup> <http://techcentralstation.com/011105B.html> (saying that political web sites showed a large growth in traffic in the month preceding the 2004 Presidential election).

showed that [voters] are [increasingly] turning to the Internet in [large] numbers to [keep] informed about politics: sixty-three million in mid-2004 vs. thirty million in March 2000.”<sup>27</sup>

“Two-fifths of Americans who are online have read a political blog, and more than a quarter read them once a month or more, according to a recent Harris Interactive poll.”<sup>28</sup> As the number of blogs and those reading them continues to increase,<sup>29</sup> the amount of people commenting and reporting on political stories “from their pajamas”<sup>30</sup> will also grow. In order for people to maintain this newfound role on the American soapbox, the FEC needs to extend the media exemption for *all* members of the political blogosphere<sup>31</sup> if they do indeed decide campaign finance laws now encompass the entire Internet.

In its Notice of Proposed Rulemaking, the FEC “recognize[d] that significant policy reasons support the continued exclusion of most Internet communications” from federal contribution limits and restrictions on how bloggers can function.<sup>32</sup> If the FEC decides to broaden campaign finance laws to the Internet, Commissioners will then have to decide who can employ the media exemption in cyberspace. What follows is an argument explaining why the FEC should consider bloggers part of the press for purposes

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<sup>27</sup> Lada Adamic, *The Political Blogosphere and the 2004 Election: Divided They Blog*, Mar. 4, 2005.

<sup>28</sup> <http://online.wsj.com/article/0,,SB111332546086804781,00.html>; See also [http://pewinterest.org/pdfs/PIP\\_blogging\\_data.pdf](http://pewinterest.org/pdfs/PIP_blogging_data.pdf)

<sup>29</sup> <http://www.online.wsj.com/article/0,,SB111332546086804781,00.html> “Still fifty-six percent of the public has never read a political blog and only seven percent of online adults have posted a comment...”

<sup>30</sup> <http://www.nytimes.com/2005/03/07/technology/07blog.html>

<sup>31</sup> <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG0&BM2671.dtl> (defining the blogosphere as the name given to the ecosystem inhabited by the growing legions of bloggers).

<sup>32</sup> *Fed. Election Comm’n Draft Notice of Proposed Rulemaking on Internet Communications* at 17.

of this exclusion. The media exemption applies, as was said above, when the press entity is “acting like a member of the media in conducting the activity at issue.”<sup>33</sup>

### ***Are Bloggers Journalists?***

Nevertheless, the question of whether to consider bloggers “authentic” journalists able to employ the media exemption is happening “at a time when newsletters, cable news channels, satellite radio stations, and Internet sites all claim a share of the turf that once belonged to a relative handful of news organizations.”<sup>34</sup> In response, bloggers will argue that they are in fact journalists conducting a bona fide news activity, while conceding the fact that many work as unpaid editors from their personal computers instead of from a newsroom.

Traditional journalists are likely to disagree, saying that bloggers are more akin to muckrakers or rumormongers.<sup>35</sup> Recent happenings continue to make this description less and less fitting.<sup>36</sup> For instance, Judy Woodruff’s Inside Politics on CNN debuted a “daily, four-minute segment” called Inside the Blog.<sup>37</sup> This feature “is the first [] segment on cable or network television dedicated to people whose reporting and opinions appear on the Web.”<sup>38</sup> Woodruff at first was cynical of the segment. She originally viewed most blogs as “pure opinion [with] no reporting” but has “come to see the segment as a tool for getting at a new, unpredictable and increasingly influential place on

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<sup>33</sup> *Fed. Election Comm’n Op.* 2004-7, available at <http://herndon3.sdrdc.com/ao/ao/040007.html> (last visited Nov. 11, 2004).

<sup>34</sup> Johanna Neuman, An Identity Crisis Unfolds in a Not-So-Elite Press Corps LA TIMES, Feb. 25, 2004.

