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January 15, 2015

Via Online Submission

Federal Election Commission
Attn: Amy L. Rothstein
Assistant General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: Advance Notice of Proposed Rulemaking 2014-12

Dear Ms. Rothstein:

Our Generation, Inc. ("OGI") submits through counsel, the following comments on the Advance Notice of Proposed Rulemaking, 79 Fed. Reg. 62361 (October 17, 2014) ("ANPRM"), regarding whether to begin a rulemaking to revise disclosure regulations. On behalf of Our Generation, Inc, Heidi Abegg requests an opportunity to testify on this rulemaking.

OGI is a § 501(c)(4) non-profit organization dedicated to government reform through grassroots organization and public education and discussion of issues. OGI regularly expresses its opinions on issues in the media and uses both the Internet to educate and lobby the public. Some of OGI's positions on issues are unpopular and controversial and for these reasons cause strong, and often adverse reactions. These strong positions on policies and issues have led to attacks by its opponents.

In the ANPRM, the Commission seeks comment on whether it should "improve its collection and presentation of campaign finance data" which presumably means, at least in part, regulation of the Internet. OGI asserts that the Internet should continue to remain a robust and vibrant space for political discussion. Therefore, it urges the Commission to continue to take a hands off approach. As officials of the executive branch who have independently taken an oath to uphold the Constitution, the Commission must promulgate (or refrain from promulgating) regulations in a manner that is least offensive to the First

Amendment and that least infringes upon the rights of citizens to engage in constitutionally protected speech. Any ties must go to the speaker, because the law “must give the benefit of any doubt to protecting rather than stifling speech.” *FEC v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2667 (2007) (citation omitted). Leaving the Internet largely unregulated, the Commission gives the benefit of any doubt to millions of Americans for whom the Internet is their most impactful medium for their political speech.

The Commission last considered regulating the Internet in 2005. See 70 Fed. Reg. 16967 (April 4, 2005). Has anything changed since the Commission unanimously exempted political Internet speech in 2006? According to Commissioner Ravel, it is the Internet’s “growing force in the political arena.” See MUR 6729 Statement of Reasons of Vice Chair Ravel at 2. Rather than celebrate and encourage such growth by continuing its hands off approach, the Commission now asks whether it should step in and regulate such speech.¹ The answer is a resounding no.

I. A Hands Off Approach is Consistent with the First Amendment and Democratic Principles.

By keeping hands off the Internet, the Commission will avoid taking the autonomy of speech away from citizens and associations and placing it in the hands of government bureaucrats. “In the free society ordained by our Constitution, it is not the government, but the people – individually as citizens and candidates and collectively as associations and political committees – who must retain control over the quantity and range of debate on public issues in a political campaign.” *Buckley v. Valeo*, 424 U.S. 1, 57 (1976). A hands off approach is consistent with the Constitution, because citizens retain control over their Internet speech.

In some nations, there is no free speech and citizens have limited or blocked access to the Internet. See <http://cpj.org/reports/2012/05/10-most-censored-countries.php>. When governments fear citizens, they regulate the Internet. Citizens need to remain uncensored and unregulated, able to hold government accountable, without worrying about reporting and government investigation for failure to do so.

¹ While OGI does not support further regulation of political Internet speech, it believes that Congress, not the Commission, is the appropriate body to consider regulation. The fact that Congress has not seen a need to regulate political speech on the Internet, and has proposed legislation protecting such speech, should give the Commission serious pause. See S. 678, 109th Cong. (2005); H.R. 1605, 109th Cong. (2005) (amending Federal Election Campaign Act to exclude communications over the Internet from the definition of public communication).

The Commission quotes *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014) in the ANPRM without any context, to justify the inclusion of disclosure in the ANPRM. *McCutcheon* is inopposite because it involved contributions and their disclosure, not independent speech. The fact that the FEC may or may not be able to make reports and databases of potentially corrupting *contributions* available on the Internet almost immediately is irrelevant to the question of whether Internet speech should be regulated. See 79 Fed. Reg. at 62363.

While independent Internet speech may be “growing force,” it is not corrupting.² In fact, it is oftentimes a counter to government and large groups. Individuals and groups who have been drowned out in traditional media can go to the Internet and make their voices heard as well as correct speech from other media. The Internet has supported the growth of the diversity of political speech, which is necessary for democracy. Individuals are no longer isolated and can find political speech from around the country. Citizens are no longer limited to hearing only viewpoints expressed in traditional media.

II. Internet Communications are Distinguishable From Traditional Print and Media Communications and Therefore, Warrant a Hands Off Approach.

Internet speech is fundamentally different than print and broadcast media speech. Foremost is the fact that the Internet levels the playing field; it is an equalizer. The Internet is nearly free and there is unlimited access, unlike traditional media, which is expensive to access and has limited space. Most can't make a million dollar ad buy; however, anyone with Internet access can put up a video on the Internet. As noted by the Webby Awards, “[t]he Web has leveled the field at every stage from creation to distribution. . . .”

<http://www.webbyawards.com/press/press-releases/webby-film-and-video-awards-unveil-nominees-for-oscars-of-the-internet/>. Many free or low cost editing tools are available to help a citizen create impactful speech. See, e.g., <http://www.techradar.com/us/news/software/applications/best-free-video-editing-software-9-top-programs-you-should-download-1136264>.

