



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Kansans for Tiahrt and George Bruce in his ) MUR 6849  
official capacity as treasurer, *et al.* )

**CONCURRING STATEMENT OF  
COMMISSIONER LEE E. GOODMAN**

The Complaint in this matter included allegations that Respondent Michael O'Donnell and his employer, Hartman Oil, Inc., made unlawful in-kind contributions to Kansans for Tiahrt by "republishing" Tiahrt's campaign materials in "tweets" using the Twitter service. The Commission found no reason to believe a violation occurred because the tweets in question "did not republish any statement that originated from Tiahrt's campaign materials, so the Act's republication provision does not apply."<sup>1</sup> I write separately to supplement the Commission's rationale with the observation that "re-tweets" and similar online postings and links to campaign websites and campaign materials would not constitute an in-kind contribution even had the Respondents "re-tweeted" campaign materials. There are two bases for this observation.

First, Commission regulations expressly exempt free communications over the Internet from being either contributions or expenditures.<sup>2</sup> The Commission most recently applied these exemptions to an analogous factual situation. An individual using the equipment and services of a corporation purchased, registered, and operated the URL "obama.com" that redirected viewers to the contribution page of the official website of Obama for America, the President's re-election committee.<sup>3</sup> The Complaint alleged that the URL was purchased for a considerable sum of money and drove thousands of contributors to the Obama campaign's website, accounting for significant contributions to the campaign.<sup>4</sup> The Commission unanimously concluded that such Internet-based support for Obama for America was not a contribution or expenditure under the

<sup>1</sup> Matter Under Review 6849 (Kansans for Tiahrt), Factual & Legal Analysis at 7.

<sup>2</sup> 11 C.F.R. §§ 100.94 (exemption from definition of contribution), 100.155 (exemption from definition of expenditure). The exemptions apply regardless of who owns the equipment or services used by the individual or group. *Id.*, §§ 100.94(a)(2), 100.155(a)(2). The only exception to this broad regulatory exemption is a paid advertisement on a third-party's website, which the Commission regulates like any other paid advertising.

<sup>3</sup> Matter Under Review 6772 (Obama for America).

<sup>4</sup> Matter Under Review 6772 (Obama for America), Factual and Legal Analysis at 3-4.

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Internet exemption rules.<sup>5</sup> Likewise, free use of the Twitter communication platform to re-tweet campaign materials clearly falls within the regulatory exemptions.

Second, in addition to the express regulatory exemptions, the Commission has recognized the reality that people and organizations post information online without incurring any measurable expense. The Commission observed this point when it adopted the Internet freedom rule in 2006.<sup>6</sup> The Commission acknowledged the point more recently in a matter where an organization had researched, drafted, and posted dozens of press releases critical of federal candidates on its own website and disseminated similar messages via mass emails.<sup>7</sup> The Commission unanimously concluded that despite wide dissemination, the actual costs of dissemination over the Internet would not have measured even \$250<sup>8</sup> – even assuming the Commission could isolate or measure any such intangible costs.<sup>9</sup>

Therefore, both as a matter of black letter law and established regulatory practice, an individual's or group's re-dissemination of campaign materials using Internet-based

<sup>5</sup> *Id.* at 6 (“Respondents’ activities related to the website [www.obama.com](http://www.obama.com) are exempt from the Act’s definitions of ‘contribution’ and ‘expenditure’”) (citing 11 C.F.R. §§ 100.94, 100.155); *see also*, Matter Under Review 5743 (Betty Sutton for Congress, *et al.*), Statement of Reasons of Commissioners Ellen Weintraub and Hans von Spakovsky at 4 (“We are reluctant to apply the republication regulation to a case involving the use of downloaded photographs, from an unrestricted [campaign] website, that were only a small part of larger mailers created by EMILY’s List.”).

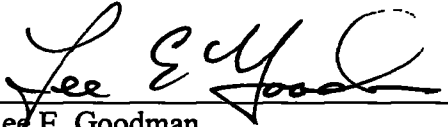
<sup>6</sup> *Internet Communications*, 71 Fed. Reg. 18,594, 18,596 (Apr. 12, 2006) (observing “there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients”).

<sup>7</sup> Matter Under Review 6795 (CREW).

<sup>8</sup> Matter Under Review 6795 (CREW), Factual and Legal Analysis at 5 (“[I]t does not appear that the costs of posting press releases on CREW’s website and sending a mass email would have triggered the \$250 independent reporting threshold”); *see also*, Matter Under Review 5523 (Local 12 United Assoc. Plumbers), Statement of Reasons of Chairman Scott Thomas, Vice Chairman Michael Toner and Commissioners Danny McDonald and Ellen Weintraub at 2 (“[T]he expenditures associated with these express advocacy and solicitation website communications were negligible.”).

<sup>9</sup> The Commission long ago abandoned any effort to make citizens account for costs associated with their personal computers, software, production efforts, Internet access charges, web hosting expenses and similar resources used to communicate over the Internet. Although the Commission started down that path two decades ago in Advisory Opinion 1998-22 (Leo Smith) (“AO 1998-22”), the Commission soon realized the folly in this approach and superseded that advisory opinion in the 2006 Internet freedom rulemaking. *See* 71 Fed. Reg. 18,589, 18,605 n.49 (April 12, 2006) (superseding AO 1998-22); *see also*, *Coordination Regulations*, 65 Fed. Reg. 76138, 76145 (December 6, 2000) (superseding AO 1998-22 in part); Advisory Opinion 2008-10 (VoterVoter.com) (concluding production costs for online communications are unregulated); Matter Under Review 6729 (Checks and Balances for Economic Growth), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 3-4 (same); Lee E. Goodman, *The Internet: The Promise of Democratization of American Politics*, in *LAW AND ELECTION POLITICS: THE RULES OF THE GAME* (M. Streb, ed., 2013).

communication tools such as Twitter, links, emails, and website postings are not contributions or expenditures regulated by the Commission.

  
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Lee E. Goodman  
Commissioner

March 29, 2016  
Date

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