

January 20, 2011



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF VICE CHAIR CAROLINE C. HUNTER AND
COMMISSIONERS DONALD F. McGAHN II AND MATTHEW S. PETERSEN
ON NOTICE OF PROPOSED *CITIZENS UNITED* RULEMAKING**

Today we support a rulemaking to comply with the holdings of the Supreme Court's landmark opinion in *Citizens United v. FEC* and strike the regulatory provisions prohibiting corporations and labor unions from making either independent expenditures or electioneering communications. We have received many questions on these issues as a result of *Citizens United*; without a rulemaking, the Commission is prevented from answering even basic questions about these regulations in Commission publications and in our valuable seminars.

Our colleagues support a much broader rulemaking, addressing not only what the Supreme Court in *Citizens United* struck down, but also provisions that the Court either upheld or expressly refused to review. We cannot support such a broad approach to the *Citizens United* rulemaking.

Citizens United struck down the ban on corporate and labor union independent expenditures and electioneering communications. However, the Court upheld the current statutory and regulatory disclaimer and disclosure requirements on independent expenditures and electioneering communications. Moreover, the Court expressly declined to review the current statutory and regulatory ban on independent expenditures by foreign nationals, an issue currently in litigation in *Bluman v. FEC*.

We believe that this rulemaking should focus on those provisions that the Court declared unconstitutional in that case, not those provisions the Court upheld or did not review. To do otherwise could cause a rulemaking designed to comply with *Citizens United* to collapse under the weight of those other issues.

Moreover, much of the additional fifty pages of rulemaking text in the draft our colleagues support focuses on implementing regulatory provisions similar to, or the same as, the DISCLOSE Act. Congress has considered and failed to pass that piece of legislation. We do not believe a failure to legislate is a mandate to regulate. To the contrary, we should not include in our rulemaking legislation that did not pass Congress. Administrative agencies must not use their rulemaking authority to circumvent the legislative process.

Obviously, we recognize the impact of *Citizens United* on Commission regulations and stand ready to address the implications of the decision. But the Commission must do so within the scope of the decision itself, consistent with its regulatory authority. At this time, and in the absence of new legislation, we believe that our draft of the notice of proposed rulemaking is the appropriate response to *Citizens United*.