



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF COMMISSIONER ELLEN L. WEINTRAUB
ON THE 2014 *CITIZENS UNITED* RULEMAKING**

Today, the Commission voted to amend its rules in response to the United States Supreme Court's decision in *Citizens United v. FEC*.¹ I could not support the proposal adopted today because it does nothing to address the tsunami of dark money flooding our system and, I fear, will be exploited by those seeking to spend millions to influence elections with no transparency and no accountability. This not only runs contrary to the disclosure mandate in *Citizens United*, but it also demeans our democracy. While there is no doubt that a rulemaking to address *Citizens United* is long overdue, today's otherwise bare-bones amendments do more harm than good.

In *Citizens United*, the Court imagined a "campaign finance system that pairs corporate independent expenditures with effective disclosure."² The Court promised "prompt disclosure of expenditures [to] provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."³ Today, however, the Commission undermines that promise by leaving in place regulatory language that dark money groups have used – with the help of half of the Commission – to withhold the true sources of support for their political activity.

I will not repeat here the sorry history of how the meaning of 11 C.F.R. § 104.20 has been tortured by those who seek any excuse to avoid disclosure.⁴ Words meant to exclude *only*

¹ 558 U.S. 310 (2010).

² *Id.* at 370.

³ *Id.*

⁴ I have covered the history of this rule and this rulemaking at length in prior statements. See Statement of Vice Chair Ellen L. Weintraub on the Proposal to Commence a Rulemaking to Address Electioneering Communication Disclosure Rules, Oct. 4, 2012, *available at* http://www.fec.gov/members/weintraub/statements/Weintraub_Statement_10.4.12.pdf; Statement of Commissioner Ellen L. Weintraub on the Draft Notices of Proposed Rulemakings on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, June 17, 2011, *available at* http://www.fec.gov/members/statements/CitizensUnitedRuleMakingStatement_20110615.pdf; Statement of Vice Chair Ellen L. Weintraub on the Commission's March 7, 2012 Hearing, Mar. 7, 2012, *available at* http://www.fec.gov/members/weintraub/statements/ELW_3.7.12_Statement.pdf; Statement of Commissioner Ellen L. Weintraub on the Notices of Proposed Rulemaking to Address *Citizens United*, Dec. 16, 2011, *available at* http://www.fec.gov/members/weintraub/statements/ELW_CU_Statement_12-16-11.pdf; Statement of Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub, Jan. 20, 2011, *available at* <http://www.fec.gov/members/statements/DEMCommissionersCNPRMStatement1-20-11.pdf>.

those donors who gave “for purposes *entirely unrelated* to the making of electioneering communications”⁵ have been twisted by those intent on giving dark money groups free license to avoid disclosure.⁶ This is sadly part of a pattern of actions and inactions by commissioners that have contributed to the rising tide of dark money.⁷ I could not support amending this provision, as the Commission did today, without addressing its profound impact on disclosure.

Dark money groups have embraced this strategy to pour vast sums of undisclosed dollars into American elections, and they will only be emboldened by the Commission’s action today. In the 2012 election, \$310.8 million was spent by groups that did not disclose their donors, and only 40.7 percent of non-candidate spending was fully disclosed.⁸ This is a breathtaking rise from just ten years ago: 2004 saw only \$5.8 million in dark money; that year, nearly all outside spending was fully disclosed.⁹ This cycle, political spending by organizations that do not disclose their donors already exceeded \$50 million by Labor Day, and undisclosed spending is projected to surpass *\$700 million*.¹⁰

Let’s be real here. We are not talking about disclosing the names of individuals printing flyers on their home computers and hand-distributing them to their neighbors. We are talking about multimillionaires and billionaires spending millions of dollars to influence elections so they can set government policy. And they want to do it behind closed doors, shielded from the view of the American public.

⁵ Explanation and Justification for Final Rules on Electioneering Communications, 72 Fed. Reg. 72899, 72911 (Dec. 26, 2007) (“2007 E&J”) (emphasis added). The 2007 E&J could not be clearer on the intent of the limiting clause. *See id.*

⁶ *See* Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn in MUR 6002 (Freedom’s Watch), Aug. 13, 2010, *available at* <http://eqs.fec.gov/eqsdocsMUR/10044274536.pdf>.

⁷ *See, e.g.*, Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6589 (American Action Network), July 30, 2014, *available at* <http://eqs.fec.gov/eqsdocsMUR/14044362004.pdf>; Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6538 (Americans for Job Security), July 30, 2014, *available at* <http://eqs.fec.gov/eqsdocsMUR/14044361962.pdf>; Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6396 (Crossroads Grassroots Policy Strategies), Jan. 8, 2014, *available at* <http://eqs.fec.gov/eqsdocsMUR/14044350970.pdf>.

⁸ Center for Responsive Politics, *Outside Spending by Disclosure, Excluding Party Committees*, *available at* <http://www.opensecrets.org/outsidespending/disclosure.php> (last visited Oct. 9, 2014).

⁹ *Id.*

¹⁰ Robert Maguire, *Dark Money Hits \$50 Million, Most Still To Come*, (Aug. 28, 2014), *available at* <http://www.opensecrets.org/news/2014/08/dark-money-hits-50-million-most-still-to-come/> (last visited Oct. 9, 2014).


Citizens United was a game-changing decision with far-reaching implications. In response, I voted repeatedly to issue a Notice of Proposed Rulemaking that would fully address the Court's decision.¹¹ Yet the Commission has perversely chosen to respond only in the narrowest possible sense. This rulemaking does not address the threat that new avenues for corporate political activity will make our democracy vulnerable to foreign individuals, corporations, and governments that seek to manipulate our elections through domestic corporations that they own or control. This rulemaking fails to take any steps to ensure that corporate employees and union members are protected from coerced participation in their employers' or unions' chosen political activities. Most inexplicably, despite the Supreme Court's strong endorsement of disclosure, half of the Commission has blocked consideration of any proposals that would shine new light on dark money.

My colleagues' repeated rebuffs of all attempts to include disclosure in a public discussion of the impact of *Citizens United* are nothing short of censorship. It is censorship not just of me, but worse, of the American people. We need to have an open, public debate on the real world impact of *Citizens United*.¹² That impact is inescapable to every American with a television. We all see the incessant ads, sponsored by groups with dubious names and hidden donors, rolling across our screens. And we have no way to assess the credibility of or to hold anyone accountable for these often toxic messages.

At a time when public concern about the lack of disclosure has reached a rare level of consensus – 81 percent of Americans believe secret campaign spending is bad for democracy¹³ – this is simply unacceptable. And not surprisingly, the rule issued by the Commission today reflects not the public's concern, but a rigged rulemaking process, designed to ensure that no serious change would be considered. Although I would like to be able to support changes to our rules to conform to *Citizens United*, I cannot support a rule that frustrates the Court's clear directive on disclosure and ignores the wide-ranging impact of the decision.

10/9/14

Date



Ellen L. Weintraub
Commissioner

¹¹ See Certifications in Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, dated Jan. 20, 2011, June 15, 2011, and Dec. 15, 2011.

¹² The fact that we are today agreeing to seek public comment as to whether to commence a rulemaking in the context of the McCutcheon decision does not obviate my concerns here. While it is a positive development, there is no guarantee that the Advanced Notice of Proposed Rulemaking will ever culminate in any actual change.

¹³ Public Citizen, *New Poll: Americans condemn high levels of corporate political spending, overwhelmingly support strong transparency and accountability reforms*, available at <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=3748> (last visited Oct. 9, 2014).