



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Statement of Vice Chair Ellen L. Weintraub
on the Commission's March 7, 2012 Hearing**

March 7, 2012

The Commission conducted a hearing today to discuss a notice of proposed rulemaking (“NPRM”)¹ purporting to address the regulatory consequences of *Citizens United* for independent expenditures and electioneering communications by corporations and labor organizations.² To the ordinary observer, this hearing must have appeared surreal.

The current election cycle is on track to feature record levels of independent spending (\$85 million to-date, and counting),³ a significant portion of which is coming from organizations that do not disclose their donors.⁴ The media reports daily on this issue, which has caused tremendous public concern.⁵ Eleven United States Senators filed a comment urging the Commission “to use its rulemaking authority to implement broad disclosure and disclaimer requirements” and to “clearly define the new disclosure requirements in the post-*Citizens United* world...” Yet all discussion of this critical issue was banned from the NPRM.⁶ And, when I tried to ask about one commenter’s compliance with *existing* disclosure regulations,⁷ two of my Republican colleagues interrupted me to shut down the discussion. Apparently, our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open”⁸ does not extend to discussions at the FEC.

The irony is that robust disclosure did not used to be controversial for either party. Indeed, the last three Republican presidents supported it. In his first debate with Al Gore in 2000, President George W. Bush called for “[i]nstant disclosure on the Internet as to who has

¹ See 76 Fed. Reg. 80803 (Dec. 27, 2011).

² See *Citizens United v. FEC*, 558 U.S. ___, 138 S.Ct. 876 (2010).

³ See Compilation of FEC Data by Center for Responsive Politics, available at <http://www.opensecrets.org/outsidespending/index.php>.

⁴ For example, in just one three day period (Feb. 6-9, 2012), the U.S. Chamber of Commerce, whose counsel testified at today’s hearing, reported making over \$2 million in electioneering communications in Ohio, Michigan and Virginia. The Chamber has not disclosed a single donor who gave the money that funded these advertisements.

⁵ For example, two thirds of those surveyed in a recent poll felt that “big donors and secret money undermine democracy.” See Stan Greenberg, Quinlan, Rosner Research, *Two Years After Citizens United, Voters Fed Up With Money in Politics*, at <http://gqrr.com/index.php?ID=2693>.

⁶ For more discussion of this problem, see my [December 16](#) and [June 17, 2011](#) statements.

⁷ The burden of compliance with new regulations is an issue that commenters frequently ask us to weigh, including in this proceeding. See, e.g., Comments of the Alliance for Justice Action Campaign, at 3, 5-6; Comments of AFL-CIO, at 3-4.

⁸ See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

given to who.”⁹ When he signed the Bipartisan Campaign Reform Act of 2002 (BCRA), President Bush also noted his support for regulation of “groups that take political action without the consent of their members or shareholders, so that the influence of these groups on elections does not necessarily comport with the actual views of the individuals who comprise these organizations.”¹⁰ President George H.W. Bush expressed concern about independent groups that “mask the motives of hidden contributors acting as mercenary character assassins” and stated “[d]isclosure -- full disclosure -- that's the answer....”¹¹ President Reagan also called for “full disclosure of all campaign contributions, including in-kind contributions, and expenditures on behalf of any electoral activities.”¹²

Most importantly, the *Citizens United* majority itself ruled that: “With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests.... This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”¹³ The Commission has yet to live up to the Court’s promise.

⁹ See Transcript of the first Gore-Bush Presidential Debate, available at <http://www.debates.org/index.php?page=october-3-2000-transcript>.

¹⁰ See, Press Release, White House Office of the Press Secretary, President Signs Campaign Finance Reform Act (Mar. 27, 2002), available at <http://www.law.stanford.edu/publications/projects/campaignfinance/collection/signing.statement.327.html>.

¹¹ President George H. W. Bush, Remarks to Congressional and Administrative Interns Announcing Campaign Finance Reform Proposals (Jun. 29, 1989), available at http://bushlibrary.tamu.edu/research/public_papers.php?id=616&year=1989&month=6.

¹² President Ronald Reagan, 1988 Legislative and Administrative Message: A Union of Individuals (Jan. 25, 1988), available at <http://www.presidency.ucsb.edu/ws/print.php?pid=36046>.

¹³ 138 S.Ct. at 916 (emphasis added).