

# TRANSCRIPT OF PROCEEDINGS

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PUBLIC HEARING ON THE  
McCUTCHEON V. FEC ADVANCE  
NOTICE OF PROPOSED  
RULEMAKING

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Pages: 1 through 341

Place: Washington, D.C.

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## HERITAGE REPORTING CORPORATION

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BEFORE THE FEDERAL ELECTION COMMISSION

)  
 PUBLIC HEARING ON THE )  
 McCUTCHEON V. FEC ADVANCE )  
 NOTICE OF PROPOSED )  
 RULEMAKING )  
 )

999 E Street, N.W.  
Washington, D.C.

Wednesday,  
February 11, 2015

The parties met, pursuant to notice, at 8:17 a.m.

PARTICIPANTS:

For the Commission:

ANN M. RAVEL, Chair  
 MATTHEW PETERSEN, Vice Chair  
 LEE E. GOODMAN  
 CAROLINE C. HUNTER  
 ELLEN L. WEINTRAUB  
 STEVEN T. WALTHER

Panel #1:

KAREN GETMAN  
 ELISABETH MacNAMARA (League of Women Voters)  
 MICHAEL MALBIN (Campaign Finance Institute)  
 JOHN PHILLIPPE, JR. (Republican National  
 (Committee)  
 DONALD SIMON (Democracy 21)  
 BRADLEY SMITH (Center for Competitive Politics)

PARTICIPANTS: (Cont'd.)

Panel #2:

RICHARD BRIFFAULT  
BRUCE CAIN  
CRAIG HOLMAN (Public Citizen)  
MARK SCHMITT (New America Foundation)  
ZEPHYR TEACHOUT  
DONALD McGAHN (Freedom Partners Chamber of  
Commerce, Freedom Partners Action Fund)  
ROBERT BAUER

Individual Witnesses:

PERIANNE BORING (Chamber of Digital Commerce)  
RACHEL BREWER  
GLENN CONWAY  
SUSAN GROGAN  
JONATHAN HOLTZMAN  
TERRENCE THRWEATT  
MATTHEW WALCHUCK  
SAI (Make Your Laws PAC)  
ERNEST ISTOOK  
MICHAEL MELILLO  
RON WILCOX  
RICH BUCHANAN  
DAISY BELDEN  
JAMES CAMPBELL  
ZACHARY NICKERSON  
JACQUELINE COOLIDGE  
LIH YOUNG  
STACEY BRIDGES  
MICHAEL BURKSON

Panel #3:

JAMES BOPP, JR. (James Madison Center for Free  
Speech, ProtectMarriage.com)  
JAY COSTA (CounterPAC)  
DAVID MASON  
HANS VON SPAKOVSKY  
PAUL RYAN (Campaign Legal Center)  
DANIEL WEINER (Brennan Center for Justice)

## PARTICIPANTS:

Panel #4:

LISA GILBERT (Public Citizen)  
SHAUN McCUTCHEON (Coolidge-Reagan Foundation)  
STEPHEN SPAULDING (Common Cause)  
DAN BACKER (Conservative Action Fund)  
BRIAN SVOBODA (Perkins Coie LLP)

Panel #5:

HEIDI ABEGG (Our Generation)  
NORM SINGLETON (Campaign for Liberty)  
ANDREW LANGER (Institute for Liberty)  
JEREMIAH MORGAN (Free Speech Coalition, Free  
Speech Defense and Education Fund, U.S.  
Justice Foundation)  
DANIEL SMITH (U.S. PIRG)  
DAVID WILLIAMS (Taxpayers Protection Alliance)

Individual Witnesses:

LINDA McGREGOR  
JANETTE PARKER  
MEGAN STILES  
ALAIN ROBERT  
RIO TAZEWELL  
JESSICA NEWMAN  
SEAM TRAMBLEY  
MALIN MOENCH

P R O C E E D I N G S

(8:17 a.m.)

1  
2  
3 CHAIR RAVEL: Good morning, everybody.  
4 Thank you very much for being here. Welcome to the  
5 Federal Election Commission hearing on campaign  
6 finance issues that was raised by the McCutcheon v.  
7 FEC decision. We're having this hearing today as a  
8 result of an agreement I entered into with some of my  
9 fellow Commissioners across the aisle to enact  
10 regulations for Citizens United and McCutcheon, in  
11 exchange for this full and public hearing on campaign  
12 finance.

13 I want to thank the people from all over the  
14 country, over 32,000 of them, who considered these  
15 important issues and provided written comments to the  
16 Commission. I'm also very grateful to those of you  
17 who are here in the room who came early and braved the  
18 bitter cold in Washington, D.C. to come and give your  
19 views.

20 Listening to the public in this way isn't  
21 something that the FEC has done in the past. This is  
22 a historic event. I strongly believe that a public  
23 agency is obligated to be open to hearing from all  
24 members of the public. This is especially true for

1 the FEC, whose mission is to protect democratic  
2 processes that are so important to all Americans.

3 So without objection, every member of the  
4 public who wants to speak today will be permitted to  
5 do so. Now I will turn it over to Vice Chair Petersen  
6 for his opening remarks.

7 VICE CHAIR PETERSEN: Thank you, Madame  
8 Chair. And good morning to everyone, especially at  
9 this unusually early hour for a Commission hearing.  
10 As you all know, the Commission is currently  
11 considering how and whether -- or whether to -- it may  
12 further respond to the Supreme Court's opinion in  
13 McCutcheon v. FEC. The McCutcheon decision, which  
14 struck down as unconstitutional the federal aggregate  
15 contribution limits, is the most recent instance in  
16 which the Supreme Court has held that a significant  
17 plank in the federal campaign finance legal  
18 architecture impermissibly encroaches upon the freedom  
19 of speech protected by the First Amendment.

20 As we undertake this task, a number of  
21 important considerations must be kept in mind. First  
22 and foremost, as the Court has consistently reminded  
23 us, the First Amendment has its fullest and most  
24 urgent application precisely to the conduct of

1 campaigns for political office.

2 Second, since Buckley v. Valeo, the Court  
3 has steadfastly rejected the concept that government  
4 may restrict the speech of some elements of our  
5 society in order to enhance the relative voices of  
6 others, labeling any such attempt as wholly foreign to  
7 the First Amendment.

8 Third, as the McCutcheon Court recently  
9 reminded us, the government may not regulate  
10 contributions simply to reduce the amount of money in  
11 politics.

12 And fourth, the Commission is an independent  
13 administrative agency tasked with interpreting and  
14 enforcing the federal campaign finance laws as adopted  
15 by Congress and limited by the courts. As a body, we  
16 lack the authority to do what Congress had declined  
17 not to do, or what the courts have said we cannot do.

