



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF VICE CHAIR ANN M. RAVEL ON THE *CITIZENS UNITED V. FEC*
AND *MCCUTCHEON V. FEC* RULEMAKINGS**

October 9, 2014

Today, the Federal Election Commission accomplished two things it has been unable to do for far too long: we reached a compromise that will provide clearer guidance to the public and regulated community; and we invited the public to comment and give testimony at a public hearing on some of the major questions affecting our political system. But this should be only the first step in a larger effort to update Commission regulations, respond to Supreme Court decisions, and directly engage the public in the process.

Given the significant changes to campaign finance resulting from the Supreme Court's decisions in *Citizens United* and *McCutcheon*, the Commission has a duty to provide the public and regulated community as much clarity as we can about what the rules are and how to comply with the law. The Commission begins to fulfill its obligation today by approving a rulemaking package containing two new technical rules implementing aspects of those Court decisions. Like any compromise, these new rules are more narrowly focused, technical, and do not fully address all the issues in ways that I necessarily would want. But more than four years after the *Citizens United* decision, this compromise allows the Commission and the public to finally move forward.

1. *Citizens United v. FEC*, 558 U.S. 310 (2010).

Commission action on the *Citizens United* decision was long overdue. After holding a public hearing more than two years ago, the Commission's rulemaking languished. When I joined the Commission last October, I made it a priority to find a way to update our regulations to make them consistent with the law. The *Citizens United* rule approved today is a necessary initial response to the Court's decision in that case. For the first time, the Commission is providing clear guidance to the public, corporations, and labor organizations seeking to engage in political activity in the wake of *Citizens United*. The *Citizens United* rule updates the Commission's regulations as follows:

1. Removing the ban on corporate and labor organization independent expenditures and electioneering communications, which the Supreme Court ruled was unconstitutional in *Citizens United* (previously located at 11 C.F.R. § 114.2(b)(2), (b)(3));

2. Informing corporations and labor organizations how to report electioneering communications and independent expenditures to the Commission (now located at 11 C.F.R. § 114.10(b));
3. Reiterating the continued prohibition on corporate or labor organization spending that is coordinated with a candidate or political party (11 C.F.R. § 114.2(b)(1), 11 C.F.R. § 114.10(a));
4. Advising corporations and labor organizations what types of communications remain exempt from the definition of “expenditure,” consistent with prior Commission regulations exempting such communications (11 C.F.R. § 114.1(a)(2); 11 C.F.R. § 114.3(c)(4); 11 C.F.R. § 114.4(c)(2)-(6), (d));
5. Removing a superfluous exception that previously allowed corporations and labor organizations to make a certain type of electioneering communication (11 C.F.R. § 114.14, 114.15); and
6. Removing cross-references to those superfluous electioneering communications rules elsewhere in Commission regulations (formerly included at 11 C.F.R. § 104.20(c)(7),(8), and (9)).

Because the Commission’s action today is the result of a compromise, all of the significant issues raised by the Supreme Court’s decisions are not addressed. Although the *Citizens United* decision affirmed the Act’s donor disclosure requirements, full public disclosure of corporate and labor organization independent spending is not yet a reality and will have to be tackled in the future. Additionally, since *Citizens United* now permits independent corporate spending on elections, the Commission must clarify in a future rulemaking that U.S. companies owned or controlled by foreign nationals are barred from engaging in election-related spending. Finally, the current rules do not clearly prohibit corporations and labor organizations from coercing their employees and members into providing financial or other support for the corporation’s or labor organization’s independent political activities. In the same spirit that resulted in the compromise approved today, the Commission should act quickly to provide much needed clarity and guidance concerning these issues.

2. *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).

As a public agency, the Commission has a duty to be transparent, responsive, and to directly engage the public in a constructive dialogue concerning the impact of its policymaking on our democracy. Today, the Commission begins to fulfill that obligation by approving an Advance Notice of Proposed Rulemaking (“ANPRM”) allowing public comment and scheduling a public hearing for February 11, 2015, to discuss what policies the Commission should consider implementing to effectively address corruption in the political process. We need to hear from people on these issues.

The *McCutcheon* ANPRM is a groundbreaking action for the Commission. While the *McCutcheon* Interim Final Rule approved today merely strikes the rules rendered invalid by the *McCutcheon* decision, the ANPRM asks the public wide-ranging questions on how to improve Commission regulations to prevent corruption in the political process. Chief Justice Roberts, in his plurality opinion, wrote that such rules should “properly refocus the inquiry on the delinquent actor: the recipient of a contribution within the base limits, who then routes the money in a

manner that undermines those limits.”¹ Through the ANPRM, the Commission seeks public comment about how to refocus its rules. Instead of solely enacting a narrow, reactive, and highly technical regulation, the Commission seeks wide-ranging public comment on issues fundamental to campaign finance. The ANPRM asks how to improve rules on earmarking, joint fundraising committees, committee affiliation, and public disclosure. In addition to accepting written public comments, the public will be able to provide testimony at the February 11th hearing. Once the Commission has reviewed the public’s comments and testimony, we will propose draft regulations that address the public’s and Chief Justice Roberts’s concerns. I applaud my colleagues’ willingness to open the Commission to the public to offer its insights concerning the significant questions affecting campaign finance in American political life. I look forward to continuing this productive collaboration.

Today, the Commission provides much-needed and long overdue updates to Commission regulations. We also emphasize how important it is to have the public participate in our policymaking process. But these are only first steps. The Commission now needs to hear from the American people about how Commission regulations may better protect the integrity of our democracy.

October 9, 2014
Date

Ann M. Ravel
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Vice Chair

¹ *McCutcheon v. FEC*, 134 S. Ct. at 1459.