FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Statement of Vice Chair Ann M. Ravel, Commissioner Steven T. Walther, and Commissioner Ellen L. Weintraub on Rulemaking in Response to *McCutcheon v. FEC*

October 9, 2014

Today the Commission unanimously approved an Advance Notice of Proposed Rulemaking ("ANPRM") seeking public comment and scheduling a public hearing for February 11, 2015, to discuss significant, complex questions that arose in the wake of the Supreme Court's decision in *McCutcheon v. FEC*.[1] In *McCutcheon*, the Court struck down the aggregate contribution limits, allowing individuals to contribute to an unlimited number of candidates or political party groups. In striking down these limits, the Court relied heavily on the fact that there were other *better* ways for Congress — and the FEC — to prevent large contributions from corrupting our political system.[2] The Commission is now asking the public what rules it should consider implementing to address corruption in the political process.[3]

The ANPRM asks how the FEC should improve its rules on earmarking, joint fundraising committees, committee affiliation, and public disclosure. The ANPRM also asks whether there are "any other regulatory changes" the Commission should make in response to the problems identified by the Court. There may be solutions to the problems the Court identified that have not yet been considered, or the Commission might borrow from states like Maryland and California that have been working on new approaches. We encourage the public to submit creative solutions.

In addition to comments that address the issues raised by the Supreme Court, we need to hear what *the public* thinks is important in the wake of *McCutcheon*. We think it is essential to hear from anyone who cares about money in politics — especially the citizens and campaign volunteers who have an equal stake in making our democracy work. We know there is growing public concern about the deluge of undisclosed spending to sway our votes.[4] We share this concern.

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[1] *McCutcheon v. FEC*, 572 U.S. __, 134 S. Ct. 1434 (2014) (plurality op.).

[2] The Court listed "multiple alternatives," including restrictions on transfers, earmarking, joint fundraisers, and increased disclosure. *Id.* at 1458-60.

[3] The document released by the Commission is an Advance Notice of Proposed Rulemaking ("ANPRM"). The Commission also adopted an "Interim Final Rule," effective immediately, that makes some changes in response to the decision.

[4] *See* Liz Kennedy, *Citizens Actually United: The Bi-Partisan Opposition To Corporate Political Spending And Support For Common Sense Reform*, (Oct. 25, 2012), available at http://www.demos.org/publication/citizens-

A record-breaking $7 billion was spent to sway voters during the 2012 election cycle. Estimates are that about $4 billion will be spent during this year's mid-term election, with $700 million or more in anonymous spending. Outside spending by groups that hide their donors increased from just $5 million in 2006 to more than $300 million in 2012. Given this dramatic increase, the Commission should consider – based on public comments and testimony – how to strengthen its disclosure rules so that voters know who is behind the messages intended to influence their votes. Similarly, since the Supreme Court's *McCutcheon* decision is ushering in a new era of joint fundraising, the Commission should consider – again, based on public comments and testimony – what measures may be necessary to prevent circumvention of contribution limits.

Relevant to the issue of joint fundraising, we note that while *McCutcheon* struck down the aggregate contribution limits, the opinion did not address the separate restriction on candidates soliciting large sums of money in excess of those limits.[5] Thus, while the aggregate limits as applied to individual contributors have been struck down and removed from Commission regulations, the ban on soliciting contributions in excess of the aggregate limits remains in place.[6]

As the primary federal agency responsible for the regulation of money in politics, we have an obligation to the public to take action to prevent corruption of the political process, to encourage public disclosure, and to listen to what the public has to say about these issues. In *McCutcheon*, the Supreme Court gave the Commission a clear mandate to look for new solutions to tackle a kind of corruption that the old rules failed to adequately address. With the help of your comments and public testimony, we hope that the Commission will rise to that challenge.

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actually-united-bi-partisan-opposition-corporate-political-spending-and-support (noting that more than 80 percent of Americans believe that secret campaign spending is bad for our democracy).

[5] *McCutcheon*, 134 S. Ct. at 1461. In fact, the Court cited approvingly to Justice Kennedy's partial concurrence in *McConnell*, where he explained that he would have rejected the ban on soft money contributions but agreed with the majority that the ban on the solicitation of such contributions was constitutional, since solicitation of such funds directly implicates *quid pro quo* corruption, or the appearance of such corruption. *Id.*; *McConnell v. FEC*, 540 U.S. 93, 308 (2003) (Kennedy, J., concurring in part and dissenting in part) ("The making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment (by granting his request)."); *see also* Majority PAC, AO 2011-12, 2011 WL 2662413.

[6] *See* 52 U.S.C. § 30125(e)(1)(A); 2 U.S.C. § 441i(e)(1).

To submit comments online, visit the Commission's website at http://www.fec.gov.

10/9/14
Date

Ann M. Ravel
Vice Chair

10/9/14
Date

Steven T. Walther
Commissioner

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Date

Ellen L. Weintraub
Commissioner