18 It is against this backdrop that the  
19 Commission must evaluate the comments and testimony  
20 presented as part of this proceeding. As we move  
21 forward in this process, several important questions  
22 will need to be answered, such as, are the proposals  
23 advanced in this proceeding consistent with both the  
24 congressional rulings handed down by the Supreme Court



1 and the statutory language we are responsible for  
2 administering and enforcing? Do the promised benefits  
3 of particular regulatory proposals outweigh the  
4 associated burdens? And finally, considering that  
5 McCutcheon dismantles a substantial piece of the  
6 campaign finance legal framework, to what extent is it  
7 appropriate to use this decision as a launching point  
8 for extending the Commission's regulatory reach?

9 Today's hearing will play an important role  
10 in answering these and other essential questions. So  
11 let me conclude by thanking everyone who is  
12 participating in today's hearing. I certainly look  
13 forward to your remarks, which undoubtedly will  
14 provide the Commission with much food for thought as  
15 we proceed in this matter.

16 So thank you, Madame Chair, and I look  
17 forward to today's hearing.

18 CHAIR RAVEL: Thank you very much, Vice  
19 Chair Petersen.

20 Now, first, before we start, a couple of  
21 housekeeping matters. In order for everybody to be  
22 able to speak today -- and the goal is that everyone  
23 who wants to speak should be able to speak. So both  
24 for Commissioners as well as the public, we're going

1 to have some fairly strict constraints on time.

2 In front of the podium is a little light,  
3 and when it turns yellow, that means everyone has --  
4 you will have one minute to wrap up. And I ask  
5 everyone who has signed up to speak, as well as  
6 panelists, when I tell you that you have to be done,  
7 please stop because -- and we want to leave a little  
8 bit of time if we can for the Commissioners to ask  
9 some questions, and that will also be very  
10 constrained, and not everybody will have an  
11 opportunity. So I really thank you for your  
12 consideration of this so that we can stay on schedule  
13 and make sure that it's a full, fair hearing, and  
14 everybody can be heard.

15 With that, let me quickly introduce our  
16 first panel this morning. It consists of Karen Getman  
17 of Remcho, Johansen & Purcell; Elizabeth MacNamara, on  
18 behalf of the League of Women Voters; Michael Malbin,  
19 on behalf of Campaign Finance Institute; John  
20 Phillippe, Jr., on behalf of the Republican National  
21 Committee; Donald Simon, on behalf of Democracy 21;  
22 and Bradley Smith, on behalf of the Center for  
23 Competitive Politics. Thank you.

24 And, Ms. Getman, you have the distinction of

1 being the first speaker at our hearing this morning.

2 MS. GETMAN: Thank you. I hope you can hear  
3 me.

4 MS. MACNAMARA: Sorry.

5 MS. GETMAN: Thank you so much for allowing  
6 me to come out here. I'm really honored to be in  
7 front of you. My law firm is one of the leading  
8 political and election law firms in California, in the  
9 Bay area. We represent the current governor, former  
10 governors, the California Democratic Party, but also  
11 many bipartisan coalitions and independent expenditure  
12 committees.

13 But I was also chair of the California Fair  
14 Political Practices Commission, which is the state  
15 regulatory agency that your Chair came from right  
16 before coming out here, and I want to talk to you a  
17 little bit about our experience up there with  
18 regulation, particularly regulation of Internet  
19 speech.

20 To know -- to put this in context, you have  
21 to know a little bit about our laws out there, which  
22 are quite different. California has very high  
23 contribution limits for candidates. We have long  
24 allowed corporate and union contributions. We have

1 very active independent expenditure campaigns out  
2 there. We have no limits on initiative campaigns,  
3 which are very often coordinated with candidates.

4 So there is a lot of money flowing into the  
5 system out there from many different directions. But  
6 at the same time, we have very strong disclosure laws  
7 and a very strong agency that stands behind them.

8 I know you usually have campaign lawyers up  
9 here telling you to slow down, be cautious, and not  
10 impose too many disclosure rules because you'll stifle  
11 speech. But I'm here to suggest just the opposite.  
12 That has not been our experience in California. In  
13 particular, with Internet regulation, we have been  
14 looking at that issue for almost 20 years. And when I  
15 was chair in 1999, I too was a little bit worried  
16 about doing too much in that area because Internet  
17 campaigning was really in its youth, and we were very  
18 excited about the possibility of this medium that  
19 could draw so many more people into the world of  
20 political campaigns, and maybe would not require the  
21 vast amounts of money that traditional TV advertising  
22 did.

23 No one wanted to dampen that activity. But  
24 that was a long time ago. Campaign activities have

1 rapidly moved to the Internet, as we all had hoped.  
2 And as a result, it does take less money and less time  
3 for a candidate, an independent expenditure, an issue  
4 campaign to spread their message widely.

5 That's not going to stop simply because you  
6 let people know who is paying to produce the message  
7 that you're seeing on YouTube or Facebook or  
8 Instagram. My firm represents a lot of campaigns and  
9 independent expenditure committees. They have no  
10 problem disclosing the funders of their campaign  
11 activity. But it's only fair that they know as well  
12 who is funding the opposition ads.

13 No one should get a carte blanche to put  
14 money into a campaign and not tell where that money is  
15 coming from. The Internet moves quickly. Disclosure  
16 on the Internet needs to move quickly. You need to be  
17 nimble. You need to be willing to change.

18 California's FPPC reached out to a lot of people  
19 throughout the state, and that campaign agency does,  
20 by the way, sometimes go out of Sacramento and have  
21 meetings throughout the state in order to hear from  
22 the public when issues affecting the public really  
23 require their input.

24 California has changed and revamped its

1 Internet disclosure laws quite a number of times since  
2 I was chair. They will review proposed disclosures on  
3 request in advance, and people and campaigns take  
4 advantage of that. They also look at campaign ads on  
5 the web on a real-time basis. When they see something  
6 on a web site or a Facebook ad that looks like it's  
7 not -- doesn't have a disclosure on it, and it should,  
8 they actually pick up the phone and call us, and we  
9 get that taken care of right away. Nobody waits for  
10 an enforcement action. Nobody waits for a gotcha  
11 letter from the other side.

12 None of that has slowed Internet campaign  
13 activity in California. To pretend that this area is  
14 still in its infancy and any attempted disclosure  
15 would chill Internet speech frankly is disingenuous.  
16 It's, I think, our time to bring federal disclosure  
17 law into the 21st century as well.

18 Now, that doesn't mean you don't need to  
19 take care in how you do it. You do. Needlessly  
20 complicated requirements or an attempt to put every  
21 possible piece of relevant disclosure information on  
22 every tweet a campaign ad sends, it creates needless  
23 distractions from what the core of disclosure is all  
24 about.