<sup>35</sup> Article 75. It is important to note that a recent poll found that “83 percent of journalists reported the use of blogs, with four out of 10 saying they use them at least once a week. Among those who use them, 55 percent said they do so to support their newsgathering work. And even though 85 percent believe bloggers should enjoy First Amendment protections, 75 percent say bloggers are not real journalists [primarily] because they don’t adhere to “commonly held ethical standards.”

<sup>36</sup> <http://www.cnn.com/2005/ALLPOLITICS/03/07/w.h.blogger.ap/index.html> In March 2005, the White House admitted its first blogger to cover the daily press briefings.

<sup>37</sup> Jon Friedman, CNN Gives Bloggers Some Respect DOW JONES MARKETWATCH, Mar. 18, 2005.

<sup>38</sup> [http://www.usatoday.com/life/columnist/mediamix/2005-03-20-media-mix\\_x.htm](http://www.usatoday.com/life/columnist/mediamix/2005-03-20-media-mix_x.htm)

the political landscape.”<sup>39</sup> Media Editor for MarketWatch Jon Friedman says that reporting on blogs by the mainstream media is something that viewers should “get used to” seeing on television.<sup>40</sup>

Bloggers continue to gain credibility in media circles and should be considered journalists who can employ the media exemption.<sup>41</sup> For example, “[b]loggers were out in front of the mainstream media in their reporting on such tarnished public figures as Senator Trent Lott, Former CBS News anchorman Dan Rather, and Former CNN news chief Eason Jordan.”<sup>42</sup>

In an increasingly scandal-ridden political society, America needs the bloggers to continue the work they do unfettered by concerns of complicated campaign finance laws. Bloggers are journalists covering stories the mainstream media are afraid to cover<sup>43</sup> or stories traditional journalists simply do not have the time or resources to cover. Without bloggers, many “big” news stories that started on a whim would have been passed over. In the years to come, America will increasingly rely<sup>44</sup> on bloggers to do this “dirty-work,” but any change to campaign finance laws without a media exemption for bloggers will discourage their efforts. “As news organizations have trimmed their budgets and

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<sup>39</sup> *Id.*

<sup>40</sup> Jon Friedman, CNN Gives Bloggers Some Respect DOW JONES MARKETWATCH, Mar. 18, 2005.

<sup>41</sup> <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG07BM2G71.DTL>

<sup>42</sup> <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG07BM2G71.DTL> Bloggers helped to stir up controversy over racist comments Lott made at Strom Thurmond’s 100th birthday in 2002. As soon as CBS Anchorman Dan Rather delivered his Sixty Minutes II report on memos about President Bush’s National Guard service, bloggers were questioning the memo’s validity. Rather later conceded that there were serious questions about the authenticity of the documents. In February 2005, Eason Jordan resigned as CNN’s news chief because of his suggestion that U.S. troops deliberately targeted journalists in Iraq.

<sup>43</sup> <http://www.latimes.com/news/opinion/la-op-tent6mar06,1,435809.story?coll=la-util-op-ed&ctrack=1&cset=true>. “Liberal bloggers scare the mainstream media. Media critics fret over [bloggers] supposed lack of professional credentials, even though many . . . are journalists. They doubt [the] facts, but do not independently investigate the stories.”

<sup>44</sup> <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG07BM2G71.DTL> “We are more dependant on the independence of the bloggers than we have ever been and we are going to be more dependent on the bloggers in the future. . . .”

avoided complicated stories, bloggers have stepped in to provide coverage of [many] ignored areas. . .”<sup>45</sup> “The rise of the blogosphere [is] one of the most exciting communications developments in decades, giving ordinary folks the chance to bite back at a media establishment widely viewed as arrogant. [It is] little surprise that mainstream media types [do not] like being questioned, challenged and chided by critics typing from their basements and bedrooms.”<sup>46</sup>

