



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Statement of Commissioner Ann M. Ravel on Modernizing Commission Rules in Response
to *Citizens United v. FEC*
(REG 2015-03 and REG 2015-04)**

March 10, 2016

The Supreme Court's 2010 *Citizens United v. FEC* decision, and the decisions interpreting that decision in the lower courts, have transformed how political campaigns are run and how money is spent in elections.¹ The impact of these decisions has become even more apparent as we approach another presidential election. Spending to date by outside groups on the 2016 election is roughly triple the amount spent at this time in the 2012 election cycle, and spending by groups that do not disclose their donors has more than doubled.² Meanwhile, while spending has increased, the number of Americans contributing to campaigns is miniscule—less than 1% of the population contributed more than \$200 to a political candidate or committee in 2012.³ The 2014 midterm election was the most expensive in history, yet it also marked the first time in years that the total number of donors decreased.⁴ Unsurprisingly, as spending has increased and the number of donors has decreased, trust in government has declined.⁵ In 2015, a Chapman University survey found that Americans' top fear was the corruption of government officials.⁶

¹ See *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d. 686 (D.C. Cir. 2010); *Carey v. FEC*, 791 F. Supp.2d 121 (D.C. Cir. 2011).

² Total Outside Spending by Cycle Thru March 8th of Election Year, Excluding Party Committees, OPENSECRETS.ORG, https://www.opensecrets.org/outsidespending/cycle_tots.php?cycle=2016&view=Y&chart=N#summ (last visited Mar. 10, 2016); Outside Spending by Disclosure, Excluding Party Committees, OPENSECRETS.ORG (Mar. 10, 2016) <https://www.opensecrets.org/outsidespending/disclosure.php?range=ytd>.

³ *Donor Demographics*, OPENSECRETS.ORG, <http://www.opensecrets.org/bigpicture/donordemographics.php?cycle=2012> (last visited Mar. 8, 2016).

⁴ Russ Choma, *Final Tally: 2014's Midterm Was Most Expensive, With Fewer Donors*, OPENSECRETS BLOG (FEB. 18, 2015), <http://www.opensecrets.org/news/2015/02/final-tally-2014s-midterm-was-most-expensive-with-fewer-donors/>.

⁵ See Pew Research Center, *Public Trust in Government: 1958-2015* (Nov. 23, 2015) <http://www.people-press.org/2015/11/23/public-trust-in-government-1958-2015/>.

⁶ See Chapman University, *Survey of American Fears, Wave 2* (Oct. 13, 2015) <http://blogs.chapman.edu/wilkinson/2015/10/13/americas-top-fears-2015/>.

Shortly after joining the Commission in late 2013, I concluded that our rules were woefully out of date, and were contributing to a system that fostered distrust in and disengagement from the political process. As a first step in modernizing our rules, in October 2014 I voted with the three Republican commissioners to ensure that our rules were consonant with the *Citizens United* decision.⁷ This initial rulemaking effort, which had languished at the Commission for years prior to my arrival, was necessary to provide guidance to the public, and to remove unconstitutional provisions from our rulebook.⁸ At the time I voted to support those changes, my Republican colleagues agreed that providing such guidance to the public and those regulated by the Commission was an important reason to update the rules. I took that first step with the full expectation that we would next grapple with the larger issues raised by *Citizens United* and its progeny.

But the Commission has failed to act, even though pressing regulatory questions remain unanswered and we have an obligation to provide much-needed guidance to the public and those we regulate. Our rules must ensure better disclosure of the sources of outside political spending, stronger safeguards against foreign corporate money infiltrating U.S. elections, and clearer prohibitions on corporations and labor unions coordinating with candidates and coercing their employees and members to engage in political activity.

After years of inaction, Commissioner Ellen Weintraub and I took the extraordinary step of filing a petition with the Commission in June 2015, asking the FEC to promulgate new rules to address these issues.⁹ Our Republican colleagues sought to prevent the public from commenting on our proposal, so two organizations filed versions of our original petition that were ultimately published for public comment.¹⁰

In response to this rulemaking petition, the Commission received approximately 11,759 comments from the public. Over 97% of commenters—11,414 of them—voiced support for the proposed rule changes.¹¹ Despite clear public support, the three Republican commissioners voted against even opening a rulemaking on that petition.¹² Opening a rulemaking would have

⁷ See Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 Fed. Reg. 62,797-819 (Oct. 21, 2014) (codified at 11 CFR Parts 104 and 114).