1           But a fear of exceeding the bound of the  
2 statute or of influencing an election that secret  
3 money already is trying to influence can lead to  
4 paralysis, and it shouldn't. California doesn't  
5 always get it right, but at least it's trying, and it  
6 sends the messages that it's going to keep trying.

7           The fact that the state enforcement agency  
8 was willing to go out on a limb two years ago just  
9 before an election to stop the practice of funneling  
10 campaign funds through layers of secret nonprofits,  
11 the fact that it calls on a real-time basis and speaks  
12 to the campaign when it sees something that it thinks  
13 is a problem, has had a real impact on campaigns in  
14 California. It doesn't stifle them, but it means that  
15 we know that we can't count on agency inertia to get  
16 away with violating the law.

17           None of this has stopped legitimate campaign  
18 activity. It's okay to get it wrong and do it again.

19       It's okay to be brave. It's okay to push the limit.

20       You have a lot of people on the other side who will  
21 step right in to protect First Amendment rights, as  
22 they should. But that doesn't mean that you should  
23 stop even trying to get more information to the  
24 voters.

1 I encourage you to begin this process of  
2 review -- this is a wonderful first step -- and see  
3 where it takes you. Leveling the playing field is  
4 never going to mean stopping the flow of money. We  
5 all know that. But it can and it should mean letting  
6 everyone know who is on the playing field during the  
7 game. Thank you.

8 CHAIR RAVEL: Thank you very much, Ms.  
9 Getman. Ms. MacNamara.

10 MS. MACNAMARA: Thank you. Madame Chair,  
11 members of the Commission, thank you for the  
12 opportunity to speak with you today about what the  
13 Federal Election Commission can do to address  
14 corruption in our political process. The League of  
15 Women Voters believes that the FEC has the authority  
16 and the responsibility to develop new disclosure  
17 regulations and new rules governing so-called  
18 independent expenditures.

19 I'm testifying today on behalf of the League  
20 of Women Voters, a volunteer citizens group organized  
21 in more than 800 communities in every state, with more  
22 than 150,000 members and supporters nationwide. That  
23 is the perspective that we bring to this discussion,  
24 the perspective of concerned citizens and voters, not



1 the perspective of the regulated community or the  
2 political operatives and the attorneys who support  
3 them. We believe that this perspective has too often  
4 been missing from the fights here in Washington and in  
5 this agency over campaign finance regulation.

6 One of my duties as president of the League  
7 is to travel around the country talking with our  
8 members and other concerned citizens. I want to  
9 report to you that voters care deeply about this issue  
10 of campaign finance and corruption. They don't  
11 express it in terms usually employed here in our  
12 nation's capital, such as earmarking, affiliated  
13 organizations, or electioneering communications. But  
14 they understand that money and politics is a critical  
15 issue for the functioning of our democracy. Voters  
16 understand that billionaires and secret organizations  
17 don't represent them. And huge sums of money corrupt  
18 our political system.

19 In 2014, as millions of Americans went to  
20 the polls to vote on the issues and the candidates  
21 that mattered most to them, millions of dollars of  
22 secret money poured into the election from dark money  
23 groups, which hide the identity of their donors,  
24 seeking to buy our elected officials and distort our

1 elections. And we won't ever know who paid for all  
2 the ads that bombarded voters throughout that  
3 election.

4           You here at the FEC can do something to stop  
5 the secret money. We urge you to set new rules  
6 requiring full disclosure in our elections. Super  
7 PACs raised and spent more than \$600 million in 2014  
8 to elect or defeat candidates. And they will continue  
9 to raise and spend unlimited amounts of money because  
10 they are supposedly independent from the candidates,  
11 when in reality there are too many ways to coordinate.

12           You all can do something to stop the super  
13 PACs and other outside groups from coordinating with  
14 candidates, and the League urges you to do so. The  
15 action we propose today is entirely consistent with  
16 the Supreme Court's decisions in McCutcheon vs. FEC,  
17 as well as Citizens United v. FEC.

18           As you know, the Court in Citizens United  
19 said that disclosure is important to providing the  
20 electorate with information. It also supported  
21 disclaimer requirements so that people will be able to  
22 evaluate the arguments to which they are being  
23 subjected. We couldn't agree more.

24           Indeed, the Court spoke as if disclosure is

1 already required. We ask that you update FEC  
2 regulations to provide for full disclosure so that the  
3 Court's decision in Citizens United does not continue  
4 as the giant loophole for secret giving that it has  
5 become.

6           While the Court in Citizens United made  
7 clear that truly independent expenditures on behalf of  
8 a candidate campaign are constitutionally protected,  
9 we all know that much of the so-called independent  
10 spending we have seen in recent years is not  
11 independent at all because such spending so often  
12 amounts to a contribution assisting a candidate's  
13 campaign. The FEC can act to ensure that outside  
14 spending is truly independent. In other words, the  
15 Supreme Court's decision assumes that regulations are  
16 in place to ensure that independent groups are not  
17 acting in concert with or cooperation with a campaign.

18           With the Supreme Court, we believe that the  
19 American voter has the right to know who is funding  
20 political campaigns. The most important thing we can  
21 do to preserve the integrity of our electoral process  
22 is to increase transparency and let the sun shine in.

23       Disclosure is the key to allowing voters to make  
24 their own decisions and to guard against the

1 inevitable corruption that comes with secret money.

2           Currently, corporations of all types,  
3 including trade associations, nonprofit advocacy  
4 groups, as well as unions and wealthy individuals can  
5 make unlimited secret contributions into efforts  
6 seeking to elect or defeat federal candidates. This  
7 is unacceptable in a democracy. Secret money has no  
8 place in America's elections. Voters deserve to know,  
9 they have the right to know, who is making unlimited  
10 expenditures and influencing elections.

11           In McCutcheon, the Court reiterated the  
12 importance of disclosure, saying that disclosure of  
13 contributions minimizes the potential for abuse of the  
14 campaign finance system. They deter actual corruption  
15 and avoid the appearance of corruption by exposing  
16 large contributions and expenditures to the light of  
17 publicity.

18           However, the Center for Responsive Politics  
19 reports that almost a third of outside spending since  
20 2010 has been from dark money groups, amounting to at  
21 least \$617 million of dark money in our elections.  
22 And the Brennan Center calculated that roughly 91  
23 percent of the money spent in the 2014 Senate races by  
24 groups that hid some or all of their donors went to

1 just 11 of the most competitive races.

2 Fair and clean elections determined by the  
3 votes of American citizens should be at the center of  
4 our democracy. Enhanced disclosure is the most  
5 important step toward protecting the role of voters  
6 and ensuring that they can make informed decisions.

