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FEDERAL ELECTION COMMISSION
Washington, DC 20463

OCT 25 1999

MEMORANDUM

AGENDA ITEM

For Meeting of: 10-28-99

SUBMITTED LATE

TO: The Commission
THROUGH: James A. Pehrkon *JAP*
Staff Director
FROM: Lawrence M. Noble *LN*
General Counsel
N. Bradley Litchfield *NBL/RES*
Associate General Counsel
Michael Marinelli *mm*
Attorney
SUBJECT: Revised Draft of Advisory Opinion 1999-17

Attached is the revised draft of the subject opinion. We request that this draft be placed on the agenda for October 28, 1999.

The changes made to the first draft (Agenda Document #99-87) reflect the analysis and consideration of the responses to the question previously sent to the requester. The draft also incorporates portions of Agenda Document 99-87-A (Commissioner Sandstrom's Draft). The changes are found throughout the document, including the factual discussion, and analysis portion of the draft. For your convenience, the sections that have modified or new language have been bolded.

Attachment

1 ADVISORY OPINION 1999-17

2
3 Benjamin L. Ginsberg
4 Patton Boggs LLP
5 2550 M Street, NW
6 Washington, DC 20037-1350

DRAFT

7
8 Dear Mr. Ginsberg:

9
10 This refers to your letters dated September 23, July 8 and June 7, 1999,
11 which request an advisory opinion on behalf of Governor George W. Bush for
12 President Exploratory Committee, Inc. ("the Committee") concerning the
13 application of the Federal Election Campaign Act of 1971, as amended ("the Act"),
14 and Commission regulations to various issues, including fundraising and polling,
15 relating to Internet use by the Committee.

16 **FACTUAL BACKGROUND**

17 The Committee requests clarification concerning a number of issues that, you
18 state, have arisen regarding the possible uses of the Internet by the Committee in the 2000
19 election cycle. They relate to several areas.

20 *Valuation of Web Site and Volunteer activities:*

21 You note that the Commission's past opinions and enforcement actions regarding
22 Internet activity indicate that a web site and links from one Internet site to another are
23 something of value to a campaign.¹ You ask whether a campaign must assess value for
24 having its name mentioned by a web site that it does not control (and may not even know
25 about). You ask how a campaign should treat a web site supportive of Mr. Bush that is
26 established by either Committee volunteers or by individuals unconnected with the

¹ The request cites to Advisory Opinions 1995-9, 1995-35, 1997-16 and 1998-22, as well as Matters Under Review 4340 and 3980.

1 campaign, but about which the campaign may know nothing. You inquire as to the basis
2 for determining the fair market value of a web site.

3 **You state your request is concerned with web sites featuring Mr. Bush's**
4 **presidential candidacy created by individuals who are both "volunteers" under 2**
5 **U.S.C. § 431(8)(B)(i), and who wish to conduct their own Internet activities using**
6 **Mr. Bush's name. You state that, in some instances, the individuals may have**
7 **considered themselves volunteers and described themselves to the campaign as**
8 **volunteers, but may have expended money on their Internet projects before**
9 **contacting the campaign. Some had a relationship with the campaign prior to the**
10 **preparation of their web sites (without the Committee's knowledge or approval).**
11 **Others volunteered, and then sought to establish sites. Of these, some wished to**
12 **amplify their volunteer efforts. Others, you state, wished to talk about the**
13 **Governor's positions on various campaign issues outside of their volunteer activities.**
14 **Others had been attempting to line up political support, and then wished raise to**
15 **funds for Bush through their own web sites. You affirm that the campaign was**
16 **aware of some of these sites and individuals but not others. You state that the**
17 **Committee has also faced the situation of individuals who have first set up sites, and**
18 **then contacted the campaign personnel afterwards to inform them of their activity.**
19 **Some of the people involved in the above situations were also contributors to the**
20 **campaign.²**

² You state that it is your belief that none of the individuals involved with these sites have official administrative duties with the Committee or have a paid position with the Committee.

