



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF CHAIRMAN LEE E. GOODMAN ON
THE *CITIZENS UNITED* v. *FEC* AND *MCCUTCHEON* v. *FEC* RULEMAKINGS**

On October 9, 2014, nearly five years after the Supreme Court ruled that citizens do not surrender their First Amendment rights merely because they choose to incorporate their private associations, the Commission has updated its regulations to remove unconstitutional provisions struck by the Supreme Court in *Citizens United v. FEC*¹ and *McCutcheon v. FEC*.² In doing so, the Commission demonstrated that it can discharge its basic constitutional duty. Public officials take oaths to uphold the Constitution. They must not resist clear, binding decisions of the Supreme Court, regardless of whether they disagree with the Court's judgments. I am proud that the Commission finally has acted responsibly by bringing FEC regulations into compliance with the Constitution.

These rulemakings incorporated several profound First Amendment rights in FEC regulation text. It is now clear to anyone looking at the face of the Commission's regulations that corporate and labor organizations may exercise their constitutional right to make independent expenditures, and that individuals may contribute to as many candidates as they wish, subject to base contribution limits and disclosure, free of unnecessary governmental restrictions. Further, FEC regulations now expressly recognize the holdings in two other significant court decisions—the U.S. Court of Appeals for the District of Columbia's decision in *SpeechNow.org v. FEC*³ and the U.S. District Court for the District of Columbia's decision in *Carey v. FEC*.⁴

These rulemakings also clarified several secondary regulatory implications of *Citizens United*. The Supreme Court made clear that the "First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day."⁵ At minimum, citizens who wish to engage in democratic activities should be able to pick up the FEC's regulations and plainly understand them. The new regulations clarify, in plain language, that non-profit organizations and other corporations can publicize their endorsements of

¹ 558 U.S. 310 (2010).

² 134 S. Ct. 1434 (2014).

³ 599 F.3d 686 (D.C. Cir. 2010).

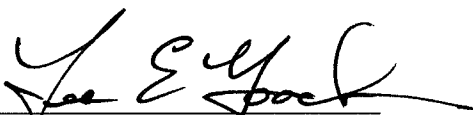
⁴ 791 F Supp. 2d 121 (D.D.C. 2011). As the revised rules note, the Commission has not yet completed a rulemaking to formally incorporate these decisions in the Commission's regulations. However, for the first time, their existence and the rights they recognize are acknowledged by the Commission's regulations.

⁵ *Citizens United*, 558 U.S. at 324.

candidates, register citizens to vote and motivate citizens to turn out to the polls on behalf of preferred candidates, and publish voter guides that exhort citizens to vote for a particular candidate who favors the issues they care about.

In addition to striking several pages of unconstitutional regulations, the Commission approved an Advance Notice of Proposed Rulemaking in Response to *McCutcheon v. FEC*. I supported this document as a vehicle for the Commission to perform its due diligence in examining questions raised by the Chief Justice in the plurality opinion in *McCutcheon*. This document does not presuppose that there will be a future rulemaking on these subjects, that the changes referenced are permissible under the law as currently written, or even that the issues addressed are problems in need of future regulatory or legislative fix—but the Commission should hear viewpoints on these topics before deciding if rule amendments might be advisable.

The new rules we have adopted will promote robust exercise of free speech rights by all citizens and organizations, enhancing public debate with more speakers and viewpoints. More viewpoints in the public debate are important for democracy. People are empowered as citizens and voters when they can hear diverse perspectives and speakers. For too long, the law restricted the number of podiums allowed on the public debate stage, but the new FEC regulations will encourage more speakers to exercise their constitutional rights and join in that public debate.



LEE E. GOODMAN
Chairman

October 15, 2014
Date