7 The League also believes that the American  
8 public has a right to have the law against unlimited  
9 coordination expenditures strictly enforced. Explicit  
10 new regulations are needed. The Supreme Court is  
11 clear that expenditures that are not truly independent  
12 of a candidate campaign can be regulated. And the  
13 definition of coordination can be quite broad.

14 As the Court has said, expenditures made  
15 after a wink or a nod will be as useful to the  
16 candidate as cash. Now we see future presidential  
17 candidates flocking to meetings with billionaire  
18 funders who will be making supposedly independent  
19 expenditures, as well as well-organized, so-called  
20 independent committees that have become a usual and  
21 expected element in any presidential campaign.

22 We now have single-candidate super PACs.  
23 The single --

24 CHAIR RAVEL: You have one minute.

1 MS. MACNAMARA: Thank you. Single-candidate  
2 super PACs is based on the notion that a candidate can  
3 help raise money for a super PAC dedicated only to his  
4 or her election.

5 It is time for the FEC to step in and  
6 recognize the fact that coordinated spending is  
7 occurring and must be regulated. Candidates should  
8 not be allowed to solicit funds or assist in fund-  
9 raising for outside groups that engage in independent  
10 campaigns. Campaign professionals should not be  
11 allowed to play musical chairs between candidate  
12 campaigns and independent spending groups. Family  
13 members should not be in the position of setting up  
14 supposedly independent activities.

15 In closing, I'd like to say that every  
16 American and this Commission should work to maintain  
17 the integrity of our democracy by ensuring our elected  
18 officials will be responsive to voters, not to big  
19 money and the secret money from special interests.  
20 The stakes are too high, and the League will not stand  
21 by and let our political system be corrupted. Thank  
22 you.

23 CHAIR RAVEL: Thank you, Ms. McNamara.

24 Professor Malbin.

1           MR. MALBIN:  Madame Chairperson, Mr. Vice  
2 Chair, and Commissioners, my name is Michael Malbin.  
3 I'm co-chair -- co-founder and executive director of  
4 the Campaign Finance Institute, which is a nonpartisan  
5 research institute in Washington, and I'm also  
6 professor of political science at the University at  
7 Albany in SUNY.

8           I want to thank -- begin by thanking the  
9 Commission for this hearing.  You could have tailored  
10 it narrowly, but instead you opened it up.  More than  
11 32,000 comments were filed, and that volume alone  
12 refutes the claim that nobody cares about money in  
13 politics.  People do care.  But, of course, they  
14 disagree about what to do.

15           You'll hear a lot about those disagreements  
16 today, and I've published on many of them, including  
17 small-donor participation, parties and single-  
18 candidate super PACs.  Some of those written --  
19 writings were attached to my written statement.

20           But that's not how I want to spend my time  
21 now.  Instead, I want to talk about a subject where  
22 you may have at least some level of consensus.  
23 Specifically, I want to just focus on the final clause  
24 in your notice, the one that said, "What steps should

1 the Commission take to further improve its collection  
2 and presentation of campaign finance data?"

3 Transparency in implementation have been  
4 high priorities for CFI from its beginning of 1999,  
5 and this has included a series over the years on the  
6 FEC's web site. The web site has become better, but  
7 it has a long, long way to go.

8 We've had the pleasure of speaking with your  
9 staff and the GSAs about your current initiative. The  
10 latest home page for revisions are a step forward.  
11 I'm also happy to see that you're soliciting online  
12 comments from public users. But despite those good  
13 steps, regular users know that the problems go way  
14 beyond the home page, and the best solutions cannot  
15 come from a designer alone.

16 The best redesigns require detailed  
17 engagement from the top. My goal today is to persuade  
18 you as Commissioners to buy into this and act on it.  
19 To grasp some of the main problems, it's important to  
20 step back and look at the larger picture.

21 The FEC has two principal functions. We've  
22 heard about one of them. One, that's to regulate.  
23 And the other is to serve as the prime vehicle for  
24 disclosure. Before you redesign, I urge you to think



1 deeply about the purpose of disclosure. One key goal,  
2 as expressed in Buckley, is to bring information to  
3 voters in a timely way to help them make decisions.

4 The primary beneficiary of disclosure is and  
5 ought to be the general public. Serving some of those  
6 purposes fully may well require changes in laws, and  
7 those changes will be controversial. But there is a  
8 lot you can do to improve voter information without  
9 changing the law or regulations. And that's where the  
10 web site fits in.

11 Very little about the current web site is  
12 designed with the public in mind. Until the FEC put a  
13 map on the disclosure portal, it did almost nothing to  
14 educate the public directly. To reach the public, you  
15 seem to rely almost entirely on intermediaries, and  
16 this need not be. The intermediaries will always be  
17 important, but the web has opened a direct route.  
18 Take it.

19 To explain the point about the current  
20 shortcomings, spend a few minutes with me mentally  
21 thinking about that home page for the web site.  
22 Almost everything on the home page is defined in terms  
23 of operating divisions within the FEC: enforcement,  
24 disclosure, the press, and so forth.

1           The web site that looks outward towards  
2 users rather than inward toward itself would be  
3 structured around content, not around agency  
4 divisions. The need to break away from and work  
5 across divisions is why leadership has to come from  
6 you, from the top. Nothing now has a functional  
7 division.

8           For example, if you want to learn what the  
9 FEC has to tell us about political parties, you have  
10 to look separately at law, regulations, disclosure,  
11 and so forth, and so on. None of that material is  
12 properly indexed. Very little shows up through a  
13 search engine. If you're not an expert, you don't  
14 have a clue of where to look. In fact, I am an  
15 expert, and I often don't have a clue.

16           Another small example makes the big point.  
17 The FEC maintains historical reports summarizing key  
18 data about candidates, parties, and PACs back to 1976.

19       These are incredibly valuable, but how does a user  
20 learn about them? It turns they're buried under the  
21 link for the press office, and then under another link  
22 called statistics. Why there? Because the press  
23 office produces them. Well, who outside the FEC and  
24 this little small community of us folks who work full-

1 time on this know about that? Answer: Nobody, if you  
2 don't already know they exist, and so no way to find  
3 them. And believe me, I've talked to many reporters  
4 who have this as their beat, and they don't know. I  
5 have to point them toward it.

6 The FEC made one recent gesture in the  
7 public's direction with the disclosure maps. But the  
8 execution is seriously flawed. District lines are far  
9 too cramped to be used. But more basically, using a  
10 map that assumes the voter knows her district number  
11 just doesn't work. Most voters do not. Why can't the  
12 FEC begin where a normal voter does? Why can't you  
13 simply ask you to put in your address, and then show  
14 you a list of House and Senate candidates running to  
15 represent you?

16 Technology is readily available. It's  
17 widely used. And so is the technology to let the  
18 voter move from that information to other agencies in  
19 the federal and state governments. Why be so inward?