1 **The request materials also include as examples several web addresses to sites**
2 **that served as examples of individuals who have created web sites supporting Mr.**
3 **Bush. You know that the campaign search on the Internet indicated the existence of**
4 **hundreds of sites incorporating the name of Mr. Bush and that the new sites are**
5 **added and old sites are deleted on a daily basis.**

6 **You further ask how the situations should be handled where the web site changes**
7 **messages on a regular basis, without the knowledge of the campaign.**

8 **You also ask how the Committee should assess the value of a link between itself**
9 **and another web site. You describe several different types of web sites where such links**
10 **to the Committee web site could exist. These are sites operated by volunteers with the**
11 **campaign, media outlets, commercial enterprises both related and unrelated to the**
12 **campaign, and corporate sites discussing the Presidential race or candidates for a variety**
13 **of reasons.**

14 **You state that because the Committee is uncertain as to the Commission's**
15 **position on these issues it has been forced to discourage Internet activity on the part**
16 **of individuals supporting the campaign where its opinion has been sought or such**
17 **activity was brought to the attention of the Committee by those conducting the**
18 **activity. Where such sites had already been established, prior to informing the**
19 **Committee, the Committee has told the individuals informing the campaign of their**
20 **actions that they must act independently without campaign or committee support.**

21 **Regarding links to the Bush' campaign's official web site by corporate owned**
22 **web sites, pending the outcome of this request, the Committee had asked that these**
23 **corporate entities (of which it was aware) to remove the links. Since this was done,**

1 **the Committee is not aware of any current links to the campaign's official web site**
2 **by corporate entities.**

3 *Vendor issues:*

4 You note the increasing phenomenon of Internet commerce-- the selling of various
5 products over the World Wide Web. This development has implications for the
6 Committee regarding the marketing of items (pins, bumper stickers, tee shirts, hats, etc.)
7 which advocate the election of a candidate. You ask whether the campaign may provide a
8 link on its web site to that of a vendor selling items about Mr. Bush's candidacy and how
9 it would value that link. You also ask about the reporting obligations in this situation.
10 You ask whether a vendor selling a candidate's campaign materials may provide a link to
11 the candidate's web site and what obligations exist for the Committee in this situation.
12 You further ask if the Committee may pay a vendor for a link to the campaign's web site.
13 In this situation, you ask how the Committee should value the link and what, if any,
14 disclaimers are required.

15 **As an example of the situations the Committee has encountered, you explain**
16 **that a merchandise vendor was using the Governor's name to sell various goods**
17 **(shirts, bumper stickers, etc.). The vendor also wished to collect supporters' names**
18 **and forward them to the campaign, as well as to provide a link to the campaign's**
19 **web site. You affirm that the Committee asked that the effort cease. You, however,**
20 **wish to know if the vendor's activities were permitted under the Act and**
21 **Regulations.**³

³ Your request also included questions relating to the Internet practices of the Gore campaign. An advisory opinion request must concern a specific transaction or activity the requester is planning to undertake. See 11 CFR 112.1(b) and (c). The activities of third parties cannot be included in a

1 **You also state that the Committee's search of the Internet revealed a number**
2 **of sites with a political message but whose prime motivation seems commercial.**
3 **None of these sites have any relationship with the Committee as best as you can**
4 **establish. However, all of them carry a pro-Bush message. Again, you wish to know**
5 **if their activity has any implications for the Bush campaign.**

6 *Internet polls:*

7 **You note the increasing frequency of polls concerning possible Presidential**
8 **candidates and the appearance of these polls on the Internet. You ask whether these polls**
9 **fall under the news media exception, regardless of the sponsor or source of the poll.**
10 **Further, does the dissemination of the results of a poll become a reportable event under**
11 **the Act? Again, if so, you ask what is the valuation and description for the related**
12 **disbursement. You ask what are the applications of the Act if the Committee, through the**
13 **Internet, urges its supporters to participate in the polling.**

14 **As an example of the Internet polling, you site an on-line straw poll**
15 **conducted by the Indiana Republican Party. You also cite the straw polls conducted**
16 **by an Internet shopping web site (Shabang) and straw polls found on various web**
17 **sites by news organizations such as [www. Austin 360.com](http://www.Austin360.com).**

18 *E-Mail:*

19 **You ask how the campaign should determine the fair market value of the use of**
20 **email where a Committee volunteer uses it to solicit friends and associates to contribute**
21 **to the campaign. You ask whether the campaign is required to report such activity and**

request. Therefore, your questions concerning the activities of the Gore campaign are not addressed in this opinion.

1 how it should be valued. You also ask whether it must be counted against the volunteer's
2 contribution limit.

