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September 23, 1999

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Supplement to
AOR 1999-17

Re: AOR 1999-17

Dear Mr. Noble:

This will respond to your letter on behalf of the Federal Election Commission seeking additional facts pertaining to the Bush for President Committee's request for an Advisory Opinion on uses of the Internet. We have attempted to provide all the information you seek, although, as discussed below, definitive answers to several of your questions are not possible given the nature of both the Internet and political campaigns. We urge the Commission to act promptly on this request since the Bush Committee (and we suspect all other campaigns) are facing the issues raised here on a daily basis.

We believe these responses reflect the reality that the Internet has an unprecedented impact on every aspect of a contemporary campaign and that the current statutory and regulatory scheme simply does not cover all of the issues that arise. We recognize that not all members of the Commission share this view. But we believe that the questions raised in the initial AOR and these supplementary responses demonstrate that the blanket imposition of existing law to use of the Internet in politics is impractical and leaves campaigns with a great deal of uncertainty. We respectfully suggest this is an undesirable result, and while recognizing the difficulty of the Commission's responsibility in this area, believe that both the blanket imposition of existing law and the failure to provide guidance will stifle use of the Internet in politics.

A perfect example of the impracticality of the existing Regulations is the Commission's question about "volunteers" and "supporters". With the reach and egalitarian nature of the Internet, a campaign simply cannot know if every person with a web site is also a volunteer under 2 U.S.C. § 431(8)(B)(i), or a "supporter" who doesn't meet the legal definition, or someone who creates a web site but later becomes a volunteer. Indeed, actually attempting to police this would likely

Lawrence M. Noble, Esquire

September 23, 1999

Page 2

impair a campaign's ability to reach out to grassroots supporters and discourage citizens from participating in the political debate.

On a larger scale, we hoped to provide a definitive look at the existing web sites that used or referred to Governor Bush's candidacy. An inquiry of the standard web search engines yielded literally hundreds of sites. A similar search only several days later showed that sites are added and deleted on a daily basis. In short, we urge the Commission to recognize that the Internet has become a new and dynamic home to the classic marketplace of ideas.

This still-evolving medium presents issues for today's and tomorrow's campaigns that the current regulatory scheme either does not address or does not address realistically.

As such, we again urge the Commission to respond to this Advisory Opinion Request and provide guidance on these issues which the Bush for President Committee and, we believe, many other campaigns are facing now.

Question 1

In attempting to provide answers to the Commission's inquiry, we performed a general search of the Internet using the standard search engines (Yahoo!, Microsoft Explorer). We discovered sites of which we were previously unaware. The individuals or groups who established these sites may or may not meet the legal definition of "volunteers" or consider themselves volunteers or supporters. In addition, if the individuals are not volunteers in the legal sense, they could become so at any time, although the campaign would not have any ability to know these new volunteers, contributors or supporters were the same people who established the web site.

a. The original inquiries concerning web sites featuring Governor Bush's presidential candidacy came from individuals who are both "volunteers" under 2 U.S.C. § 431(8)(B)(i), and who, as described below, wanted to conduct their own Internet activities using Governor Bush's name. In some instances, the individuals may have considered themselves volunteers and described themselves to the campaign as volunteers, but may have (the campaign could not have known) expended money on their Internet projects before contacting the campaign. Some had a relationship with the campaign prior to the preparation of their web sites (without the Committee's knowledge or approval). Others volunteered, and then sought to establish sites. Of these, some wished to amplify their volunteer efforts. Others wished to talk about the Governor's positions outside of their volunteer activities (i.e., someone acting as a volunteer fundraiser establishing a web site to discuss an issue or advocate the Governor's political work). Others had been attempting to line up political support, and then wished to add a fundraising component through a web site. The campaign was aware of some of these sites and individuals, but not others.

Lawrence M. Noble, Esquire
September 23, 1999
Page 3

Without knowing the Commission's views, the Committee was forced to discourage this activity. This AOR was prompted in part by the Committee's need to know whether the Commission believes a campaign has an affirmative obligation to police, or even squelch, this Internet activity.

It is unclear what you mean in your letter by "prior relationships". The Bush campaign has been extremely (and historically) fortunate in attracting support. Approximately 110,000 persons have contributed to the campaign thusfar; many more individuals have volunteered in some way, and still more people have participated in the numerous grassroots community events or political rallies the Governor has sponsored. The Bush campaign, as all campaigns, seeks to be inclusive and considers these local, grassroots political contacts as establishing a "relationship". We suspect, and hope, that all these individuals would consider their contacts with the Governor as establishing some sort of "relationship". But the Committee, as a practical matter, has no way of creating and maintaining a list of everyone in the country who has, or believes they have, such "a relationship" with the campaign. The effort is simply too massive.