20 When you finally do know the district, the  
21 map transfers you to a useful summary about  
22 information about candidates, but if you wanted to  
23 know about independent spending in the districts,  
24 you've got to go back through a whole series of other

1 links and down to a totally different set of maps, and  
2 never do you get to see the two together.

3 If you want to see about all disclosed,  
4 legally disclosed, spending in a district, what do you  
5 have to do? You go to Open Secrets or you go to us.  
6 You don't go to you. Well, that doesn't seem  
7 sensible.

8 Stepping away from data, suppose a citizen  
9 wants to know about the law. There are pretty good  
10 plain-language guides for candidates, parties, and  
11 PACs, if you can find them. But there needs to be  
12 something like that for the average citizen. But  
13 let's go below that to the more technical and legal  
14 material, laws, regulations, court cases, advisory  
15 opinions, MURs, past ones, pending ones.

16 For every single one of those categories,  
17 you have to look at a separate section of the web  
18 site, which is great for billing, but it's lousy for  
19 getting information. This doesn't have to be. Almost  
20 every single one of the legal documents refers to a  
21 section of the U.S. Code.

22 A single database could cross-reference them  
23 all by code number. It could also use --

24 CHAIR RAVEL: You have one minute.

1           MR. MALBIN: Yeah. It could also use plain-  
2 language words to convey meaning to novice users. I  
3 could go -- I'm happy to go -- I'll be happy to go on  
4 -- would be happy to go on with staff, but that would  
5 miss the main point. The key point is that a web site  
6 redesign is not about aesthetics. Redesign should be  
7 about rethinking the core of your communications.  
8 What exactly are you trying to communicate, to whom,  
9 and why? It's also about thinking through the core of  
10 your mission.

11           We all know there is disagreement within the  
12 Commission about regulatory policy, but here there  
13 should be a consensus. The key purpose of disclosure  
14 is to inform citizens. The rest of us stakeholders  
15 should come second. We mostly know how to find what  
16 we need. Only you can put the citizens at the top  
17 where they should be.

18           CHAIR RAVEL: Thank you so much, Professor  
19 Malbin. Thank you.

20           Mr. Phillippe.

21           MR. PHILLIPPE: Thank you, Madame Chair and  
22 Mr. Vice Chair and Commissioners. I appreciate the  
23 opportunity to be here today. I'll begin by  
24 paraphrasing the late Admiral Stockdale: Who am I,

1 and why are we here?

2 My name is John Phillippe. I'm the chief  
3 counsel of the Republican National Committee. We were  
4 one of the plaintiffs in the McCutcheon litigation.  
5 We brought and financed this case. I lived that case  
6 for about two years. And I know it inside and out.

7 What I don't know is the answer to the  
8 second question, why are we here, because I don't see  
9 any connection between that decision and the issues  
10 raised in the ANPRM. The Court, of course, did  
11 discuss a few distinct issues in the context of  
12 showing why the aggregate limits were  
13 unconstitutional, but certainly not in the context of  
14 suggesting to the Commission that it should do further  
15 rulemaking.

16 Indeed, this Commission has done rulemaking  
17 post-McCutcheon. You took the aggregate limits off  
18 the book. Your McCutcheon-related work is complete.  
19 So I would suggest this ANPRM is about something else,  
20 and it's about policy preferences. And there is  
21 nothing wrong with doing rulemakings in connection  
22 with policy preferences, as long as the statute and  
23 the Supreme Court decisions will support that. And  
24 you're going to hear a lot of policy preferences

1 today, many articulated by the D.C. lobbyists who have  
2 self-styled themselves as campaign finance reformers,  
3 who are interested in undermining the public's  
4 confidence in our democratic system in order to carry  
5 out their agenda of restricting money in politics and  
6 restricting First Amendment activity. And I urge you  
7 to reject that cynical rhetoric and to reject their  
8 effort to undermine faith in their democracy, and  
9 instead to take steps to strengthen our democracy.

10           And one way you can do that is by  
11 strengthening the political party committees. The  
12 last two times I appeared before you, once in an  
13 informal setting on party committee activity, and once  
14 in a formal setting with my colleague Bob Bauer from  
15 the DNC, when we came and asked for an advisory  
16 opinion to allow funding for conventions separate from  
17 the current federal limits in place at that time -- of  
18 course, you gave us an advisory opinion that has since  
19 been augmented by statute.

20           But even those of you who voted against that  
21 advisory opinion and all of the Commissioners who took  
22 part in that public forum with us expressed a desire  
23 to assist and strengthen the party committees to the  
24 extent allowed by statute. And I really hope you'll

1 act consistent with that expressed sentiment. And one  
2 way you can do that is by not using McCutcheon as a  
3 pretext for cracking down on party committees, but to  
4 look at ways that you can strengthen the party  
5 committees consistent with McCutcheon and consistent  
6 with Congress's recent express intent to strengthen  
7 party committees in the omnibus appropriations  
8 legislation that had passed at the end of the year.

9           There is a few things, of course, that the  
10 Commission can do by regulation or policy. You can  
11 loosen the coordinated party-coordinated restrictions.  
12 After McCain-Feingold, the Commission, really on an  
13 unwarranted basis, passed more severe restrictions on  
14 party-coordinated communications, and it didn't need  
15 to do that. You could take a look at loosening those.  
16 You can loosen the FEA rules with respect to staff  
17 salaries at state parties, and in a way that's  
18 consistent with the statute.

19           You could loosen the volunteer materials  
20 exemption. There are other things that have been  
21 suggested that I would support, such as simplifying or  
22 even replacing Form 3X for policy -- for party  
23 committees, as has been suggested in a recent petition  
24 for rulemaking. And you could modernize the web site.



1 You could take more activities to encourage compliance  
2 and education for the regulated communities.

3 Now, a lot of the things that would  
4 strengthen party committees have to come from  
5 Congress, and we would urge Congress to do things to  
6 strengthen party committees, raising or eliminating  
7 the party-coordinated spending limits, allowing exempt  
8 activities for paid staff, allowing more allocation  
9 for state parties of federal and non-federal  
10 activities, letting the national parties raise money  
11 for state candidates, and raise money for charities,  
12 things that McCain-Feingold does not allow us to do,  
13 shockingly.

14 But those are -- those are reforms that  
15 Congress would have to pass, not the Commission. And  
16 similarly, it was Congress, not the Commission, that  
17 the McCutcheon court primarily addressed in its  
18 decision. And again, it wasn't in a context of  
19 suggesting new laws or new regulations that should be  
20 passed, but it was saying if Congress really is  
21 concerned about circumvention of the contribution  
22 limits, here are some things that it could do.