3 *Solicitation of Contributions through the Internet:*

4 Several issues have emerged regarding the Committee's fundraising efforts
5 through the Internet.⁴ One on which you ask guidance is whether a campaign can use e-
6 mail to fulfill the Committee's best efforts obligation, whether or not the original
7 contribution was solicited over the Internet.⁵

8 *Republication of Candidate Materials*

9 You state that a group of individuals was planning to establish a web site to
10 post materials advocating the Governor's election and to use this web site to bolster
11 their volunteer fundraising for the Committee. The Committee informed these
12 individuals that they should not establish the web site. However, you state that an
13 informal inquiry of others in the regulated community revealed confusion over
14 whether the Commission considers this proposed reproduction of materials from the
15 Committee's official web site a contribution. You ask whether such a reproduction
16 on the Internet would be considered "unique," or if, instead, the provisions of 11
17 CFR 109.1(d)(1) would apply.

⁴ In your original submission, you indicated that the Committee was considering whether to accept Federal matching funds. On July 15, 1999, the Committee announced that it would not seek matching funds. Therefore, the draft will only address those fundraising issues which relate to the Act and not those which concern obligations the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"), at 26 U.S.C. §§9031-9042.

⁵ In your original submission you included a request that the Commission examine whether the Committee using the services of a vendor to conduct its Internet fundraising activities was required to have the vendor provide the Committee with a separate and unique Merchant ID number. You have subsequently withdrawn this question from your advisory opinion request. The Commission has, however, recently examined this issue in Advisory Opinion 1999-22.

1 **ACT AND COMMISSION REGULATIONS**

2 **The Act requires the Commission to respond to a “complete request**
3 **concerning the application of this Act . . . or a rule or regulation prescribed by the**
4 **Commission, with respect to a specific transaction or activity by the person. . .” 2**
5 **U.S.C. § 437f(a)(1).**

6 The Act prohibits contributions and expenditures by a corporation in connection
7 with a Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). The term "contribution" is
8 defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or
9 gift of money, or any services, or anything of value ... to any candidate, campaign
10 committee, or political party or organization," in connection with any Federal election. 2
11 U.S.C. §441b(b)(2); 11 CFR 114.1(a)(1). See 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11
12 CFR 100.7(a)(1) and 100.8(a)(1). The phrase "anything of value" includes goods or
13 services provided without charge, or at less than the usual and normal charge. 11 CFR
14 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A). However, the term "contribution" under the
15 Act does not include, among other categories, the value of services provided without
16 compensation by any individual who volunteers on behalf of a candidate or political
17 committee. 2 U.S.C. §431(8)(B)(i).

18 The definition of "expenditure" in 2 U.S.C. §431(9) includes “any purchase,
19 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made
20 by any person for the purpose of influencing any election for” Federal office. See also 11
21 CFR 100.8(a)(1). Whenever any person makes an expenditure to finance communications
22 expressly advocating the election or defeat of a clearly identified candidate or soliciting
23 any contribution, and does so through various types of mass media (e.g., a broadcasting

1 station) or via "any other type of general public political advertising," the communication
2 is required to include a statement of sponsorship or disclaimer. 2 U.S.C §441d, 11 CFR
3 110.11.

4 The Act, 2 U.S.C. §431(9)(B)(i), specifically exempts from the definition of
5 "expenditure":

6 any news story, commentary, or editorial distributed through
7 the facilities of any broadcasting station, newspaper, magazine,
8 or other periodical publication, unless such facilities are owned or
9 controlled by any political party, political committee, or candidate.

10
11 Commission regulations similarly exclude from the definitions of contribution and
12 expenditure "[a]ny cost incurred in covering or carrying" a news story, commentary,
13 or editorial by any broadcasting station, newspaper, magazine, or other periodical
14 publication. 11 CFR 100:7(b)(2) and 100.8(b)(2). According to the legislative
15 history of this "press exemption," Congress intended to preserve the traditional role of the
16 press with respect to campaigns:

17 [I]t is not the intent of the Congress in the present legislation to
18 limit or burden in any way the First Amendment freedoms of the
19 press and of association. Thus, [the exemption] assures the
20 unfettered right of the newspapers, TV networks, and other media
21 to cover and comment on political campaigns.

22
23 H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974).