Many political bloggers pride themselves on drawing a line between themselves and the mainstream media, but this line in the sand between the two continues to fade. As the rigid division that once existed between news and entertainment departments gets muddier,<sup>47</sup> it has become more and more acceptable for those working for traditional news operations to erect their own blogs on company websites.<sup>48</sup> During an interview in New York, “NBC Universal Television Group President Jeff Zucker said entering the generally opinionated world of blogs might be one way television networks could keep their grip on viewers who increasingly use the Internet for news.”<sup>49</sup> Zucker admitted that he was “considering a blog for [NBC Nightly News anchor Brain Williams] and could envision a similar blog for [Today Show host] Katie Couric. . . .”<sup>50</sup> The fact that more mainstream and traditional journalists are beginning to blog essentially quashes any

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<sup>45</sup> <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG07BM2G71.DTL>. See Also <http://www.nytimes.com/2005/03/07/technology/07blog.html> “In 15 years, there may be no clear distinction between reported on the one hand and bloggers on the other. . . It won’t just be an either or when you have a reporter for the Chicago Tribune on the one hand, and a guy sitting” in his living room with a beer in his hand.

<sup>46</sup> Howard Kurtz, *For Every Story, An Online Epilogue* WASH. POST. APR. 18, 2005 AT C01.

<sup>47</sup> <http://www.adelphiamediaservices.com/pages/nets/?cp=nets&sp=prog&net=cnn> Recently, CNN Headline News switched gears replacing continuous new updates with Showbiz Tonight. Branded as a “comprehensive mix of all of the latest entertainment stories, live reports, in-studio live interviews, debates on hot issues and provocative pundits on the latest news, trends and buzz. *Showbiz Tonight* covers celebrity events, movies, television, music, video games, the Internet and more.

<sup>48</sup> Angelo Fernando, *Big Blogger is Watching You!* Comm. World July 1, 2004.

<sup>49</sup> Howard Kurtz, *For Every Story, An Online Epilogue* WASH. POST. APR. 18, 2005 AT C01.

<sup>50</sup> *Id.* Note: The Today show began blogging in May 2005.

justification that bloggers are not legitimate journalists engaged in a bona fide news activity.

A judge in Santa Clara County, California is currently deciding something analogous to the issue of considering bloggers as traditional journalists. There is a case brought by Apple Computers against a group of bloggers. Apple brought suit<sup>51</sup> against bloggers “in an attempt to [force the bloggers to] uncover anonymous sources who may have illegally leaked some of Apple’s internal trade secrets.”<sup>52</sup>

The decision in this case should be a factor in helping the FEC decide if bloggers are traditional journalists who can employ the media exemption.<sup>53</sup> The Superior Court Judge recently issued a tentative ruling<sup>54</sup> that may cause bloggers some worry. However, the final ruling is expected soon.

### ***The Need for a Code of Conduct***

One major issue clouding any vision of viewing political bloggers as traditional journalists for purposes of the media exemption is the fact that many bloggers operate without formal ethical guidelines or a code of conduct. On one hand, there are mainstream newspapers, network TV news, and cable channels like FoxNews “tout[ing] their objectivity and promis[ing] coverage that is not tainted by partisan politics.”<sup>55</sup> On the other, bloggers are reporting “opinion news, news that reflects [the individual

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<sup>51</sup> Rhymer Rigby, *MEDIA: Niche Appeal of the Blogging Business* Fin. Times USA, Jan. 4, 2005 at 7..

<sup>52</sup> <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG07BM2G71.DTL>

<sup>53</sup> See <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/03/08/MNG07BM2G71.DTL>

In the Apple case, traditional journalists would be able to rely on California’s shield law, “which protects reporters from having to reveal unpublished information.” Although this has been the brunt of much arguments in the Wilson case.

<sup>54</sup> The ruling said bloggers who reported on Apple did not have the shield laws protections.

