

AOR 1998-22

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

SEP 21 3 10 PM '98

September 18, 1998

Office of The General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Request for Advisory Opinion

Factual Information: Leo Smith, registered as an Independent voter in Suffield, Connecticut, elected to protest the House Republican efforts against President Clinton by erecting an Internet Web Site advocating the defeat of Republican incumbent candidate Nancy Johnson in the Connecticut Sixth Congressional district race, and the election of her opponent, Democrat candidate Charlotte Koskoff. The web site has been put up and the web address is <http://www.e-source.com/koskoff>. This site is currently active, and has been up since September 17, 1998.

No cash funds were received or expended. Unlike the creation of traditional campaign literature, which requires the purchase of paper, ink and copying services, the creation of this web site involved zero expenditure of funds. Leo Smith is involved in web site creation and has created web sites for organizations such as the Connecticut State Dental Association and the Connecticut Dental Hygienists Association. The requisite HTML skills, computer equipment, server and Internet Access necessary to create and host a web site were all available to Leo Smith at no additional financial charge or expense. No third parties have contributed or will contribute anything to the web site. No goods of any material value were received or will be received in furtherance of the web site.

Issue: If the above statements are accepted as fact for the purpose of the advisory opinion, in the case where a political advocacy position is taken regarding the election or defeat of a candidate for federal office, and where the materials published were done so electronically in such a manner that no funds or goods of material value were expended is so publishing those materials, does the lack of expenditure of funds cause the materials published to fall outside the jurisdiction of the FEC and the requisite disclaimer requirements? Specifically, the two issues are:

- 1) Whether in the immediate case a financial filing report is required, under FEC regulations, and
- 2) Whether the publisher may publish an anonymous publication, even if the FEC determines that financial reporting is required.

Argument: Leo Smith argues that *McIntyre v Ohio* established a right to anonymous free speech in political matters. Any reference to mandatory reporting allowance under *Buckley v Valeo* related to financial reporting

requirements. In *McIntyre v Ohio*, the US Supreme Court offered no support for any FEC requirement that disallows anonymous political publications.

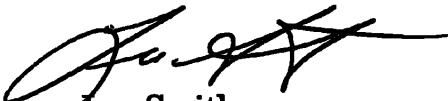
The Court stated:

“True, in another portion of the Buckley opinion we expressed approval of a requirement that even “independent expenditures” in excess of a threshold level be reported to the Federal Election Commission. *Id.*, at 75-76. But that requirement entailed nothing more than an identification to the Commission of the amount and use of money expended in support of a candidate. See *id.*, at 157-159, 160 (reproducing relevant portions of the statute).

Though such mandatory reporting undeniably impedes protected First Amendment activity, the intrusion is a far cry from compelled self-identification on all election-related writings. A written election-related document - particularly a leaflet - is often a personally crafted statement of a political viewpoint. Mrs. McIntyre's handbills surely fit that description. As such, identification of the author against her will is particularly intrusive; it reveals unmistakably the content of her thoughts on a controversial issue. Disclosure of an expenditure and its use, without more, reveals far less information.”

Where Leo Smith incurs no expenditure of funds in creating and hosting a web site, Leo Smith takes the position that no reporting requirements apply. Leo Smith takes the further position, that even if reporting requirements were held to apply, that under *McIntyre v Ohio*, Leo Smith is not required to include identification or other disclaimer on the web site, and that the publication of an anonymous web site advocating the election or defeat of a candidate running for federal office is a right under the First Amendment.