23 Has Congress acted? It has acted, but not  
24 in a way that suggests that it's worried about

1 circumvention or worried about large checks to party  
2 committees. Indeed, the opposite. Increasing limits  
3 for party committees was one of the very few policy  
4 issues deemed important enough by Congress to include  
5 in the year-end appropriations. And they have now  
6 given the Commission through that bill a lot of leeway  
7 to act consistent with the sentiment that all of you  
8 have expressed to strengthen the party committees.

9           If you read that legislation and you read  
10 the legislative history in the congressional records  
11 submitted by Leader Reid and Speaker Boehner, you'll  
12 see an intent for very broad uses of those new  
13 accounts, including fundraising for those new  
14 accounts, and it is clear that those accounts are  
15 meant to augment, not supplant, but augment the  
16 advisory opinions on the same -- on the same topics,  
17 and to allow for fundraising for those accounts.

18           So this Commission has a lot of leeway to  
19 help the party committees now directly there included  
20 in the statute. So I hope to the extent that you do  
21 any rulemakings, you will act consistent with that  
22 sentiment.

23           I'd like to address just very briefly,  
24 because we do address it more extensively in our

1 written comment, the four issues raised in McCutcheon:  
2 Disclosure, affiliation, earmarking. Again, the Court  
3 said the rigorous laws now in place on those topics  
4 support the notion that the aggregate limits are  
5 unconstitutional. The Court did not say we need more  
6 rigorous regulation in those areas. And with respect  
7 to joint fundraising committees -- and that's joint  
8 fundraising -- that's really the topic that's probably  
9 most relevant to party committees.

10 Again, if Congress were worried about large  
11 checks to party committees, it has got a very odd way  
12 of showing it when it recently increased the party  
13 committee limits. So clearly Congress is not  
14 concerned about --

15 CHAIR RAVEL: You have one minute.

16 MR. PHILLIPPE: -- that particular issue.  
17 Thank you. And the Court, the Supreme Court, pointed  
18 out that joint fundraising committees are not a good  
19 tool for circumvention, and there is certainly no  
20 evidence of joint fundraising committees being used  
21 for circumvention of the contribution limits, either  
22 pre- or post- the McCutcheon decision.

23 So I would urge you not to act to limit the  
24 size or the transferability of funds out of joint

1 fundraising committees because there is just no  
2 evidentiary basis to do so.

3           And in closing, I would actually suggest  
4 then that you really look at the evidence presented to  
5 you today, elevate evidence over rhetoric. A  
6 rulemaking cannot be based on mere rhetoric. There  
7 needs to be evidence in the record, as the Van Hollen  
8 court recently pointed out. And so I really urge you  
9 to be true to administrative procedure, and be true to  
10 your sentiment expressed many times to help strengthen  
11 the party committees.

12           Thank you.

13           CHAIR RAVEL: Thank you very much.

14           Mr. Simon.

15           MR. SIMON: Thank you. Good morning. Two  
16 weeks ago, according to press reports, a room full of  
17 multimillionaires decided they're going to raise and  
18 spend about \$900 million to make the 2016 elections  
19 turn out their way. This money is going to be donated  
20 to outside spending groups in very large amounts by  
21 very rich people. Much of the money will undoubtedly  
22 be spent through groups that under the Commission's  
23 rules do not disclose their donors. So the public  
24 will never know the identity of the wealthy interests

1 who are behind much of this spending.

2           This group will almost certainly support  
3 Republican candidates exclusively, but there will be  
4 plenty of multimillionaires on the Democratic side as  
5 well, and they're likely to deploy their vast wealth  
6 in similar ways, and their identities are also likely  
7 to be hidden from the public.

8           To an important degree, this illustrates the  
9 state of campaign financing for the upcoming  
10 presidential elections, a contest of plutocrats  
11 spending hundreds of millions of dollars whose  
12 identities will not be known to the public, but only  
13 to the candidates, office holders, and party leaders  
14 that they seek to benefit and curry favor with.

15           To compound the problem, much of the  
16 spending in this election will be done under the guise  
17 of being independent of those candidates, office  
18 holders, and party leaders. But at least for the  
19 spending done through candidate-specific super PACs,  
20 this truly is a legal fiction, not any sensible  
21 conception of independence.

22           When the Supreme Court has discussed  
23 independent spending, it has said such spending must  
24 be totally independent, wholly independent, truly

1 independent, and done without any candidate approval  
2 or wink or nod.

3           The reality with candidate-specific super  
4 PACs is very different. In the 2012 election, for  
5 instance, one donor gave a million dollars to the  
6 Santorum super PAC, and that donor said that it helped  
7 shape the spending decisions by the super PAC. At the  
8 same time, he traveled with Santorum, was reported to  
9 be part of Santorum's inner campaign circle, and  
10 according to press reports participated in sensitive  
11 conversations with Santorum about his campaign  
12 advertising. Santorum himself said that this donor is  
13 "someone who I talk to, who gives me plenty of advice  
14 on what I say."

15           In another example, according to other press  
16 reports, one consulting firm simultaneously provided  
17 voter research services to both the Romney campaign  
18 and to the Romney super PAC. The head of the  
19 consulting firm was quoted in the *New York Times* story  
20 as stating about this arrangement that he understood  
21 how it could look ridiculous.

22           In Buckley, the Supreme Court said that the  
23 independent nature of outside spending is what  
24 alleviates the danger that the spending will be given

1 as a quid pro quo in exchange for improper commitments  
2 from a candidate. But according to press reports,  
3 Sheldon Adelson had direct face-to-face talks with  
4 Mitt Romney before donating \$30 million to the Romney  
5 super PAC.

6 Can anyone seriously contend that this is  
7 what the Supreme Court meant when it said that  
8 independent spending poses no danger of corruption?  
9 By now it's considered a virtual necessity for any  
10 serious candidate to have a dedicated super PAC, which  
11 as a practical matter functions as a soft-money arm of  
12 the campaign. Nor is there much danger of the super  
13 PAC getting off-message. The super-PAC is typically  
14 run by the candidate's own political operatives or  
15 former staff.

16 The candidate himself raises money for the  
17 super PAC and meets with its large donors. And now  
18 the candidate even supplies the video footage for the  
19 super PAC to use in its ads.

20 It has been widely observed that the premise  
21 of the Citizens United decision is that unlimited  
22 corporate spending does not pose any threat of  
23 corruption for two reasons: first, because such  
24 spending will be fully disclosed; and second, because

1 it will be completely independent of a candidate's  
2 campaign.

3           Instead, we now have hundreds of millions of  
4 dollars of undisclosed spending, and we now have  
5 spending that can be considered independent only by  
6 applying the yardstick of the FEC's inadequate  
7 coordination regulations. The very safeguards against  
8 corruption relied on by the Supreme Court have been  
9 undermined by the Commission's rules.

