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ONE HUNDRED TWELFTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 13, 2011

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The Honorable Aaron J. Schock, Chairman
The Honorable Susan Davis, Ranking Member
Commission on Congressional Mailing Standards
1309 Longworth House Office Building
Washington, DC 20515

Dear Colleagues:

This responds to your letter of September 20, 2011, signed by the six Commissioners of the bipartisan Commission on Congressional Mailing Standards (Franking Commission), seeking a ruling from the Committee as to whether Members' principal campaign Web sites and other Internet communications resources, such as Facebook, Twitter, and YouTube (collectively, Internet Sites), may contain language notifying constituents of Members' official Internet Sites and provide hyperlinks to those resources. The Committee has traditionally advised Members that such language and a hyperlink would be inappropriate. However, the Committee has reconsidered this policy, and pursuant to Committee Rule 10(a)(8), the Committee has unanimously voted to establish a new policy that will allow Members' principal campaign Internet Sites to provide a hyperlink to Members' official Internet Sites if accompanied by an appropriate disclaimer.

FACTUAL BACKGROUND

According to your letter, additional information you provided to Committee counsel, and publicly-available information, the following is the background on this matter. Communicating with a Member's constituents is an essential role of a Member of Congress. In recent years, the use of third-party social networking Web sites has become an effective and efficient tool to offer two-way communications between Members of Congress and their constituents. Indeed, people are increasingly relying on email, Web sites, and free online communities, such as Facebook and Twitter to send messages to congressional offices, and in return, Members are using the same Internet Sites to send messages to their constituents. Similarly, Members' campaigns are also increasingly using these Internet Sites to communicate with voters.

The Committee has historically advised Members that House rules and federal law prohibit advertising a Member's official contact information using campaign resources.¹ Thus, the

¹ 2008 House Ethics Manual at 178.

Committee has advised Members that it is impermissible to include hyperlinks on Members' campaign Internet Sites that take constituents to Members' official Internet Sites.²

Because of the rapid increase in the use of Internet-based tools to communicate with Members of Congress, many constituents continue to find it difficult, and often confusing, to use the appropriate sites. For example, constituents will occasionally post a message on a principal campaign Facebook page or send an email through a campaign Web site with the intention of communicating with the Member in an official capacity. This breakdown and delay in communication has become more prominent with the introduction of the freshman Members of the 112th Congress, and it will continue to occur until it is properly addressed with a solution that ensures the integrity of the rules of the House are kept intact, while ensuring this critical communication gap is bridged.

You believe that this "inadvertent crisis has led to a breakdown in this vital line of communication and can easily be resolved." To that end, you suggest the following solution. Members should be permitted to place text on their principal campaign Internet Sites for the purpose of notifying constituents of the corresponding official Internet Sites. Along with the text, Members would also be permitted to include a hyperlink on their principal campaign Internet Sites that would transfer constituents to the corresponding official Internet Sites. You suggest the following text:

Thank you for visiting my campaign (Web site/Twitter page/Facebook page). If your intention was to visit my official House of Representatives (Web site/Twitter page/Facebook page), please [click here](#). [The "click here" would be hyperlinked to the appropriate Web site.]

Franking Commission staff sought informal guidance from the Federal Election Commission (FEC) regarding the proposed text and hyperlink. Your staff was told that the FEC would not object to Members placing such a hyperlink and text on campaign Internet Sites. You are now requesting a ruling from the Committee on your suggested text as well as posting a hyperlink on a principal campaign Internet Sites that would lead an individual to an official Internet Sites.

LEGAL BACKGROUND

Internet Sites paid for or maintained, even only in part, with official funds are official Internet Sites and are subject to all the restrictions on communications made using official resources.³ Similarly, Internet Sites, including new media accounts, paid for or maintained, even

² *Id.*

³ See, e.g., 31 U.S.C. § 1301(a); Comm. on House Admin., U.S. House of Representatives, *Members' Congressional Handbook* (hereinafter *Members' Handbook*); Comm. on House Admin., U.S. House of Representatives, *Committee Handbook* (hereinafter *Committee Handbook*); 39 U.S.C. § 3210; Franking Commission, *Regulations on the Use of the Congressional Frank by Members of the House of Representatives* (hereinafter *Franking Regulations*)

only in part, with campaign funds are campaign Internet Sites, and are subject to all the restrictions on communications made using campaign resources.⁴

The Committee's longstanding guidance with respect to official and campaign resources is that the relevant House rules and federal statutes prohibit the use of campaign resources to advertise the contact information, such as the address or telephone number, for the official congressional office.⁵ Since at least 1998, the Committee has advised Members that these rules and statutes also prohibit a campaign Web site from including a hyperlink to a Member's official congressional Web site.⁶

House Rule 24 generally prohibits "unofficial office accounts." Accordingly, outside private donations, funds, or in-kind goods or services may not be used to support the activities of, or pay the expenses of, a congressional office. Only appropriated funds or Members' personal funds may be used for this purpose.⁷ The House Commission on Administrative Review (95th Congress) proposed House Rule 24 to act as a "wall" between private funds and official allowances, and House Rule 24 has been in effect since 1977. Congress codified this rule into law governing both Chambers as part of the Legislative Branch Appropriations Act, 1991.⁸

Despite this general ban on "unofficial office accounts," House Rule 24(b)(1) does provide that a Member's principal campaign funds "may defray official expenses." However, House Rule 24(b)(2) explicitly states a Member's principal campaign funds:

may not be used to defray official expenses for mail or other communications, compensation for services, office space, office furniture, office equipment, or any associated information technology services (excluding handheld communications devices).

