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Subject Fw: Comment on Advisory Opinion 2010-08
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Subject Comment on Advisory Opinion 2010-08

Attached is a comment on the draft advisory opinion. We'll bring the original with us to the meeting tomorrow.

Best regards,

Amir

Amir Cameron Tayrani

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June 9, 2010

Ms. Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Client:

Re: *Advisory Opinion 2010-08*

Dear Ms. Duncan:

I write on behalf of Citizens United in response to Drafts A and B of Advisory Opinion 2010-08. Although the short 24-hour public comment period precludes us from filing a more detailed response, little analysis is necessary to reveal the legal and logical flaws in Draft B of the Advisory Opinion, which would limit the media exception to Citizens United's distribution of films through "broadcast, cable, or satellite television" and exclude from the scope of the exception films distributed by theatrical release and as DVDs.

This artificially narrow interpretation of the media exception is arbitrary, irrational, and unreasonable. Draft B is flatly inconsistent with the Commission's recent acknowledgement that the media exception "protects news stories, commentaries, and editorials *no matter in what medium they are published.*" Explanation and Justification for Final Rules on Internet Communications, 71 Fed. Reg. 18,589, 18,608 (Apr. 12, 2006) (emphasis added).

Historically, theaters are a traditional forum for conveying news, commentary, and other information to the public. Indeed, until the invention of the television, Americans routinely visited movie theaters to view film footage of news event, including extensive coverage of World War II. There is no logical basis for denying the media exception where a viewer purchases a ticket to view a film in a movie theater, but to grant the exception where the same person pays a cable or satellite service a fee to view the same film on television.

As for DVDs, similar to the Internet, they did not exist when the media exception was first enacted in 1974. Denying the media exception to films distributed by DVD is wholly inconsistent with the Commission's past practice of "extend[ing] the media exemption to forms of media that did not exist or were not widespread when Congress enacted the exemption in 1974." 71 Fed. Reg. at 18,608.

GIBSON DUNN

Ms. Thomasenia P. Duncan, Esq.
June 9, 2010
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For each of these reasons, the Commission should adopt Draft A of Advisory Opinion 2010-08.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Theodore B. Olson". The signature is fluid and cursive, with the first name "Theodore" being the most prominent.

Theodore B. Olson