24
25 The financing by any person of the dissemination, distribution, or
26 republication, in whole or in part, of any broadcast or any written, graphic, or other
27 form of campaign materials prepared by the candidate, his campaign committees, or
28 their authorized agents shall be considered an expenditure. 2 U.S.C §
29 441a(a)(7)(B)(ii). This expenditure shall be considered to be a contribution for the

1 **purpose of contribution limitations and reporting responsibilities by the person**
2 **making the expenditure but shall not be considered an expenditure by the candidate**
3 **or his authorized committees unless made with the cooperation or with the prior**
4 **consent of, or in consultation with, or at the request or suggestion of, a candidate or**
5 **any authorized agent or committee thereof. 11 CFR 109.1(d)(1).**

6 **DISPOSITION OF QUESTIONS**

7 *Valuation issues*

8 **Web sites established by volunteers**

9
10 **Commission regulations offer relevant guidance in two areas: volunteer activity by**
11 **an individual conducted at home and at corporate facilities. Both these situations**
12 **(depending on the circumstances) could result in no reporting obligations by the**
13 **Committee because it would not have received a contribution.**

14 **In the first situation, Commission regulations provide under 11 CFR 100.7(b)(4)**
15 **that no contribution results where an individual, in the course of volunteering personal**
16 **services on his or her residential premises to any candidate, provides the use of his or her**
17 **real or personal property to such candidate for candidate-related activity. Therefore, if a**
18 **volunteer for the campaign chooses to prepare a web site supporting the campaign using**
19 **his or her personal property at home, i.e. a home computer, that action would not be a**
20 **contribution. Further, the ongoing related costs (such as maintaining Internet service with**
21 **a provider) that are part of the upkeep of a home-run web site would also fall into this**
22 **exception. In short, there would also be no reporting obligation that would attach to the**
23 **activity. Neither the Act or Commission regulations limit the type of volunteer**
24 **activity which may receive the benefit of the exception. Therefore, the Commission**

1 notes that the exception would apply to individuals known to the campaign who,
2 with the campaign permission (at some level) engage in volunteer activity that
3 consists solely of the Internet activity described above i.e. establishing a web site
4 supportive of Mr. Bush.

5 The Commission notes that there may be individuals who engage in Internet
6 activity supportive of the campaign and who do not have any prior volunteer
7 experience with the campaign and, further, do not contact the campaign to gain its
8 assent for their activities. In these situations, the Committee is completely unaware
9 of the activity involved, or if it discovers the activity at all it is by a search of the
10 web. Further, the Committee has no control over the activities of these individuals. —

11 The Commission concludes that where the Bush Committee has no
12 knowledge and has not coordinated a particular Internet activity with individuals
13 who are not volunteers, and where nothing of value is provided to the Committee,
14 there is no reporting obligation incurred by the Committee. Thus, where an
15 expenditure is made independent of the candidate, and is not coordinated with the
16 campaign, and where nothing of value is provided to the campaign, the committee is
17 not expected to report the receipt of an in-kind contribution. The Commission also
18 agrees with the Committee, that given the constantly changing nature of this
19 activity, it does not have an obligation to search the web to discover the existence of
20 Pro-Bush activity.

21 Further, the Commission notes if the campaign has no control or knowledge
22 of the activities of these individuals, then these activities would constitute actions by
23 third parties rather than proposed activity by the Committee. As stated above, the

1 **Act requires the Commission to respond to “a complete written [Advisory Opinion]**
2 **request concerning the application of this Act . . . or a rule or regulation prescribed**
3 **by the Commission with respect to a specific transaction or activity by the person.”**
4 **2 U.S.C. § 437f(a)(1) (emphasis added). For this reason, any further comment on**
5 **the activity of these individuals would not be an appropriate subject for an advisory**
6 **opinion. See footnote 3.⁶**

7 The second situation, involving the use by committee volunteers of corporate
8 facilities or equipment, requires a slightly different analysis. Under 11 CFR 114.9(a),
9 stockholders and employees of a corporation may, subject to the rules and practices of the
10 corporation, make occasional, isolated, or incidental use of the facilities of a corporation
11 for individual volunteer activity in connection with a Federal election. Reimbursement of
12 the corporation is only required to the extent that the overhead or operating costs of the
13 corporation are increased.⁷ If the volunteer were to prepare Internet related material such
14 as a web site using corporate owned facilities and such use went beyond occasional,