10           With regard to disclosure in particular, the  
11 Commission itself has said about its role that, quote,  
12 "Disclosing the sources and amount of funds used to  
13 finance federal elections is perhaps the most  
14 important of the FEC's duties. In fact, it would be  
15 virtually impossible for the Commission to effectively  
16 fulfill any of its other responsibilities without  
17 disclosure," close quote.

18           Yet the Commission is failing at this job.  
19 A district court has now twice declared illegal the  
20 Commission's reporting rules for electioneering  
21 communications. The Commission is not even appealing  
22 the latest ruling, although another party is. But the  
23 Commission can and should fix its rules right away to  
24 close the most obvious of loopholes that turns a



1 statutory reporting requirement into little more than  
2 a suggestion to an outside spending group that it  
3 might want to volunteer the names of its donors, and  
4 not surprisingly, few do.

5 Similarly, the Commission should fix its  
6 rules regarding disclosure of independent  
7 expenditures, which also result in almost no donor  
8 disclosure. It's hard to square the Supreme Court's  
9 ringing endorsement of disclosure as a panacea for the  
10 possible ills of big money with the Commission's  
11 tolerance for its obviously flawed rules that result  
12 in hundreds of millions of dollars of secret money in  
13 federal elections.

14 Indeed, in McCutcheon itself, the Court  
15 again said that disclosure minimizes the potential for  
16 abuse of the campaign finance system. There is no  
17 excuse, statutory or constitutional, for the  
18 Commission's existing inadequate disclosure regime.

19 So let me suggest that if you're looking for  
20 issues to examine in a rulemaking, disclosure and  
21 coordination would be the two most important areas for  
22 the Commission to pursue. As to the specific  
23 McCutcheon-related issues raised in the ANPRM, our  
24 written comments set forth our suggestions with regard

1 to existing rules relating to earmarking, affiliation,  
2 and joint fundraising committees.

3 The Court in McCutcheon did not question the  
4 importance of effective measures to guard against  
5 circumvention of the base contribution limits. It  
6 simply said that the aggregate limits are not a  
7 narrowly-tailored means to do so. The Court said that  
8 the Commission's rules are a better means to  
9 accomplish this anti-circumvention goal, but it also  
10 specifically invited the Commission to strengthen  
11 those rules to ensure that they serve that purpose.

12 For instance, the Court three times said  
13 that it would be impossible or at least illegal for a  
14 donor to funnel contributions through an intermediary.

15 CHAIR RAVEL: You have a minute.

16 MR. SIMON: Thank you. For a donor to  
17 funnel contributions through an intermediary because  
18 the Commission's rules forbid even implied earmarking.

19 Yet the Commission has announced that it enforces the  
20 earmarking prohibition only when the earmarking is  
21 direct and express.

22 The Commission's announced enforcement  
23 policy is at war with the express language of its own  
24 regulation, and it's certainly at war with the

1 rationale of the McCutcheon opinion. It should be of  
2 obvious importance for the Commission to reconcile its  
3 enforcement practice with its regulation and with the  
4 Supreme Court's reliance on that regulation.

5 These kinds of technical changes are  
6 important, but they pale in comparison to what the  
7 Commission should do first, which is to fix its  
8 disclosure and coordination rules. Thank you.

9 CHAIR RAVEL: Thank you very much.

10 Professor Smith.

11 MR. SMITH: Madame Chair, this is a  
12 rather --

13 CHAIR RAVEL: Do you want to move --

14 MR. SMITH: Can I just speak from the podium  
15 perhaps or from the --

16 CHAIR RAVEL: Or do you want to move to the  
17 other one? I'm sorry, yeah. It's -- we don't have a  
18 table big enough.

19 MR. SMITH: Thank you.

20 CHAIR RAVEL: I apologize.

21 MR. SMITH: All right. Well, thank you,  
22 Chair Ravel, and Vice Chair Petersen, and  
23 Commissioners, Mr. Palmer, and members of the  
24 Counsel's office. I'm pleased to appear here today as

1 chairman of the Center for Competitive Politics, but  
2 also as a member of the public, and from my home in  
3 Granville, Ohio, population 5,646, a major seat of  
4 power in the country -- that's the population if you  
5 include the college students.

6 As we start this long day of comments, it's  
7 worth reminding ourselves that the United States today  
8 has more disclosure laws in effect that at any time  
9 prior in our nation's history. Indeed, campaign  
10 finance generally remains more heavily regulated at  
11 the federal level than at any time prior to 1975, and  
12 in many ways more heavily regulated than at any time  
13 prior to 2003.

14 Federal laws and regulations governing  
15 campaign finance total over 376,000 words, not  
16 including advisory opinions, statements of policy, and  
17 the like. That's about 75 percent longer than Plato's  
18 *Republic*, generally considered the definitive  
19 philosophical treatise on all questions regarding  
20 government. And it is further worth reminding  
21 ourselves that for all the outrage generated by those  
22 who oppose the Supreme Court's eminently sensible and  
23 doctrinally ordinary First Amendment rulings in  
24 Citizens United and McCutcheon, no federal disclosure

1 laws have been repealed, nor were any struck down by  
2 the Court in those cases, nor were any FEC regulations  
3 governing earmarking, affiliation, or coordination  
4 struck down.

5           While the courts have not struck down  
6 federal disclosure laws, it is not true, as some have  
7 suggested, that the Supreme Court has given its  
8 blessing to disclosure laws that are broader than  
9 those that are already on the books. The Supreme  
10 Court has a long history of striking down overly broad  
11 rules, either facially or as applied. And Thomas v.  
12 Collins, NAACP v. Alabama, NAACP v. Button, Talley v.  
13 California, Bates v. Little Rock, Brown v. Socialist  
14 Workers Campaign Committee, Meyer v. Grant, Buckley v.  
15 American Constitutional Law Foundation, and McIntyre  
16 v. Ohio Elections Commission is a few of the most  
17 prominent. In Massachusetts Citizens for Life v. FEC,  
18 the Court struck down laws extending the reach of  
19 disclosure through the definition of political  
20 committee. And in Buckley v. Valeo itself, the Court  
21 upheld FECA's disclosure requirements only after  
22 dramatically narrowing their reach and scope,  
23 prohibiting many of the same things that are now  
24 proposed for added disclosure today.

1           Moreover, lower federal courts continue to  
2           strike down state laws that are often similar to those  
3           that are now being proposed federally. In sum, there  
4           are limits.

5           I do believe that there are things that can  
6           be done in the realm of disclosure, such as  
7           substantially raising the threshold for reporting of  
8           contributions to wash out minor contributors and for  
9           registering as a political committee. But generally  
10          speaking, if changes in disclosure rules are to be  
11          successful, they will occur in the context of  
12          legislative compromise and cannot under the statute be  
13          successfully dictated by this agency.

