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## Hensarling Bill Would Do Too Little, and Too Much

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The Center for Democracy & Technology has been fighting for almost 10 years to limit the impact of campaign finance laws on political speech online. The CDT was the initial advocate of the approach that Reps. Charles Bass (R-N.H.) and Tom Allen (D-Maine) have taken in H.R. 4900, an approach we believe offers far greater protection for Web loggers and individual speakers on the Internet than does H.R. 1606, introduced by Rep. Jeb Hensarling (R-Texas).

Although we appreciate the intention behind the Hensarling bill, that bill simultaneously does too little and too much.

It does too little because it addresses only the narrow question raised by the Bipartisan Campaign Reform Act about the application of "public communications" rules to the Internet. At the same time, it completely ignores the regulation of the Internet that predated BCRA in the Federal Election Campaign Act.

Even if H.R. 1606 were enacted, bloggers and individual speakers on the Internet still would face burdensome requirements under FECA to (a) file reports on expenditures with the Federal Election Commission, (b) publicly post their home addresses when they advocate on behalf of a candidate, and (c) submit to onerous "political committee" regulation if two or more bloggers or speakers collaborate on a Web site. Moreover, H.R. 1606 is silent on whether the "media exemption" (the one that protects news outlets from regulation) can apply to bloggers and other online publications.

In sharp contrast, the bill by Bass and Allen addresses all of these points, and it makes crystal clear that 99 percent of bloggers and other individual speakers on the Internet will be free from all campaign finance regulation.

Most importantly, H.R. 4900 protects speakers in a simple manner that will allow individuals to determine if they are subject to regulation without hiring a lawyer to help them wade through more than 1,000 pages of statutes, regulations and "advisory opinions" promulgated by the FEC.

The Bass-Allen bill creates a broad "safe harbor" level of \$5,000 in spending below which no regulations apply. Thus, bloggers and ordinary citizens who do not spend more than \$5,000 a year on online political speech are exempted from campaign finance laws. Under H.R. 4900, all that a blogger or small online speaker would have to ask is: "Have I spent more than \$5,000 this year?" If the answer is "no" — as it will be for 99 percent of bloggers and individuals on the Internet — then no campaign finance laws will apply.

In the view of the campaign finance reform community, the Hensarling bill also does too much. That bill would remove spending limitations imposed by BCRA on state political parties and corporations, permitting them to spend unlimited amounts of "soft money" on Internet advertising and other online advocacy. Because of the loopholes created by H.R. 1606, it is certain to face protracted opposition in the Senate from Sens. John McCain (R-Ariz.) and Russ Feingold (D-Wis.), among others.

The CDT has not taken a position on campaign finance laws. Our goal, instead, is to protect individuals' and bloggers' speech on the Internet, and we set out to achieve that protection without significantly impacting the campaign finance laws. H.R. 4900 protects bloggers and small speakers far better than does H.R. 1606, and by design, it does not create other loopholes in the campaign finance laws. Those who truly want to protect bloggers and ordinary citizens should support H.R. 4900. Those whose real goal is to undermine campaign finance laws should support H.R. 1606, which provides only limited protection to online speakers.

It's ironic that many leading bloggers have chosen to support H.R. 1606 over H.R. 4900. Most of Washington, D.C., became aware of the threat facing online political speakers a year ago when a loose-knit group of conservative and liberal bloggers named the "Online Coalition" sent a letter to the FEC detailing its concerns. The coalition's March 11, 2005, letter (available at [www.onlinecoalition.com/letter](http://www.onlinecoalition.com/letter)) advocated (a) extending the media exemption to bloggers, (b) exempting unpaid political activity on the Internet, and (c) protecting bloggers and others who republish campaign materials. The coalition said it supported keeping paid political Internet advertising subject to the campaign finance rules.

H.R. 4900 squarely addresses each of the concerns raised by the coalition, and indeed provides significantly more protection than was requested by its members. By contrast, H.R. 1606 does almost nothing that the Coalition said it wanted just one year ago.

Everyone involved in this debate claims that their goal is to protect bloggers. In the summer of 2005, the CDT organized more than 1,000 bloggers and activists to urge the FEC to protect individual speech online. The Bass-Allen bill is far more effective at achieving that goal than is Hensarling's bill, and the former does not carry the campaign finance baggage that will cause a major battle in the Senate.

Political speech and debate online are revolutionizing American politics, and Congress must act quickly to protect, as thoroughly as possible, the rights of individuals on the Internet to express their political views. With the 2006 election less than eight months away, lawmakers should quickly enact H.R. 4900, which provides far more protection with far less controversy.