⁶ **Advisory Opinion 1998-22 is relevant where an individual who is not a volunteer for the campaign chooses to prepare a web site which expressly advocates the election of Mr. Bush or expressly advocates the defeat of his opponents. As the Commission noted in that opinion, if the activity to create the web site where not conducted completely independent (in this situation, of Mr. Bush's campaign) the resulting expenditures would be reportable by the Committee as an in-kind contribution See 2 U.S.C. §§431(8)(A)(i), 434(b)(2)(A), 434(b)(3)(A); 11 CFR 104.3(a)(3)(i), 104.3(a)(4)(i), 104.13. In that opinion, the individual created a web site which urged the defeat of a incumbent Congressional candidate and the election of the candidate's opponent. The campaign supported by the web site asserted that the individual was acting independently of the campaign. Since the issue of the independence of the expenditures was not raised by the requester, the advisory opinion did not determine whether the independence of the expenditures was compromised by the contacts between the campaign and the requester. Advisory Opinion 1998-22 also offers guidance as to the valuation of a web site which is an in-kind contribution.**

⁷ **Section 114.9(a) further defines “incidental use” to mean “(a) when used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or (b) when used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities.” The regulation also notes that any such activity which does not exceed one hour per week or four hours per month, regardless of whether the**

1 isolated, or incidental use, the campaign would incur an obligation to reimburse the
2 corporation within a commercially reasonable time for the normal and usual rental charge,
3 as defined in section 100.7(a)(1)(iii). Without such reimbursement, a prohibited corporate
4 contribution would result.⁸

5 Links between web sites

6 Providing a link to web sites operated by the Committee would be considered a
7 service and something of value to the campaign and could, under certain circumstances,
8 meet the definition of "contribution" under the Act and Commission regulations. See
9 Conciliation Agreement in MUR 4340. The Commission notes that any service provided
10 without charge, or at less than the usual and normal charge, would constitute a
11 contribution. 11 CFR 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A).⁹

12 Providing a specific link to the Committee web site may not in and of itself
13 necessarily constitute a contribution to a campaign. The issue would turn on whether or
14 not the owner of the web page providing the link would normally charge for the providing
15 of such a link. You suggest that "accepted industry practice" should determine the
16 valuation of such links. You also assert that such practice is to provide such links without
17 cost.

activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the corporate facilities.

⁸ Please take note of the difference between the Act's and the regulation's treatment of volunteers' incidental use of corporate facilities as described here, versus the limitations on corporate communications that endorse candidates. See 2 U.S.C. § 441b(2) and 11 CFR 114.3(c)(2) and 114.4(c)(6); see also Advisory Opinion 1997-16.

⁹ The Commission has also examined whether on the basis of its content a web site or a link could be construed as a contribution to a candidate. See Advisory Opinions 1999-7 and 1998-22. Recently, in Advisory Opinion 1999-7, the Commission noted that whatever the content of a web site or the providing of a web link, the exception in the Act at section 431(9)(b)(ii) for nonpartisan activity to encourage voting could apply to remove the activity from being considered an expenditure or contribution.

1 The Commission questions whether, with numerous types of web sites and site
2 owners in existence, there is one uniform practice that governs the entire Internet
3 “industry.” For example, while it may be common practice for one type of owner of a web
4 site to charge little or nothing for a link (i.e. those established by certain smaller non-profit
5 organizations or sites established by individuals), certain other categories of site owners
6 (such as commercial vendors, Internet service providers or larger non-profits) may, in fact,
7 charge a large amount for including a link to another entity’s web site.

8 If an owner of a web site would normally charge for a link to another site and
9 chooses not to charge the Committee, or charges the Committee less than a similarly
10 situated nonpolitical organization or entity, the provision of a link would be treated as a
11 contribution to the campaign.¹⁰

12 The amount of the contribution would be the difference between what the
13 Committee is normally charged and the amount it paid, if anything, for the link.
14 Additionally, if the owner of the web site is a corporation, then the contribution would be
15 prohibited by section 441b.

16 You have identified various web sites established by individuals who may or
17 may not be volunteers to the campaign that have established links to the campaign
18 without the Committee’s prior knowledge or consent. You also state that it is
19 impossible for the Committee to “police the Internet.” In these circumstances, as

¹⁰ The Commission notes that there is an exception to following standard business practice. The Commission has determined that services offered free of charge by corporations in the ordinary course of business for promotional or good will purposes (if these services might otherwise have required consideration) are prohibited by 2 U.S.C. §441b. See Advisory Opinions 1996-2, 1988-25, 1988-12. With regard to Internet activity, in Advisory Opinion 1996-2 the Commission determined that CompuServe’s proposal to extend to Federal candidates its program of promotional free Internet accounts would result in a prohibited corporate contribution under section 441b.