<sup>55</sup> <http://www.chicagotribune.com/news/opinion/chi-0502260279feb26,1,3542196>

blogger's] own beliefs and preferences and tends to filter out dissenting views..."<sup>56</sup> It may be shocking for some to hear, but "[t]he idea of objectivity in news reporting is, relatively speaking, a fairly recent development. In the earliest days of American journalism, newspapers were expected [by their readers] to present a partisan view."<sup>57</sup>

There are arguments on both sides when it comes to the issue of adopting a so-called blogger's standard of care. "So far, many bloggers resist any notion of ethical standards, saying individuals ought to decide what's right for them."<sup>58</sup> They consider blogging synonymous with a conversation, and "you [cannot] develop a code of ethics for conversations."<sup>59</sup> During a recent CNN interview, media critic for the Washington Post Howard Kurtz noted that bloggers should practice common sense when blogging. Kurtz expounded on the push by some for ethical standards, and the fact that bloggers can and often will "say anything they want, and that is both the promise and the peril of blogging."<sup>60</sup> Blogging opens up a whole new can of worms because "it's exciting to hear what people have to say, unvarnished [and] unfiltered, but on the other hand they also have the freedom to be irresponsible and even wrong."<sup>61</sup>

With this freedom to write anything a blogger wants, there comes a desire for some sort of standard to help bolster an individual blogger's integrity and trustworthiness.<sup>62</sup> "Jonathan Dube, managing producer at MSNBC.com and publisher of

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<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> <http://abcnews.go.com/Business/wireStory?id=431856>

<sup>59</sup> Id.

<sup>60</sup> 2/20/05 CNNMONEY

<sup>61</sup> Id.

<sup>62</sup> <http://dailyillini.com/news/2005/04/12NewsKaplan.Speaks.to.students.on.blogging>. President of MSNBC Rick Kaplan spoke to a group of students about the impact of blogging on news and society in general. Speaking about the need for bloggers to be accurate he equated blogging to baseball. "The bloggers' accuracy rates are good for baseball, not for journalists," Kaplan said. "A baseball player can

CyberJournalist.net, modified the Society of Professional Journalists' code of ethics and urged fellow bloggers to adopt it. The principles: Be honest and fair. Minimize harm. Be accountable.”<sup>63</sup>

In much the same fashion, “[l]ongtime blogger Rebecca Blood circulated [her own set of] guidelines that call for disclosing any conflicts of interest, publicly correcting any misinformation and linking to any source materials referenced in postings.”<sup>64</sup> It may be some time until bloggers adopt a uniform set of standards, but “bloggers already have informally adopted norms that go beyond what traditional journalists do.”<sup>65</sup> If a blogger does not link to source materials in their writings, then that particular blogger usually is not taken seriously by other bloggers.<sup>66</sup> In the traditional media organizations, there is no policy as how this situation should be handled.<sup>67</sup>

### ***Bloggers Excel at Reporting “Opinion News”***

“In enacting the statutory exemption for the media, Congress intended to assure ‘the unfettered right of the newspapers, television networks, and other media to cover and comment on political campaigns.’”<sup>68</sup> “The most difficult questions, as [we will] see, concerns the role of popular blogs and online magazines that report on, and express

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make seven out of ten and be highly respected. If journalists are only right seven out of ten times, this would be terrible.”

<sup>63</sup> <http://abcnews.go.com/Business/wireStory?id=431856>

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> <http://www.digitaldivide.net/blog/acarvin/view?postID=2326> On his blog, Andy Carvin, coordinator of the Digital Divide Network, commented that, “While bloggers may lack organized standards, they’re usually good about attributing their sources...”

<sup>67</sup> <http://abcnews.go.com/Business/wireStory?id=431856>

<sup>68</sup> Notice of proposed Rulemaking citing H.R. Rep. No. 93-1239, 93d Congress, 2d Session at 4 (1974) (emphasis added). This statutory exemption was implemented by the Commission in its regulations. See 11 CFR 100.73 and 100.132.

opinions about, candidates for federal office.”<sup>69</sup> Bloggers are more akin to traditional journalists, able to employ the media exemption, then most would like to admit.