⁸ See Rulemaking Record for REG 2010-01 Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (*Citizens United*), available at <http://sers.fec.gov/fosers/> (search for “REG 2010-01”); Statement of Commissioner Ann M. Ravel on the *Citizens United v. FEC* and *McCutcheon v. FEC* Rulemakings, dated October 9, 2014, available at http://www.fec.gov/members/ravel/statements/CU_McCutcheon_Stmt_Signed_10-9-14.pdf.

⁹ See Letter from Ann M. Ravel and Ellen L. Weintraub to the Federal Election Commission, available at http://www.fec.gov/members/statements/Petition_for_Rulemaking.pdf.

¹⁰ See Rulemaking Petition: Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (*Citizens United*), 80 Fed. Reg. 45,116 (Jul. 29, 2015).

¹¹ Public comments available at <http://sers.fec.gov/fosers/> (search for “REG 2015-04”).

¹² See Certification for Motion to Open a Rulemaking in REG 2015-04 in Response to Public Comment, dated December 18, 2015, available at <http://sers.fec.gov/fosers/showpdf.htm?docid=346628>.

afforded the Commission the opportunity to engage in a thoughtful, meaningful exploration and analysis of how to respond to court cases that have clearly rendered some of the Commission's rules outdated. A rulemaking proceeding would have allowed the Commission to enter into a deliberative process in which campaign finance attorneys, those regulated by the Commission, and the public could have provided their views on specific proposed changes to our rules by submitting written comments and giving oral testimony at a public hearing. The commissioners, in consultation with the Commission's attorneys, could then have reviewed various policy options and negotiated final rules. Instead, three commissioners refused to even engage in a dialogue with the public and those regulated by the Commission about how to improve our rules in a rapidly changing campaign finance system.

In yet another blow to the public's interest, at the same time that the Commission was considering the petition addressing the impact of *Citizens United*, the Commission was also reviewing proposals to revise the rules applicable to political parties and to shore up the Commission's limited and outdated rules limiting coordination between candidates and outside groups.¹³ Along with my colleague Commissioner Ellen Weintraub, I submitted a rulemaking proposal to address the pressing issue of single-candidate super PACs that coordinate closely with campaigns. The proposal would have modernized our outdated coordination regulations and prevented the circumvention of contribution limits.

I supported a motion to open a rulemaking to consider both the coordination proposal and Commissioner Lee Goodman's proposal to revise political party regulations, but again the three Republican commissioners voted against opening a rulemaking on these important issues, foreclosing meaningful public comment and Commission action on significant and timely regulatory changes.¹⁴

This agency is principally responsible for implementing and enforcing our campaign finance laws, and yet we have failed to address some of the biggest changes in the system since *Citizens United*. One is left to ask: why do the Republican commissioners not want to hear from scholars, campaign finance practitioners and the public? Are they afraid of what they might learn?

March 10, 2016

Date


Ann M. Ravel
Commissioner

¹³ Memorandum from Commissioners Ann M. Ravel and Ellen L. Weintraub Re: Coordination Rulemaking Proposal (Nov. 16, 2015), available at http://www.fec.gov/agenda/2015/documents/mtgdoc_15-54-d.pdf; Memorandum from Commissioner Lee E. Goodman Re: Regulatory Relief for Political Parties (Oct. 20, 2015), available at http://www.fec.gov/agenda/2015/documents/mtgdoc_15-54-a.pdf; Memorandum from Commissioner Lee E. Goodman Re: Regulatory Relief for Political Parties – Revised Resolution (Nov. 16, 2015), available at http://www.fec.gov/agenda/2015/documents/mtgdoc_15-54-a-1.pdf.

¹⁴ See Minutes of an Open Meeting of the Federal Election Commission, at 11-12 (Dec. 17, 2015), available at http://www.fec.gov/agenda/2016/documents/mtgdoc_16-04-a.pdf.