1 previously noted, where there is no knowledge and coordination (and something of
2 value is not being given to the Committee) the Commission concludes that the links
3 provided from individuals' web sites to the Campaign's web site would not be
4 reportable in-kind contributions to the Committee.

5 You have indicated that the various corporate entities which established
6 links to the Bush campaign which you were aware of have removed these links at
7 your request. You provide, however, examples of various other corporate entities
8 that still provide links to the Bush campaign. However, several of these are news or
9 other media organizations which offer links as part of their coverage of the current
10 campaign.¹¹ These links come within the scope of the "press exemption" under
11 §431(9)(B)(i) and 11 CFR 100.7(b)(2) and 100.8(b)(2).¹² Therefore, the provision of
12 these links is not viewed as either a contribution or expenditure. Your request does
13 not provide sufficient information regarding several other web sites to determine

¹¹ These web sites are www.latimes.com (Los Angeles Times) and www.Dallasnews.com (the Dallas News), www.csmonitor.com (the Christian Monitor).

¹² See p. 5, *supra*, for the statutory language of the exemption at 2 U.S.C. §431(9)(B)(i). The "news story exemption" at 11 C.F.R. 100.7(b)(2) and 100.8(b)(2) states:

"Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not an expenditure unless the facility is owned or controlled by any political party, political committee or candidate, in which case the costs for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcast facility, and (ii) which is part of a general pattern of campaign-related news account which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure."
11 C.F.R. §100.7(b)(2); 100.8(b)(2).

See also, Advisory Opinions 1982-44, 1990-5 and 1996-2 (CompuServe's proposal to establish "nonpartisan online election headquarters" by providing free e-mail accounts would not receive the benefit of section 431(9)(B)(i) since "neither CompuServe nor its described online services is a facility qualifying for the media exemption as described in the Act").

1 whether providing these links would come within the scope of the “press
2 exemption.”¹³

3 You have provided an example of one corporate web site (www.nation.com)
4 providing a link to the Campaign’s web site that does not appear to be owned by a
5 news organization. This web site is, instead, owned by National Semiconductor
6 Corporation. The link to the campaign, however, is grouped with links to every
7 other Democratic and Republican candidate for President and includes a statement
8 that the links are not offered as endorsements of any candidate but only to provide
9 information. Again the Commission notes its conclusion that where the Committee
10 does not know or coordinate Internet activity, this activity does not result in a
11 reporting obligation for the committee. Regarding this specific site, your request
12 does not provide sufficient information regarding the activity of the site owner to
13 determine if the provision of links in these circumstances would otherwise also
14 qualify for any exceptions from the definitions of expenditure or contribution. See 2
15 U.S.C. §431(9)(B)(ii) and §441b(b)(2).

16 Your request also includes examples of two web sites with which the
17 campaign, has no connection that you describe as commercial sites
18 (www.bushcampaignhq.com and www.bushlite.net). Both these sites seem to be
19 parodies of the official campaign site and while they provide a link to the official
20 campaign, the purpose does not seem to be to support Mr. Bush’s candidacy. The
21 Commission again notes that the Bush campaign has no connection with these

¹³ These web sites are www.opensecrets.org and www.issues2000.org.

1 entities and has not paid for any links.¹⁴ In these circumstances, the Commission
2 concludes neither the operation of the web sites nor the provision of the links could
3 be viewed as a contribution to the Bush campaign.

4 *Committee and vendor Internet activity*

5 The discussion above applies to your questions regarding the Committee's
6 obligations where a vendor that sells campaign materials provides a link to the
7 Committee's web site. Providing the link is permissible. However, if it would be normal
8 industry practice to charge for the link, then the Committee would have to pay the usual
9 and normal charge to avoid the making of a contribution by the vendor. The Committee
10 would also be obligated to report the disbursement as an operating expenditure in its
11 report filings. See 2 U.S.C. §434(b)(4) and 11 CFR 104.3(b)(2). If the Committee pays a
12 web site owner for a link to the Committee's web site, this would be considered an
13 operating expenditure.

