







“[t]he costs incurred by an individual in creating an ad [are] covered by the Internet exemption from the definition of ‘expenditure’ so long as the creator is not also purchasing TV airtime for the ad he or she created.”<sup>19</sup> Consequently, “[f]or purposes of reporting [independent expenditures] under 11 CFR [§] 109.10, . . . creation costs [do] not become reportable independent expenditures [unless and] until the ad is publicly distributed or otherwise publicly disseminated”<sup>20</sup> — a principle the Commission has reaffirmed to the public many times since issuing Advisory Opinion 2008-10 (VoterVoter.com).<sup>21</sup>

In light of Checks and Balances’ uncontroverted sworn statements that its videos appeared solely on the Internet, and because there was no evidence the videos were posted to YouTube or any other website for a fee, we agreed with OGC that the communications (including any associated production costs) were exempt from FEC regulation. Accordingly, Checks and Balances had no obligation to report the communications as independent expenditures.<sup>22</sup>

Furthermore, neither video needed a disclaimer because, as OGC recognized, communications distributed only over the Internet do not require disclaimers.<sup>23</sup> As to persons other than political committees, disclaimers are required on only electioneering communications and public communications that contain express advocacy.<sup>24</sup> Checks and Balances’ videos, as noted, were not electioneering communications. And the definition of “public communication” excludes “communications over the Internet, except for communications placed *for a fee* on another person’s Web site.”<sup>25</sup> Since no facts suggested

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“expenditure” if those communications were made by a “a group of individuals who get together . . . and all of their activity is conducted through the Internet, and the Website contains . . . videos that are produced and contain express advocacy.” Tr. of Public Hearing on Internet Communications at 64–65 (June 29, 2005) (testimony of Mr. Robert Bauer). This commenter “absolutely” endorsed such an exemption. *Id.* at 65.

<sup>19</sup> Advisory Opinion 2008-10 (VoterVoter.com) at 7.

<sup>20</sup> *Id.* at 8 n.12.

<sup>21</sup> See, e.g., The Record, (FEC, D.C.), Dec. 2008, at 4 (“Costs incurred by an individual in creating an ad are exempt from the definition of ‘expenditure,’ as long as the creator is not also purchasing TV airtime for the ad he or she created.”). In fact, the language from Advisory Opinion 2008-10 (VoterVoter.com) was featured verbatim in the Commission’s monthly *Corporate and Labor Guide Supplement* and *Non-Connected Supplement* publications for over two-and-a-half years, from 2008 until the Commission stopped publishing those supplements in 2011. See, e.g., *Corporate & Labor Guide Supp.*, The Record (FEC, D.C.), Aug. 2011, at 36; *id.*, Jul. 2011, at 36; *id.*, Feb. 2010, at 34; *id.*, Mar. 2009, at 26; see also, e.g., *Nonconnected Supp.*, The Record, Aug. 2011, at 22.

<sup>22</sup> See 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)) (“The term ‘independent expenditure’ means an *expenditure* by a person . . . .” (emphasis added)).

<sup>23</sup> See First General Counsel’s Report at 10 (“We agree that communications distributed on the internet require no disclaimer.”).

<sup>24</sup> See 11 C.F.R. § 110.11(a)(2) & (4).

<sup>25</sup> *Id.* § 100.26 (emphasis added).

Checks and Balances placed its videos on any website for a fee, they did not require disclaimers.

### III. CONCLUSION

Over eight years ago, this Commission unanimously acknowledged that “[t]he Internet has changed the way in which individuals engage in political activity by expanding the opportunities for them to participate in campaigns and grassroots activities.”<sup>26</sup> Recognizing the Internet as a “unique and evolving mode of mass communication and political speech . . . distinct from other media,” the Commission declared it would take a “restrained regulatory approach” with respect to online political activity.<sup>27</sup> In this spirit, the Commission promulgated the Internet exemption to “remove any potential restrictions” on the ability of individuals and groups to use the Internet as a tool for civic engagement and political advocacy.<sup>28</sup> Since then, this freedom has gained wide acceptance, as evidenced by the hundreds of thousands of political videos, websites, blogs, and other social media posted on the Internet without so much as an inquiry by the Commission. Regrettably, the 3-to-3 vote in this matter suggests a desire to retreat from these important protections for online political speech — a shift in course that could threaten the continued development of the Internet’s virtual free marketplace of political ideas and democratic debate.

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<sup>26</sup> *Internet Communications*, 71 Fed. Reg. 18,589, 18,603 (Apr. 12, 2006).

<sup>27</sup> *Id.* at 18,589.

<sup>28</sup> *Id.*

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LEE E. GOODMAN  
Chairman

Oct. 24, 2014

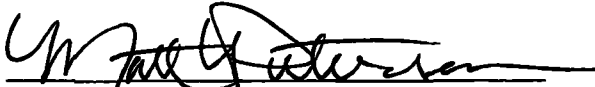
Date



CAROLINE C. HUNTER  
Commissioner

10/23/14

Date



MATTHEW S. PETERSEN  
Commissioner

10/23/2014

Date

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