Your question seeking distinctions between "volunteers" and "supporters" does not take into account a fundamental truth – the Internet does not fit neatly into the existing election laws. The foundation of the Internet is unregulated participation with very low barriers to entry. Its ease of use, low cost, and broad reach enables any person to participate in politics to a far greater extent than ever before possible, and certainly far more than the "person with a mimeograph machine in the basement" who was the model volunteer when the Act was drafted.

In reality, the nature of the Internet allows individuals to participate in the political process in ways not anticipated by the Act. That, combined with the reality that a contemporary Presidential campaign (especially one as popular as Governor Bush's) reaches so many people, makes requiring a campaign to know precisely who among those establishing sites has what contacts or relationships with the campaign impossible. We hope that, rather than view this as a hotbed of potential abuse requiring much government regulation, the Commission sees the uniqueness and potential of the Internet to improve the political process, and therefore provides those participating in the political process with clear and practical guidance that will allow campaigning on the Internet to flourish.

b. and c. Subparts b and c ask the Committee to provide the names of sites established by volunteers and those established by persons not connected to the campaign. As discussed above, given the nature of the Internet, we do not believe a campaign can or should be responsible for policing who is establishing Internet sites and whether or how they may be connected to the campaign. We attempt to answer, but in reality cannot in all cases.

However, the Commission's letter does raise the question of whether the Commission believes that the Bush Committee, or any other campaign, has an affirmative obligation to police all sites

Lawrence M. Noble, Esquire
September 23, 1999
Page 4

on the Internet to determine if there is some sort of a relationship that triggers reportable contributions or expenditures under the Act. Given the assumptions that appear to underlie the questions in your letter, we ask the Commission to address this in its response to the AOR.

As for your question, the Committee has faced the situation of individuals, some of whom were contributors and some of whom were not, who wanted to set up web sites to support the Governor politically, and others who wished also to raise money. The Committee's response, pending the Commission's answer to this AOR, has been to tell the individuals who ask to not establish such web sites. A large part of the motivation behind this AOR is the campaign's sense that it does not seem right to be squelching these low cost attempts to become involved in the political process. However, we are genuinely concerned that the Commission will view this as some sort of activity subject to the Act's limitations and reporting requirements. This uncertainty will, we hope, be cleared up in this Advisory Opinion so that these individuals may participate in the political process through the Internet.

We have also faced the awkward situation of individuals who have set up sites first, and then contacted the Committee afterwards to tell us about it. We have, pending this Advisory Opinion, informed them that they must act independently and cannot raise any funds for the Committee unless the Committee pays for the site (which the Committee has not done). We hope to gain guidance from the Commission on how to deal with this situation created by well-meaning and enthusiastic individuals, who may or may not meet the legal definition of a "volunteer".

In performing the search of the Internet in response to your inquiry, we also discovered sites about which the Committee previously did not know. We have also received several recent inquiries or letters about web site projects that illustrate why the Bush Committee (and no doubt other campaigns), need guidance from the Commission now.

In an attempt to answer your question about "volunteers", we offer the following web sites as examples:

* www.teensforbush.com - a site established by the 11-year-old son of a policy advisor/volunteer for the campaign. The campaign considered the father a "volunteer" due to his work on policy issues, but did not know of the son's efforts before the site was established.

* www.nhbush.com - a self-described independent site that provides favorable information about the Governor, which was discovered in responding to the Commission's inquiry. The campaign has had no contact with the creators of this site, as far as the senior staff of the campaign knows. But the campaign cannot be assured that the individuals who operate this site have not volunteered for or contributed to the campaign, nor can the campaign definitely

Lawrence M. Noble, Esquire
September 23, 1999
Page 5

know that these individuals have had absolutely no contact with anyone associated with the campaign.

* <http://members.xoom.com/XOOM/Bush2000NH/index.html> – again, the campaign does not know who created this site, or whether the individuals are also volunteers or contributors to Bush for President. This site, which was found only when researching this response, does seek volunteers for the campaign and asks them to contact the campaign's New Hampshire co-chair.