Many people, who argue that bloggers should not have the same rights as authentic journalists, focus their attention examining the fact that many bloggers opine more than they report. Nevertheless, the work of bloggers needs to remain largely the way things have been since the inception of the Internet free from campaign finance regulations. All “bloggers should get an [] exemption from [financial] reporting and coordination requirements, but they should have to disclose on their sites payments from candidates or committees to take a particular position in a federal race.”<sup>70</sup>

Focusing on the reality that many bloggers dedicate a good number of their postings to personally remark on the hot topic of the day should not disqualify them from the media exemption. In fact, this gives credence to the comparisons between traditional media and bloggers. Bloggers are simply taking advantage of advances in new technology to tell their story and their passages resemble online editorial pages<sup>71</sup> similar to ones found in many newspapers today. It seems hardy unfounded to allow the media exemption for editorial and opinion divisions of a newspaper while disallowing it for bloggers who do much the same thing on a daily basis. For purposes of the media exemption, the FEC cannot go down the road picking and choosing which people are and are not journalists as technology changes the way news, information and opinion is delivered.

Jacob Weisberg, the editor of Slate online magazine, has written on this very topic. Sanctioning a privilege for some professions, like lawyers and doctors, that need

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<sup>69</sup> <http://www.personaldemocracy.com/node/416>

<sup>70</sup> *Id.*

<sup>71</sup> [http://www.metropulse.com/articles/2005/15\\_13frank\\_talk.html](http://www.metropulse.com/articles/2005/15_13frank_talk.html)

to be licensed is an easy task, but when it comes to journalists it gets much more thorny. “Journalism does not require any specific training, or institutional certification, or organizational membership, or even regular employment.”<sup>72</sup> Journalism, like blogging, can be described as “an activity [that] some people engage in that is protected under the Constitution.”<sup>73</sup>

Newspaper editorial pages supply commentary on a story in which their paper has reported on preceding pages. “Editors and news directors traditionally [have] the job of sorting through [possible leads] and deciding [which] they [are] comfortable reporting.”<sup>74</sup> In much the same approach, bloggers usually refer, by hyperlink, to an online story, or other blogger, they find interesting, while explaining an issue and supplying their own editorial comments. One of the only differences between the two is the fact that bloggers are oftentimes not doing the conventional reporting. Weisberg argues that the entry of bloggers into the opinion marketplace is a good thing for both democracy and the press itself.<sup>75</sup> “The great cacophony of voices in the blogosphere means that more views are being represented, that more subjects are being examined in detail, and that more sunlight shines into institutions of all kinds.”<sup>76</sup>

As the number of voices speaking about various topics proliferates, the issue of credibility of a specific blog will also come into question. Be it proper or not, readers generally know what to expect from the editorial pages of the New York Times or Washington Times, and the same can be said for blogs. Depending on their political

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<sup>72</sup> <http://slate.com/toolbar.aspx?action=print&id=2114581>

<sup>73</sup> *Id.*

<sup>74</sup> [http://www.metropulse.com/articles/2005/15\\_13frank\\_talk.html](http://www.metropulse.com/articles/2005/15_13frank_talk.html)

<sup>75</sup> <http://slate.com/toolbar.aspx?action=print&id=2114581>

<sup>76</sup> *Id.* “Thousands of bloggers ranting from their soapboxes means that our political culture encompasses bracing debate about everything people disagree about.”

outlook, a reader can judge for himself or herself who has the more fitting analysis.

“Over time you come to judge them as thoughtful, informative and reliable. Or you come to see them as hopeless, clueless foolishness. Regular reading helps you to decide whether the source is sound, [no matter if] the source is a blog or a newspaper.”<sup>77</sup> To simply say that blogs cannot be afforded the journalistic media exemption because they engage primarily opinions is just not suitable.

### ***Quashing Grassroots Support***

In order for a democracy to be a success, its citizens must vote and feel as though they are a part of the democratic process. Americans have become increasingly uninterested<sup>78</sup> in politics as a whole. Over the last forty years, there has been a “continual decline in the involvement of American citizens in the democratic process with fewer participating in elections and government.”<sup>79</sup> If the FEC imposes strict guidelines on Internet politicking, then things may only get worse.