Traditionally, the Committee has interpreted House Rule 24(b)(2) to ban the use of campaign funds to pay for all "communications" that may be paid for as "set out in the

⁴ See, e.g., 31 U.S.C. § 1301(a); *Members' Handbook*; *Committee Handbook*; see also *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1983) ("[G]overnment funds should not be spent to help incumbents gain reelection"); *2008 House Ethics Manual* at 154 (noting that a Member may "not convert campaign funds to personal or official uses"); House Rule 24 (prohibiting "unofficial office accounts"); 2 U.S.C. § 59e(d) (prohibiting official use of "funds received from a political committee or derived from a contribution or expenditure").

⁵ See House Rule 24; 31 U.S.C. § 1342 (prohibiting acceptance of voluntary services without specific authorization (augmentation of appropriations)).

⁶ See, e.g., Committee on Ethics Advisory Memorandum, "Answers to the 'Top 20 Questions'" (March 4, 1998) ("It has long been the rule that campaign contributions cannot be used to support the activities of, or pay the expenses of, a congressional office, and under this rule, the Committee has long advised that campaign materials cannot include, for example, the address or telephone number of the congressional office. There is no basis for according any different treatment to either a Member's campaign web site or the office web site address.").

⁷ See 31 U.S.C. § 1342.

⁸ See 2 U.S.C. § 59e(d).

regulations issued by the Committee on House Administration on use of official allowances[.]”⁹ Accordingly, the Committee has long advised that a Member’s campaign Web site “may not include a link to the Member’s House website.”¹⁰ The *2008 House Ethics Manual* further states that a Member’s official Web site “may not be advertised on his or her campaign website or in materials issued by the campaign.”¹¹ In informal guidance, the Committee has similarly advised Members that House Rule 24(b)(2) prohibits the content of any material posted on a campaign new media account from including a direct hyperlink to Web sites or new media accounts created or operated using official resources.

In the past, the Committee has recognized certain, common-sense, exceptions to the general ban on using campaign resources to defray the costs of official communications. For example, the *2008 House Ethics Manual* states that “the campaign office may refer to the congressional office any officially related matters that it receives.”¹² However, the Committee has not recognized such an exception for hyperlinks from campaign to official Internet Sites.

ANALYSIS

The Committee has reviewed your request that Members’ principal campaign Internet Sites be permitted to provide text notifying constituents of a Member’s official Internet Sites and include a hyperlink to the appropriate official Internet Sites. Permitting such text and a hyperlink would be inconsistent with longstanding Committee precedent. Thus, granting your request would require changing Committee policy, and pursuant to Committee Rule 10(a)(8), the Committee may only issue an advisory opinion of general applicability establishing a new policy upon an affirmative vote of a majority of the Members of the Committee.

The Committee considered several factors when reviewing your request. The Committee considered the recent increase in the use of third-party Web sites as an effective and efficient tool to offer two-way communications between Members of Congress and their constituents. The Committee also considered the difficulty and confusion facing constituents trying to use the appropriate Internet Sites, and that alleviating this confusion is consistent with the goal of maintaining the separation between campaign and official resources. The Committee further considered the fact that this breakdown and delay in communication will continue to occur until the underlying problem is addressed. The Committee reviewed other possible solutions to this problem, in addition to your request.

Pursuant to Committee Rule 10(a)(8), the Committee unanimously voted to adopt a new policy with respect to Members’ campaign and official Internet Sites. It is now the position of the Committee that Members’ campaign Internet Sites may provide a hyperlink to Members’ official Internet Sites if that hyperlink is accompanied by a disclaimer that has been approved by the

⁹ *2008 House Ethics Manual* at 177.

¹⁰ *2008 House Ethics Manual* at 131; see also Committee on Ethics Advisory Memorandum, “Answers to the ‘Top 20 Questions’”.

¹¹ *2008 House Ethics Manual* at 178.

¹² *Id.* at 133.

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The Honorable Susan Davis
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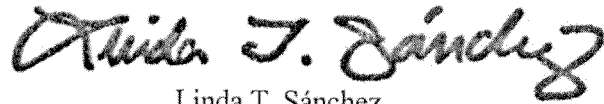
Committee in advance. Accordingly, your request that Members' campaign Internet Sites be permitted to include text notifying constituents of Members' official Internet Sites, and for that text to include a hyperlink that would transfer constituents to Members' official Internet Sites, is permissible under the Committee's new policy. The proposed disclaimer language contained in your letter, and reproduced on page two of this response, would be a permissible disclaimer. Any Internet Sites that do not permit use of such a disclaimer may not contain a hyperlink or reference to a Member's official Internet Site.

If you have any further questions, please contact the Committee's Chief Counsel and Staff Director Dan Schwager at extension 5-7103.

Sincerely,



Jo Bonner
Chairman



Linda T. Sanchez
Ranking Member

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