* B2K – a site at wysiwyg://160/http://www.sas.upenn.edu/~prullini/bush2000.htm – is a self-styled network of “dedicated activists working to elect George W. Bush as our next President” with whom the campaign has no known relationship or regular contact. Individuals associated with the site have contacted the campaign periodically seeking an official sanction, which they have not received. The AOR seeks guidance on what the campaign's responsibility is with regard to these types of sites, and whether a campaign has some sort of affirmative legal duty since this site does have links to the campaign's official site (the campaign has never asked for such a link). The Bush Committee believes that a campaign cannot, as a practical matter, know of all such sites and that the Commission should not try to regulate this form of free speech.

* **GWB 2000 Webring** – a site at <http://www.wfol.net/mhoferit/utb2k/ringhome.htm> which describes itself as a group of web sites that supports Governor Bush's candidacy. This group has sought an affiliation with the campaign, which has not been granted. While the campaign does not know the individuals involved, we do not believe they are “volunteers” within the meaning of 2 U.S.C. § 431(8)(B)(i). Yet the site describes it and other sites on the “webring” as “owned by volunteer supporters of George W. Bush. They are each part of a grass-roots effort to elect Governor Bush as our next President.” The campaign does not believe it should, nor does it believe it can, police Internet sites such as this that will spring up during the course of a campaign. The AOR was filed to receive guidance on this and similar situations.

* <http://www.fl4bush.htm> – describes itself as “The Grassroots (unofficial)” site of the campaign. The campaign has no affiliation with the owners of the site but is without recourse in telling the owners of the site what to do or not to do.

The campaign believes that none of the individuals involved with these sites have official administrative duties with the Committee or have a paid position with the Committee. The Committee has no way of knowing if the individuals running such sites are volunteering in grassroots activities such as phone banks or campaign literature distribution or fundraising events. It is also impossible to know if someone operating a site will subsequently decide to

Lawrence M. Noble, Esquire
September 23, 1999
Page 6

participate in these grassroots activities closer to the primary dates in their states. Asking a campaign to police this activity is simply not practical.

In light of the Commission's questions, we ask the Commission to address the Committee's handling of two other situations:

- a group of individuals was planning to use a site with material advocating the Governor's election to bolster their volunteer fundraising for the Committee (the Committee asked them to cease the effort). An informal inquiry of others in the regulated community revealed confusion over whether the Commission considers this reproduction of materials from the Committee's official web site a contribution. Is it the Commission's ruling that such a reproduction on the Internet is unique, or do the provisions of 11 C.F.R. § 109.1(d)(1) apply to this use of the Internet.
- a merchandise vendor was using the Governor's name to sell various goods (shirts, bumper stickers, etc.). The vendor also wished to collect supporters' names and forward them to the campaign, as well as to provide a link to the campaign's web site. We asked that that effort cease. Does the Commission believe the vendor's activities are permitted under the Act and Regulations?

The search of the Internet to answer the Commission's inquiries also reveals a number of sites with a political message but whose prime motivation seems commercial. None of these sites have any relationship with the Committee as far as the Committee knows, but all sell items with a pro-Governor Bush message. Representative are:

* www.bushwear.com - while the campaign has no connection to this site, one of the owners has claimed that he helped to secure pledge cards from some state legislators for Governor Bush.

* <http://lovewear.arn.net/gwbush.htm> - discovered on a search engine in responding to the Commission's inquiry

Another factor that the Commission must consider is that the individuals who establish these sites may, if asked, say for the sake of their commercial credibility that they are connected to the campaign, even if the Committee does not know who they are.

2. The question was prompted by "friendly" corporate sites we discovered linked to the Committee's web site. Pending the Commission's Advisory Opinion, the campaign has been asking the corporate entities to take down the links. Because the corporate entities did take down the links when we asked, we cannot provide any current sites.

Lawrence M. Noble, Esquire
September 23, 1999
Page 7

a. Examples of other types of sites that have come to the Committee's attention include:

* corporate site (www.national.com/govnews/campaign.html)

* news- www.latimes.com; www.dallasnews.com; www.csmonitor.com;
www.opensecrets.org/2000elect; www.issues2000.org.

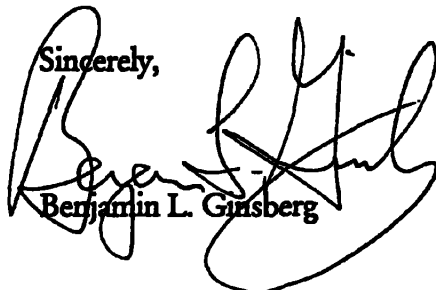
* commercial (www.bushcampaignhq.com/; www.bushlite.net/;
<http://www.shabang.com> (offer extended to the Committee). We would also urge the Commission to rule on the permissibility of the tactic taken by another political site. A site named www.goregear.com is linked from the official "gore2000" site. While the commercial site does not have a link back to the site, it does direct the viewer: "If you have arrived here via the Gore2000 Web Site, hit the 'Back' button on your browser to return to it." Is this permissible under the Act?

b. You also ask about the "visual representation" of known links to the site. To the extent we understand "visual representation", we believe the examples cited above respond to the inquiry.