14 You describe the situation in which a merchandise vendor using Mr. Bush's
15 name to sell various goods wished to forward to the Committee the names of
16 supporters and also provide a link to the Bush campaign from the vendor site. The
17 Commission concludes that this would be permissible as long as the campaign paid
18 the usual and normal charge for the list of supporters and for the link (if it would be
19 standard business practice to be charged for the link).¹⁵

¹⁴ In fact, the text link to the Bush official campaign contains a derogatory reference to Mr. Bush.

¹⁵ The Commission notes that you have not provided facts indicating that the merchandise vendor was also forwarding any profits from the merchandise sales to the Committee or otherwise using the merchandise to engage in fundraising activity for the Committee. See Advisory Opinions 1989-21, 1990-19, 1992-24, 1995-24 and 1995-46 for guidance on these issues.

1 **Your request includes an example of one vendor who has no connection to**
2 **the campaign but who is selling items bearing the name of the candidate**
3 **(www.bushwear.com). The vendor's site also has no link to the official web site of**
4 **the Committee. As with the web sites established by individuals with no attachment**
5 **to the Bush campaign, the Commission notes that the activities of vendors who have**
6 **no contact with the campaign, and no Internet link to the campaign web site, are**
7 **third party activities, and are beyond the scope of this opinion.¹⁶ However, the**
8 **Commission notes that the activities of this vendor do not produce a reporting**
9 **obligation for the Committee. See discussion above.**

10 **You also ask whether disclaimers must accompany the possible links.**
11 **However, you give no indication of the content of the text accompanying any**
12 **specific link. Generally, the Commission has concluded that disclaimers are**
13 **required on web sites that expressly advocate the election or defeat of a Federal**
14 **candidate, as well as those that solicit contributions. See 2 U.S.C. § 441d; 11 CFR §**
15 **110.11(a)(1). This would apply to any web site that contained any express advocacy**
16 **similar to that found in Advisory Opinion 1998-22. Again, without additional**
17 **factual information regarding the link's accompanying text, the Commission can**
18 **offer no further guidance on this matter.**

19 *Internet polling*

20 **Your next questions concern the source and transmission of Internet polling**
21 **information. You ask whether all Internet polls fall under the news media exemption**

¹⁶ The Commission notes that in Advisory Opinion 1994-30 it examined the situation of a vendor with no connection to any candidate or campaign, who proposed to sell candidate-related merchandise.

1 regardless of the source. You also ask whether the dissemination of poll results
2 causes a reportable event under the Act.

3 Because interpretation of this statutory exemption turns on the content of the
4 writing and its source, the Commission can only generally note that web sites
5 operated by entities whose activity fulfills the requirements of the "press
6 exemption" could receive the benefit of 2 U.S.C. §431(9)(B)(i). See the discussion
7 above. The Commission notes that your request offers three examples of sites that
8 have engaged in Internet polling. Of these three only one, [www.Austin 360.com](http://www.Austin360.com),
9 seems to be owned by a *bona fide* news organization-the Austin American
10 Statesman- a newspaper distributed in Central Texas. The other two examples you
11 provide are of web sites owned by entities, one a commercial enterprise selling
12 consumer goods, the other a party organization whose activities would not fulfill the
13 requirements of the press exemption.

14 On the question of distributing Internet poll results, the dissemination of the
15 results of a poll is not prohibited by the Act or Commission regulations. Nothing in
16 the Act or Commission regulations would prohibit the Committee from using its
17 web site or its e-mail functions to support Mr. Bush via Internet polling. Any costs
18 associated with this activity would be operating expenditures. The related costs for
19 this and any other Internet activity (as discussed above and in Advisory Opinion
20 1998-22) would include expenses to operate an e-mail account, maintain a web site,
21 purchase hardware, etc. Many of these costs, such as the purchase of computer
22 software and hardware, payment of electric power and overhead costs, the
23 Committee would have been required to report in any event. No additional

1 **reporting would be required for each new or other Internet use unless it entails a**
2 **separate purchase or fee.**

3 *E-Mail*

4 You ask regarding the use of e-mail by volunteer supporters of the campaign to
5 urge support for Mr. Bush's candidacy. The Committee's questions regarding the use of
6 e-mail by Committee volunteers are covered in the Commission's previous discussion
7 regarding the value of a web site. Under section 11 CFR 100.7(b) the use of e-mail by a
8 campaign volunteer using his home equipment would not result in a contribution to the
9 campaign. The ongoing costs for home e-mail activity are likely to be small and in any
10 case would also be covered by section 11 CFR 100.7(b). The contribution limit of the
11 volunteer would not be affected by this activity. However, e-mail using corporate
12 equipment is governed by 114.9(a). The Commission notes it could be considered
13 occasional, isolated or incidental use if it met the other requirements of 114.9(e). See
14 footnote six.

