



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF CHAIRMAN LEE E. GOODMAN AND
COMMISSIONERS CAROLINE C. HUNTER AND MATTHEW S. PETERSEN
ENCOURAGING PUBLIC COMMENT ON THE COMMISSION'S TREATMENT OF
ONLINE POLITICAL ACTIVITY**

October 29, 2014

The Federal Election Commission is accepting public comment on a variety of potential speech regulations — including whether it should impose new disclosure regulations on online political speech, such as political blogs, websites, webcasts and podcasts, online news providers and news aggregators, social media and platforms, video websites and video content posted on the Internet, chat rooms and email, and all other Internet-based forums for political discussion and debate. The Commission is providing this opportunity for public comment in response to an Advance Notice of Proposed Rulemaking published in the *Federal Register* on October 17.

If you care about the regulation of political speech on the Internet, now is the time for the Commission to hear from you. The Vice Chair of the Commission recently demanded a total “re-examination of the Commission’s [regulatory] approach to the Internet and other emerging technologies.” Despite the Internet’s growing importance as a tool for all citizens to engage in political debate, and notwithstanding this Commission’s promise to take a “restrained regulatory approach” with respect to online political activity, the Vice Chair apparently believes the time has come to impose greater regulation on political speech over the Internet.

Citizens who wish to be heard on this issue should submit comments using one of the two options below. **The deadline to comment is January 15, 2015.** A public hearing will be held at the Commission on February 11, 2015, and will be streamed live online.

Online: <http://sers.fec.gov/forces/addcomments.htm?pid=93617>

Mail (Paper): Federal Election Commission
Attn: Amy L. Rothstein, Assistant General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Be Sure to Include: Each commenter’s full name and postal address

To Testify at The Hearing: File a written (paper or online) comment prior to the January 15, 2015 deadline that includes an **explicit request to testify at the public hearing**

Background

On October 9, the Commission approved an Interim Final Rule and Advance Notice of Proposed Rulemaking (“ANPRM”)¹ in response to the Supreme Court’s opinion in *McCutcheon v. FEC*, which held that the aggregate limits on contributions are “invalid under the First Amendment,” stating that they “do little, if anything,” to address circumvention concerns, “while seriously restricting participation in the democratic process.”² The Interim Final Rule responded to *McCutcheon*, removing the aggregate limits from Commission regulations. Now, the FEC is accepting public comment in response to language from *McCutcheon* that noted potential alternatives Congress and the FEC might consider “that would serve the Government’s anticircumvention interest, while avoiding ‘unnecessary abridgment of First Amendment rights.’”³ In response to *McCutcheon*, the ANPRM focuses only on alternatives in the Commission’s jurisdiction under FECA, including leaving Commission rules unchanged. The Court identified four areas that currently serve the anticircumvention interest: earmarking; joint-fundraising; affiliation; and disclosure of contributions.⁴ In an effort to conform our regulations to both *Citizens United v. FEC* and *McCutcheon*, we agreed to vote for the ANPRM, which raised questions in these four areas.

The Vice Chair recently displayed her desire to broaden the scope of the ANPRM, stating that “[w]e need to hear from the public on [the four topics identified in *McCutcheon*] and other issues of consequence to campaign finance and our democracy.”⁵ One of those issues apparently is regulation of the Internet.⁶ The Commission has declared that it must take a “restrained regulatory approach” with respect to online political activity,⁷ but, in a recent public statement, the Vice Chair suggested she believes increased regulation of the Internet may be appropriate. She called for a total “re-examination of the Commission’s approach to the Internet and other emerging technologies,”⁸ and noted concerns over the Commission’s regulatory exemption for free online postings and the lack of “disclosure and disclaimer requirements for certain Internet advertisements.”⁹

The Commission has been praised for its careful approach to regulating online political activity. Over the last decade, the Internet has had a profound democratizing effect on the political process and has led to increased participation in that process. Thus, we too are interested in hearing others’ views on whether the Commission should impose new regulatory burdens on online political speech,¹⁰ and we encourage all citizens concerned with this topic to submit comments prior to the January 15, 2015.

¹ The ANPRM was published in the *Federal Register* on October 17, 2014. See generally *Advance Notice of Proposed Rulemaking*, 79 Fed. Reg. 62,361, 62,361–63 (Oct. 17, 2014).

² *McCutcheon v. FEC*, 134 S. Ct. 1434, 1442 (2014).

³ *Id.* at 1458.

⁴ *Id.* at 1453, 1459–60.

⁵ Statement of Vice Chair Ann M. Ravel Encouraging Public Comments to Increase Disclosure and Address Corruption in the Political Process (Oct. 20, 2014).

⁶ We recently voiced our concern over the emerging trend among other Commissioners “to regulate . . . citizens’ use of technology and the Internet as a means to facilitate public political discourse.” MUR 6729 (Checks & Balances), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Hunter and Petersen at 1 (Oct. 24, 2014).

⁷ *Internet Communications*, 71 Fed. Reg. 18,589, 18,603 (Apr. 12, 2006).

⁸ MUR 6729 (Checks & Balances), Statement of Reasons of Vice Chair Ann M. Ravel at 1 (Oct. 24, 2014).

⁹ *Id.*

¹⁰ We note that, by design, an ANPRM does not present the issues “in a way to fully apprise interested parties with sufficient clarity and specificity for the Commission to enact a final rule.” *Advance Notice of Proposed Rulemaking*, 79 Fed. Reg. at 62,362. Moreover, we believe that agencies should not promulgate a rule without proper notice. Notice is adequate when “it appraises interested parties of the issue to be addressed in the rulemaking proceeding with sufficient clarity and specificity to allow them to participate in the rulemaking in a meaningful and informed manner.” Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking* at 283 (4th ed. 2006). Thus, the Commission must necessarily provide additional notice prior to any promulgation of a rule concerning Internet regulations or any other area.