



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Statement of Commissioner Ellen L. Weintraub
on the Notices of Proposed Rulemaking to Address *Citizens United***

December 16, 2011

The Commission voted yesterday on two draft notices of proposed rulemaking (“NPRMs”) that address certain regulations affected by *Citizens United*.¹ Agenda Document 11-73 would have provided the opportunity to seek public comment on the Commission’s regulations governing disclosure of independent expenditures, in light of the changes resulting from *Citizens United*. Agenda Document 11-74 proposes revision of certain regulations governing political activity by corporations and labor organizations. I favor engaging with the public on these and the many other concerns that *Citizens United* raises. It should not require an Act of Congress to persuade the FEC to reexamine its own regulations, in light of a changing landscape. I thus would have welcomed the chance to approve both NPRMs. Nevertheless, as I explained in greater detail in my [June 17, 2011 statement](#), I do not believe that the Commission can begin to comply with *Citizens United* while completely ignoring disclosure. For this reason, I could not support Agenda Document 11-74 after Agenda Document 11-73 failed.

The next election promises to be the most expensive in history. Hundreds of millions of dollars will be spent by outside groups. More and more of these dollars come from organizations that do not disclose information about their donors. As in the last cycle, most of this money likely will be concentrated on races in a few key states and districts. In some of these races, outside spending may dominate the debate.² And money from outside groups likely will go disproportionately to fund negative advertisements.³

Such a proliferation of anonymous, negative speech cannot be good for our democracy. Nor is it consistent with the view of eight Justices of the Supreme Court, who ruled that “effective disclosure” is what “enables the electorate to make informed decisions and give proper weight to different speakers and messages.”⁴ Moreover, as Justice Scalia recently noted in another case: “Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. . . . [A] society which . . . campaigns anonymously . . . hidden from public scrutiny and protected from the accountability of criticism . . . does not resemble the Home of the Brave.”⁵ I remain hopeful that the Commission will one day take this insight to heart.

¹ See *Citizens United v. FEC*, 558 U.S. ___, 138 S.Ct. 876 (2010).

² For example, in 2010, outside groups (excluding political parties) spent approximately \$34 million in just one Senate contest, in Colorado. That was more than twice the amount spent by both major party nominees combined.

³ In the ten 2010 Senate races that drew the most outside spending, almost 70% of outside money (excluding that from political parties) was spent to run negative advertisements.

⁴ *Citizens United*, 138 S.Ct. at 916.

⁵ *Doe v. Reed*, 561 U.S. ___, 130 S.Ct. 2811, 2837 (2010) (Scalia, J., concurring in judgment).