3. In terms of the Internet polls, we call the Commission's attention to an on-line straw poll conducted by the Indiana Republican Party. In addition, the Shabang site listed above appears to include a straw poll component. Several news organizations conduct straw polls on their sites - see www.Austin360.com.

4. The Committee decided not to use the vendor for its Internet fundraising. Accordingly, this question is now hypothetical for the Committee, so we withdraw it pursuant to 2 U.S.C. § 437f(a)(1).

We look forward to hearing from the Commission so that we may receive guidance from the Commission on these important Internet issues that the Committee is confronting on a daily basis.

Sincerely,

Benjamin L. Ginsberg

Michael Toner

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4 QUAYLE: Bartlett Pairs With Quayle

Dan Quayle announced 8/23 that Rep. Roscoe Bartlett (MD 06) will serve as his MD campaign chair (Washington Times, 8/24). Bartlett on Quayle: "I'm excited to join the campaign and work with my constituents for Dan Quayle. With his twenty-plus years of experience in public service, his message of restoring core values, lowering taxes and reducing government, Quayle is the stand-out candidate" (release, 8/23).

(Back to Contents)

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5 MONEY WATCH: Matching Funds Come Early This Year

George W. Bush's decision to forgo matching funds means his opponents will get more fed aid, faster. Because of Bush's move, the FEC will payout 39% of matching funds to qualified candidates, rather than the 32% it originally planned to dole out. The FEC will pay about \$82M rather than \$99M initially anticipated. So far, five WH 2000ers have qualified for the funds -- Gary Bauer, Bill Bradley, Elizabeth Dole, John McCain and Dan Quayle. Al Gore has said he will apply for matching funds. Steve Forbes also has opted against taking matching funds (Salant, AP/Foster's Democrat

<<http://www.fosters.com/news99c/august/24/xx0824a.htm>>, 8/24).

US News' "Washington Whispers" reports, Bush's campaign is concerned that campaign finance proponents like McCain "may be getting traction," and his friends are concerned that by raising more than \$50M by the end of the year he could have "too much of a good thing." Bush, however, has yet to call off his fundraising team, and he "tells friends that his bigger concern" is that Forbes "will carpet-bomb him with negative ads" in IA and NH (Strobel, 8/30 issue).

(Back to Contents)

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6 GAY VOTERS: Bush Reviewing Anti-Gay Pledge

Des Moines Register

<<http://www.dmregister.com/news/stories/c4789004/8763233.html>>'s Buttry reports that six GOPers have signed a pledge to oppose same-sex marriage, gay adoption and special protection for homosexuals, according to the group pushing the pledges. Gary Bauer, Pat Buchanan, Steve Forbes, Alan Keyes, Orrin Hatch and Dan Quayle "signed on the spot," according to Bill Horn, a pledge organizer. George W. Bush's campaign asked to review copy to the pledge, according to Bush IA aide Eric Woolson. Elizabeth Dole spokesperson Ari Fleischer "was unfamiliar with the pledge" but said she favors current laws barring same-sex marriage. John McCain's campaign was sent a copy of the pledge, but his campaign could not be reached for comment. Ex-Green Bay Packer Reggie White also is leading the pledge effort. From the pledge: "As president I will vigilantly defend this age old institution [marriage] against any effort, judicial or legislative, to redefine it to include same-sex relationships" (8/24).

(Back to Contents)

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7 INDIANA: Bush Wins IN GOP Web Poll

George W. Bush won the IN cyber poll with 35% of the vote. IN GOP Chair Mike McDaniel said the "week-long informal poll, conducted at the state party's invitation, succeeded in its real goal - drawing attention to the Web site itself" (Wyman, Indianapolis Star/News, 8/24). Other GOP WH 2000ers: Pat Buchanan nabbed 23%, Elizabeth Dole 22%, Dan Quayle 9%, Steve Forbes 4%, John McCain 3%, Lamar Alexander 1%, Gary Bauer 1%, Orrin Hatch 1%, and Alan Keyes 1%. The cyber poll was conducted 8/16 to 8/22 (release, 8/23).

(Back to Contents)

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