

CALIFORNIA FORUM MAY 30, 2015

# The coming revolution in campaign communication

## HIGHLIGHTS

The 2016 presidential campaign may be the last where television is the primary mode of campaign communication

Current campaign finance laws and regulations have almost nothing to say about online campaigning

With the shift of campaign communication to the Internet, new policies and practices will need to be developed



The 2016 presidential campaign – including such candidates as, from left, Hillary Clinton, Ted Cruz and Rand Paul – may be the last where television is the primary mode of campaign communication, and the transition to the Internet will have profound implications for future campaign law and policy, writes Nathaniel Persily, a professor of law at Stanford University. | **Charlie Neibergall/Nati Harnik/C** - The Associated Press

BY NATHANIEL PERSILY  
Special to The Bee

When Hillary Clinton announced her candidacy for president last month, she did so, unremarkably, with a video released on the Internet. That choice of venue may have received little attention, but that decision, like that of her many rivals who will announce and campaign the same way, signals the revolution in campaign communication underway.

The 2016 presidential campaign may be the last where television is the primary mode of campaign communication, and the transition to the Internet will have profound implications for campaign law and policy.



Nathaniel Persily | JON ROEMER

For years, much of the rhetoric and policy surrounding campaign finance has been predicated on television as the primary channel for communication. The corruption charged against our campaign-finance system arose in large part from the specter of rich individuals and groups spending billions on TV ads, drowning out the voices of the lesser-financed and overwhelming a captive audience with biased, uncontested messages that brainwashed them until Election Day.

This campaign-finance paradigm has governed regulation of campaign communication – such as the “stand by your ad” provision that leads candidates to “approve this message” on TV – as well as the way the constitutional concerns were weighed. Consider how Justice John Paul Stevens described the campaign-finance debate in his 2005 dissent in a Vermont case: “Just as a driver need not use a Hummer to reach her destination, so a candidate need not flood the airways with ceaseless sound-bites of trivial information in order to provide voters with reasons to support her.”

This “inundation” metaphor so familiar to campaign-finance discussions is more than a turn of phrase; it points to the critical role that the “captivity” of a TV audience, along with the limitations of the TV spectrum, have in our thinking about campaign finance. As campaigning moves to the Internet, the audience is no longer captive and there is no such thing as “spectrum space.”

The importance of this technological change is not limited to how we think about the campaign-finance problem, though. It has tangible regulatory implications.

First, our current campaign-finance laws and regulations have almost nothing to say about online campaigning – it is the political equivalent of the Wild West without sheriffs. Second, even if the Federal Election Commission were not comically dysfunctional and divided along party lines, it is not clear that any regulatory body could control campaigning on the Internet.

When a teenager in his mother’s basement in Moscow or a Saudi sovereign wealth fund can put up a YouTube video maligning or supporting presidential candidates, it is hard to see how a federal agency could do anything to control the messages potential voters might receive.

The regulatory challenges are not merely practical, though. Critical concepts in campaign-finance law, such as who is eligible for “the media” exception, turn on the technology of communication. Traditionally, the media was exempt from any regulations of spending on election-related communications, given that the government could not regulate Walter Cronkite or Tom Brokaw, for example, in their reporting of news that might be critical or beneficial to campaigns. But in the Internet age, when anyone can blog or tweet or podcast, there is no way to distinguish “the media” from everyone else.

While television advertising will still dominate the 2016 presidential campaign, the writing of its demise is already on the wall. Indeed, the much-reviled 2010 Supreme Court case, *Citizens*

United v. FEC, turns out to have been a case before its time.

The poster child for obscene levels of spending on TV ads by corporations, rich people and Super PACs, Citizens United was actually about an on-demand movie ("Hillary: The Movie") that viewers could download at their leisure. That style of communication with a non-captive audience, which was the exception in 2010, will soon become the rule in the age of Internet campaigning.

If there is to be regulation in this new environment, it will come not from government but from the platforms used for campaign communication. Firms, such as Facebook, Twitter and Google/YouTube, do not confront the constitutional or political obstacles that hinder government campaign reform. Their terms of service, regarding deception, incitement, harassment, privacy and obscenity, for example, are ones that would violate the First Amendment if the government mandated them.

With the shift of campaign communication to the Internet, new policies and practices will need to be developed. This transition provides an opportunity for reforms that might address many of the well-known pathologies of campaign financing, such as undisclosed spending, as well as dangers that a few firms could have disproportionate power over campaign-related speech.

As with all things Internet-related, predictions of utopia and dystopia abound. Perhaps the inexpensiveness of online campaign communication will open up a marketplace of ideas to a broader range of voices that could not get their message out when television dominated. Or perhaps the online cacophony will actually increase the price of getting one's message to the right people, especially if just a few portals provide the necessary infrastructure to capture and target an increasingly inattentive audience.

Making the right policy decisions now, during this period of fundamental transformation, will determine which future is in store for American political campaigns.

Nathaniel Persily is the James B. McClatchy professor of law at Stanford University.

reprints

## MORE CALIFORNIA FORUM

---

### YOU MAY LIKE

Sponsored Links by Taboola

**#1 reason not to buy a new computer**  
SpeedFixTool

**4 in 5 Americans Are Ignoring Buffett's Warning**  
The Motley Fool

**Why credit card interest makes no sense any longer**  
gIV...  
NextAdvisor

**Worst Exercise For Middle Age -- Ages You Faster**  
MAX Workouts Fitness Guide

## COMMENTS

Sign In Using The Social Network of Your Choice to Comment

To learn more about comments, please see the Comments FAQ.

[Terms](#) [Privacy Policy](#) [Social by Gigya](#)

We thank you for respecting the community's complete guidelines.

**0 Comments**

[Subscribe](#) [RSS](#)