



**Legislative Bulletin.....March 16, 2006**

**Contents:**

**H.R. 1606** — Online Freedom of Speech Act

**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$0

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

**H.R. 1606—Online Freedom of Speech Act (Hensarling, R-TX)**

**Order of Business:** The bill is scheduled to be considered on Thursday, March 16<sup>th</sup>, likely subject to a closed rule (allowing no amendments).

**Note:** Congress voted on this identical version of H.R. 1606 in November 2005. Although the bill received a clear majority (225-182), it did not receive the two-thirds needed to pass under suspension of the rules: <http://clerk.house.gov/evs/2005/roll559.xml>.

**Background:** In September of 2004, U.S. District Court Judge Colleen Kollar-Kotelly ruled that it was not clear in the Bipartisan Campaign Reform Act (“BCRA,” Public Law 107-155) that the Internet should be fully exempted from the law (even though the Internet was not mentioned in it) and directed the Federal Election Commission to re-write various regulations

to encompass the Internet. The U.S. Court of Appeals for the D.C. Circuit upheld the district court decision. Only an act of Congress signed into law by the President can stop this judicially-ordered regulatory re-write.

**THIS THURSDAY**, the Federal Election Commission (FEC) is expected to announce new campaign-related regulations of speech on the Internet. H.R. 1606 would override any such FEC regulations.

Senate Minority Leader, Harry Reid (D-NV), introduced a bill (S. 678) in the Senate that is identical to H.R. 1606.

NOTE: This bill is commonly regarded as a “blogger protection” bill since it addresses concerns that bloggers who regularly engage in mass public communications may become subject to federal campaign finance regulations—especially if they reference a federal candidate 30 days before a primary election or 60 days before a general election.

**Summary:** H.R. 1606 would amend the Federal Election Campaign Act of 1971 (2 U.S.C. 431(22)) to exclude Internet communications from the Act’s definition of “public communication,” which is currently defined as “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.”

Perhaps the most significant application of this exemption would be to the current prohibition on citizens using non-campaign funds in the 30 days before a primary election and the 60 days before a general election for a public communication merely *referencing* a federal candidate. H.R. 1606 would clarify that this prohibition would NOT apply to Internet communications. The bill would also apply the Internet exemption beyond the 30- and 60-day periods, since the definition of “public communication” applies year-round to what comes under federal campaign regulation.

Other applications of this proposed exemption include keeping Internet communications from triggering certain exceptions in campaign finance law. In other words, the Federal Election Campaign Act includes a variety of definitions (“contribution,” “expenditure,” etc.) and a variety of *exemptions* from those definitions (and from the relevant federal regulations). Many of these exemptions do not apply if a “public communication” is involved. Under H.R. 1606, public communications over the Internet would allow these exemptions to stand.

NOTE: This bill would NOT exempt *all* Internet activity from federal campaign finance regulations—just from those which involve the definition of “public communication.” The bill would NOT reverse the ban on soft money for federal election activities, nor would it exempt contributions made on the Internet from federal contribution limits, reporting requirements, and other such regulations.

**Committee Action:** On April 13, 2005, the bill was introduced and referred to the Committee on House Administration. On June 8, 2005, the Committee appended H.R. 1606 onto RSC Chairman Pence's 527 Fairness Act (H.R. 1316) and favorably reported H.R. 1316 by a party-line vote of 6-3. On March 9, 2006, the Committee, under the new chairmanship of Rep. Vernon Ehlers (R-MI) marked up (without amendment) and favorably reported H.R. 1606 as a stand-alone bill to the full House.

**Cost to Taxpayers:** The bill would have no federal spending implications.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No, it would *prevent* the expansion of certain federal regulations onto the Internet.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The House Administration Committee, in House Report 109-389, cites constitutional authority in Article I, Section 4, Clause 1, which grants Congress the power to "at any time by Law make or alter such Regulations" regarding the "Times, Places and Manner of holding Elections for Senators and Representatives."

**Outside Organizations:** Some of the organization who have expressed public support for H.R. 1606 include:

- American Civil Liberties Union
- American Conservative Union
- Americans for Tax Reform
- Cato Institute
- Christian Coalition
- Citizens Against Government Waste
- Club For Growth
- Family Research Council
- FreedomWorks
- James Madison Center for Free Speech
- National Rifle Association
- National Right to Life Committee
- National Taxpayers Union
- OMB Watch

**RSC Staff Contact:** Paul S. Teller, [paul.teller@mail.house.gov](mailto:paul.teller@mail.house.gov), (202) 226-9718