15 *Solicitation of contributions through Internet*

16 Your last series of questions relate to Internet fundraising activities. Although
17 your request originally phrased these questions with reference to the Committee's possible
18 application for matching funds, the issues raised are applicable to all fundraising efforts,
19 whether or not the resulting contributions are matched.

20 You ask whether e-mail communications may be used to fulfill the Committee's
21 "best efforts" obligations, whether or not the original contribution was solicited over the
22 Internet. The Commission notes that a political committee is required to use "best
23 efforts" to obtain, for each contribution aggregating in excess of \$200 per calendar year,

1 any required contribution information which was not provided by the contributor. 11 CFR
2 104.7(b)(2).¹⁷

3 Such follow-up efforts (after the initial solicitation is sent) require either a written
4 request sent to the contributor, or an oral request to the contributor documented in
5 writing. Furthermore, the Explanation and Justification for the Commission's regulations
6 on the matching of credit card contributions noted the special circumstances of
7 contributions raised through the Internet. The Commission, citing Advisory Opinion
8 1995-9, noted that "in the unique case of a contribution received over the Internet, the
9 [follow-up] request could consist of an electronic message sent to the contributor's e-mail
10 address." See 64 *Fed.Reg.* 32397 (June 17, 1999) and Advisory Opinion 1995-9. It is
11 logical to assume that a contributor would respond best to the medium which was first
12 used for the successful solicitation.¹⁸ Therefore, the Commission concludes that the
13 Committee may substitute e-mail communications for written or oral communications as a
14 means of exerting best efforts to obtain missing contributor information where the original
15 contribution was received through the Internet or where the Committee has otherwise
16 obtained reliable information as to a donor's e-mail address (through, for example, prior
17 up to date e-mail communications with the contributor).

¹⁷ The information that a political committees is required to use its best efforts to obtain concerns a contributor's full name, mailing address, occupation, and the name of employer where the contributions exceed \$200 in a calendar year. 11 CFR 104.7(b)(1).

¹⁸ The Commission notes that while both e-mail and postal addresses are subject to change, e-mail addresses may change with greater rapidity since no change of residence is necessary for an old e-mail address to be rendered inoperative, only a change of job or e-mail provider. Moreover, forwarding service for e-mail, is less prevalent as opposed to postal addresses. However, this concern is lessened if the campaign solicited and received the contribution by Internet communication (with an Internet address provided), since that would indicate the existence of a viable e-mail address used for transactions.

1 *Republication of Candidate Materials*

**2 The Commission notes that 2 U.S.C § 441a(a)(7)(B)(ii) and 11 CFR
3 109.1(d)(1) refer to the financing of the dissemination, distribution, or republication,
4 of any broadcast or any written, graphic, or "other form of campaign materials
5 prepared by the candidate, his campaign committees, or their authorized agents."
6 Campaign material appearing on the campaign Internet web site would be
7 considered an "other form of campaign materials" that would clearly fall with in the
8 scope of section 109.1(d)(1). Therefore, any attempt to use material downloaded
9 from the campaign web site by campaign supporters to establish a web site
10 supporting Mr. Bush would be an in-kind contribution to his campaign from these
11 individuals. This would be the case in so far as it relates to the possible reporting
12 obligations and contribution limits of the entities involved. However, the
13 Committee itself would not incur any reporting obligation and these activities would
14 not be considered an expenditure by the Committee unless there is cooperation by
15 the Committee through its authorized agents, with the effort.**

**16 This response constitutes an advisory opinion concerning the application of the
17 Act, or regulations prescribed by the Commission, to the specific transaction or activity set
18 forth in your request. See 2 U.S.C. §437f.**

19 Sincerely,

**20
21 Scott E. Thomas
22 Chairman
23**

**24 Enclosures (AOs 1998-22, 1997-7, 1996-2, 1995-46, 1995-9, 1995-24, 1994-30,
25 1992-24, 1990-19, 1990-5, 1989-21 and 1982-44)**