“In the early 1960s, President John F. Kennedy appointed a special commission to study voter participation, partly because he considered sixty-three percent of adults who voted in 1960 to be too low compared to the eighty percent turnouts in Europe. . .” Since the commission’s appointment, there has been a “continual decline in the involvement of American citizens in the democratic process with fewer participating in elections and government.”<sup>80</sup>

It gets even more disturbing when the decrease in the number of young people is examined. “Since 1972, [youth] voter participation in presidential elections has declined

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<sup>77</sup> [http://www.metropulse.com/articles/2005/15\\_13frank\\_talk.html](http://www.metropulse.com/articles/2005/15_13frank_talk.html)

<sup>78</sup> Flashpoints CINCINNATI POST (KY), Apr. 14, 2004 at K4. “A national survey. . .found increasingly Americans feel disconnected from government and ignored by the political process.”

<sup>79</sup> Trey Grayson, Reinvigorate Citizens’ Sense of Duty LEXINGTON HERALD LEADER Oct. 3, 2004 at F3.

<sup>80</sup> Id.

more than thirteen percent nationwide.”<sup>81</sup> Much of this increasing voter apathy can be attributed to the fact that Americans believe that they “have no say in what the government does.”<sup>82</sup> In a time where there is a growing lack of interest by young people and all voters as a whole, campaign finance laws should not be adjusted to put the brakes on one area of politics where passions are mounting. New media and technology are changing the way young voters look at and participate in politics.

In his book, South Park Conservatives, Brian C. Anderson delves into a brief history of the events that sparked the phenomenon called talk radio. Anderson’s description of the landscape *before* the FCC scrapped the Fairness Doctrine proves a useful analogy to what might happen *if* the FEC decides to curtail the freedoms bloggers currently have.

Under the FCC’s Fairness Doctrine, radio and television stations were saddled with regulations that needed to be followed for a broadcast license renewal. Broadcasters were forced to “cover vitally important controversial issues of interest in the community served by the broadcaster” while “providing a reasonable opportunity for the presentation of contrasting viewpoints on such issues.”<sup>83</sup> This translated into stations steering clear of controversial issues and topics for fear that special interest groups and candidates might demand equal time and complain that the particular broadcaster was unfair.

Before the FCC stopped enforcing the Fairness Doctrine in the late 1980s, many broadcasters were afraid to take a chance with controversial programming. There were

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<sup>81</sup> Id.

<sup>82</sup> Flashpoints CINCINNATI POST (KY), Apr. 14, 2004 at K4. “Forty-six percent of those surveyed believed they had no say about what the government does.”

<sup>83</sup> For example, “If you had the ‘Craig Shirley Show,’ fully sponsored, and it was an hour-long, right-wing screed, then you had to put on the ‘Paul Begala Show’ as a left-wing screed for an hour and maybe do it gratis if there was no one to sponsor it.”

“seventy-five or so stations running talk shows of any kind on the American airwaves.”<sup>84</sup>

Once the doctrine was lifted, the number of stations ballooned. Resulting in “roughly 1,400 stations [that] were devoting themselves exclusively to talk on AM. . .”<sup>85</sup>

The Fairness Doctrine was clearly an example of a regulation stifling free speech. If the FEC decides to regulate how the blogosphere revolves, then bloggers will begin doing exactly what programmers did in the late 1970s and 1980s by avoiding the medium at all costs because of the specter of government regulation. This will result in a decrease in the number of eyes watching what the politicians are doing, as well as reporting the happenings to the American public. This is not a good thing for bloggers or politicians, alike.

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<sup>84</sup> See page 35 of [South Park Conservatives](#)

<sup>85</sup> See page 36.. That calculates into a “stunning seventeen-fold increase from Fairness Doctrine days.”