The Internet is the twenty-first century printing press. Nearly every American citizen has access to the Internet, and therefore, a chance to be heard. An individual doesn't need a multi-million dollar TV budget to have an impact. It doesn't matter who you are – if you have Internet access, you can speak and reach potentially millions of people. On the Internet, no one rejects your video or

² The Supreme Court has consistently permitted government regulation of speech when it addresses speech that is corrupting or creates an appearance of corruption of the political system. *Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986).

edits your words; one has almost complete control over their speech. On the Internet, your speech is limited only by your creativity.

Two examples illustrate this point. In 2007, Phil de Vellis anonymously created a video ad (known as the "Vote Different" ad) featuring Hillary Clinton using Apple's 1984 ad. See http://www.huffingtonpost.com/phil-de-vellis-aka-parkridge/i-made-the-vote-different_b_43989.html. After journalistic sleuthing outed him as the creator of the ad, he explained that he made the ad to show that an "individual citizen can affect the process. There are thousands of people who could have made this ad. . . ." *Id.* Using a Mac and some software, he said that "[t]his ad was not the first citizen ad, and it will not be the last." *Id.* Simon Rosenberg, the president of New Democrat Network, said that the Hillary ad signaled "'the emergence of a new era in political advertising' in which an individual can cheaply and easily make an impact on the political discussion." <http://nymag.com/news/politics/encyclopedia/youtubevideo/>.

Also in 2007, the "I Got a Crush. . . on Obama" satirical ad aired. This Internet video quickly went viral. President Obama said of the ad, "it's just one more example of the fertile imagination of the Internet." <http://www.theguardian.com/news/2008/feb/17/barackobama.uselections2008>. The ad, produced in part by a twenty-one year old and costing only about \$1,000, demonstrated "the democratic nature of the Internet." <http://abcnews.go.com/Politics/story?id=3275802>.

Chairman Ravel posits that the Commission's protection of Internet speech "has been stretched to cover slickly-produced ads aired solely on the Internet but paid for by the same organizations and the same large contributors as the actual ads aired on TV." MUR 6729 Statement of Reasons of Vice Chair Ravel at 2. Why should a TV political message require the same disclosure if placed on the Internet? It is not because the involvement of money is the same in each case. The cost of the TV message will be far greater than the cost of the Internet message. What purpose does Internet disclosure really serve if there is no influence of money involved? Deterrence of opposing speech? Opportunity for harassment?

Furthermore, what is a "slickly-produced ad?" As the two examples above show, it is easy for individuals to create videos and other Internet speech for very little cost. Should the Commission dismiss those examples, OGI's video contest also demonstrates how easy (and free or almost free) it is for citizens to create professional "slick" looking ads without the help of expensive professional consultants. See <http://ourgeneration.org/video-contest/>.

Should the Commission attempt to engage in line drawing between "slick" ads and other types of Internet speech, it will quickly find itself in a

constitutional morass. Furthermore, it will be nearly impossible to distinguish “slick” speech from other speech. Another Internet video demonstrates this point nicely. In 2008, a video featuring the McCain Girls in “Raining McCain” went viral. <http://nymag.com/news/politics/encyclopedia/youtubevideo/>. Numerous professionals could not initially determine whether the ad was political, performance art, or satire. *Id.* As one commentator noted, “I believe the YouTube era begins the age when it is impossible to tell parody/irony/performance art from completely sincere product.” *Id.* If professionals can’t tell the difference, how will the Commission? A hands off approach will avoid this unconstitutional entanglement in political speech.

III. Regulation of Political Internet Speech Will Have a Chilling Effect, Lead to Harassing Complaints, and Result in Burdensome Investigations.

Should the Commission adopt regulations to require reporting of Internet speech, ordinary citizens will be chilled and will refrain from speaking. Reporting requirements and the attendant violations for failure to comply will lead many citizens to avoid speaking. Ordinary citizens who have no understanding of the complexities of express advocacy or electioneering windows will find themselves in violation of the law merely for expressing an opinion. Those with the resources to hire attorneys and CPAs will continue to speak.

Should the Commission attempt to line draw and reach only “slick” ads, the result will be harassing complaints filed against opponents, and burdensome investigations. As demonstrated by the “Vote Different” and “Raining McCain” ads, it is nearly impossible to tell from the face of an ad whether it is for a political, satire, or performance art purpose. Therefore, the Commission should not engage in line drawing but instead continue to largely exempt Internet speech from regulation.

Regulation of Internet speech will be difficult to enforce. Will the Commission hire forensic investigators to determine who placed a video on the Internet? Will subpoenas be issued to those who repost material to determine who is behind an anonymous video? Will government officials patrol the far reaches of the Internet looking for non-compliant speech? Regulation of Internet speech is an invitation to burdensome and far reaching investigations by FEC officials. It will also lead to an unmanageable amount of complaints filed by citizens against anyone whose Internet speech offends or is in opposition to their own.

IV. Conclusion

Our democracy is best served by allowing political speech to remain unregulated, uncensored and available to all. In the nearly ten years since the Commission last looked at regulating Internet activity, the Internet, left unchecked, has been partly responsible for increased political participation and involvement. Such participation and involvement should be encouraged, not stifled by government regulation. OGI urges the Commission to continue its hands off policy and leave the Internet largely unregulated.

Respectfully submitted,

/s/

Heidi K. Abegg

Alan P. Dye

Counsel for Our Generation, Inc.