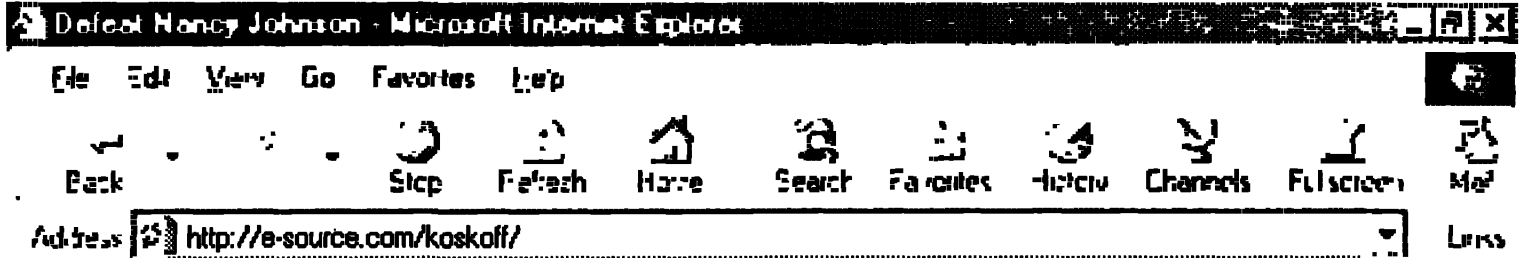
Leo Smith requests that the FEC issue an Advisory Opinion on the issues presented above.



Leo Smith
1060 Mapleton Avenue
Suffield, CT 06078
860 668 4000

Attachment: Printout of website at <http://www.e-source.com/koskoff>

Web site erected by Leo Smith



Voters In Connecticut's Sixth Congressional District:

**ARE
YOU
DISGUSTED?**

with the fact that the Republican controlled Congress is fixated on impeachment of President Clinton, and feel that the Republican Congress' full attention should be focused on other important issues, such as Health Care Reform, Campaign Finance Reform, and Social Security Reform, then consider taking an active role in defeating Republican insider Nancy Johnson's bid for re-election. View Salon Magazine exposé on Hypocrite Henry Hyde. You can take direct action:

**SUPPORT PRESIDENT CLINTON
HELP DEFEAT NANCY JOHNSON**

By contributing your time, money or both towards electing Nancy Johnson's opponent
Charlotte Koskoff in the November elections.

**WORK TO ELECT
KOSKOFF
FOR CONGRESS**

How To Help



im4koskoff@aol.com

This website is posted by a registered Independent voter in the Sixth District.
This site is not affiliated with or supported by the official Koskoff for Congress campaign.



Subject: Leo Smith website

Date: Mon, 21 Sep 1998 17:16:50 -0400

From: Bradley Litchfield <brlitch@fec.gov>

Organization: Federal Election Commission

To: im4koskoff@aol.com

To the cyber addressee that receives this message:

I am writing as an official of the Federal Election Commission, Office of General Counsel. I linked to this email address from the web site known as: <http://e-source.com/koskoff/>

I learned of this site from Leo Smith who states in a letter to the Federal Election Commission that he created this web site to advocate the defeat of Rep. Nancy Johnson and to advocate the election of Charlotte Koskoff. Both of these persons are candidates in the 1998 general election for the 6th CD of Connecticut.

My questions are:

- 1) Is this e-mail being received by the Koskoff campaign and by any real person who has some connection with that campaign? Such as a campaign employee? A campaign volunteer? A campaign official? Or by the candidate herself or a member of her family?
- 2) What is the relationship and association of Leo Smith (1060 Mapleton Avenue, Suffield, CT 06078 tel 860-668-4000) with the Koskoff campaign or to Ms. Koskoff (the candidate) or to any agent or representative of the Koskoff campaign?

Thank you for your prompt responses to this inquiry.

N. Bradley Litchfield
Associate General Counsel/Policy
Federal Election Commission

email: brlitch@fec.gov

voice phone: 202-694-1650

Subject: Contacting Leo Smith
Date: Mon, 21 Sep 1998 17:31:32 -0400
From: Bradley Litchfield <brlitch@fec.gov>
Organization: Federal Election Commission
To: barter@ntplx.net

I have linked to this e-mail address from a reverse phone directory search I made using a telephone number provided to me in a first class letter dated September 18, from Leo Smith of Suffield, CT. The number Mr. Smith provided to me is 860-668-4000.

I have some vital questions to ask Mr. Smith about his letter. If I pose them in e-mail form to this cyber address, will they reach him??

Thank you.

N. Bradley Litchfield
Associate General Counsel/Policy
Federal Election Commission

e-mail: brlitch@fec.gov

tel: 202-694-1650