14          In issuing this ANPRM, the Commission relies  
15          heavily upon Chief Justice Roberts's indication that,  
16          quote, "Multiple avenues are available to Congress  
17          that would serve the government's interest in  
18          preventing circumvention while avoiding unnecessary  
19          abridgment of First Amendment rights."

20          Merely because the Chief suggested as a part  
21          of a First Amendment analysis a number of measures  
22          that might be more carefully constructed than a blunt  
23          aggregate limit does not mean those measures would  
24          necessarily survive the required closely drawn

1 analysis if put forth in the federal courts. As the  
2 McCutcheon Court stated, "We do not opine on the  
3 validity of any particular proposal." Nor does the  
4 Chief Justice's repeated suggestions that Congress  
5 could plausibly take up additional anti-circumvention  
6 measures necessarily mean that the FEC may attempt to  
7 legislate in Congress's stead.

8           Importantly, said the Court, "there are  
9 multiple avenues available to Congress that would  
10 serve the government's anti-circumvention issues." It  
11 wrote, "if Congress agrees it might." It wrote, "if  
12 Congress believes it could require." It wrote,  
13 "Congress might also consider." And the point is that  
14 there are numerous alternative approaches available to  
15 Congress.

16           Only once did the Court suggest that the  
17 Commission might have the authority to adopt stricter  
18 measures, and that was in the context of PACs, where  
19 it noted that the FEC might strengthen those rules  
20 further by, for example, deciding how -- divining --  
21 defining how many candidates a PAC must support in  
22 order to ensure that a substantial portion of a  
23 donor's contribution is not rerouted to a certain  
24 candidate.

1           Even there, the Court was not issuing an  
2           advisory opinion suggesting that such a ruling would  
3           be clearly constitutional, so even there the  
4           Commission would want to act carefully.

5           Furthermore, any actions the Commission  
6           takes must contain the reasoned analysis necessitated  
7           by the Administrative Procedures Act, and must then  
8           survive review under Chevron v. Natural Resources  
9           Defense Council. So before considering the contents  
10          of any proposed rule change, the Commission must first  
11          consider whether existing rules are sufficient.

12          In other words, the Commission's rules, for  
13          example, already prohibit earmarking. And even before  
14          McCutcheon, donors were theoretically able to use  
15          contributions to PACs to skirt the limits on  
16          contributions to individual candidates. Yet nothing  
17          suggests that this was a major problem for the  
18          Commission. It wasn't even one routinely flagged by  
19          supporters of greater regulation here. And there is  
20          nothing to suggest that the regulations were  
21          inadequate to deal with it.

22          The Commission has successfully prosecuted  
23          cases under section 110.1(h), both in federal court  
24          and in obtaining settlements at the Commission level.



1       During the course of the McCutcheon case, counsel for  
2       the United States and *amici* floated numerous  
3       hypotheticals suggesting that absent an aggregate cap  
4       on contribution, informal earmarking that skirted  
5       existing legal prohibitions might occur.

6               As I and others with experience in these  
7       matters have written, these theories are highly  
8       unlikely in reality. And the McCutcheon majority  
9       itself found these theories, quote, "implausible" and,  
10      quote, "unlikely." The Court noted that the district  
11      court erred by engaging in such, quote, "speculation,"  
12      it considered such scenarios, quote, "divorced from  
13      reality," and it clearly stated that the government  
14      may not, quote, "further the impermissible objective  
15      of simply limiting the amount of money in political  
16      campaigns by claiming circumvention, given the  
17      improbability of circumvention."

18             In short, while the Court suggested that  
19      certain regulatory steps of an aggregate -- short of  
20      an aggregate ban might be a less restrictive way for  
21      the government to accomplish its objective, it made  
22      clear that such means must address an actual and not a  
23      hypothetical problem, and it expressed clear doubts  
24      that large-scale circumvention of existing laws and

1 regulations is likely.

2           If these evils are not already apparent from  
3 the FEC's files, it's unlikely that this burden can be  
4 met. Now, unfortunately, time constraints today don't  
5 allow us to have really a more serious discussion.  
6 But let me conclude that I have heard much made of the  
7 fact that the Commission has received over 30,000  
8 comments on this ANPRM, most of them, according to  
9 Commissioner Weintraub, clamoring for more  
10 restrictions on political speech and campaign  
11 financing.

12           Of course, just last year, the Internal  
13 Revenue Service proposed more restrictions on  
14 political speech and campaign financing, and received  
15 about 170,000 comments, the vast majority of them  
16 urging it not to regulate political speech.

17           You know, this Commission does listen to the  
18 public. It has listened to the public. The public is  
19 welcome to comment on --

20           CHAIR RAVEL: You've got one minute.

21           MR. SMITH: -- on every rulemaking, and  
22 we've had bigger rulemakings. A little over a decade  
23 ago, this agency received over 100,000 comments, the  
24 substantial majority opposed to an ANPRM that would

1 have expanded the agency's reach in terms of  
2 disclosure. And at that time, Commissioner Weintraub  
3 stood with me in rejecting this overreaction to the  
4 villain *du jour*, 527s. Who even hears of 527s today?

5 The villain *du jour* is something in the  
6 vicinity of 5 percent or less of political spending.  
7 And we know that because far from being truly dark,  
8 this money has to be reported as spent.

9 So we at the Center do believe in integrity  
10 in elections, and we believe that that integrity  
11 begins with describing seriously and fairly the extent  
12 of the problem facing us, and describing seriously and  
13 fairly court decisions, and recognizing court  
14 decisions as First Amendment guidance and orders, not  
15 as obstacles to be circumvented by this Commission.

16 Rather than spend time on divisive measures  
17 of dubious constitutionality in response to alleged  
18 problems of dubious mention, I would urge this  
19 Commission to focus on modest but real reforms --

20 CHAIR RAVEL: Time is up, sir.

21 MR. SMITH: -- to the process that can be  
22 accomplished. Thank you.

23 CHAIR RAVEL: Thank you very much.

24 Appreciate it. Thank you very much to the panel. We

1 will now turn to Commissioner questions for about the  
2 next 17 minutes, it looks like. So are there any  
3 questions or comments from -- Commissioner Goodman.

4 COMMISSIONER GOODMAN: Yes. I'd like to  
5 address Ms. Getman about the California experience in  
6 attempting to regulate certain Internet  
7 communications. Just for the edification of everyone  
8 here, because I know you understand this, the  
9 Commission has drawn a line for regulation of some  
10 Internet communications, but not others. And the  
11 Commission drew that line in 2006 to say that this  
12 Commission will regulate political committees.

13 When they post materials online, they have  
14 to include disclaimers, and of course they already  
15 disclose all their expenditures. But my question is,  
16 for the vast majority of American people, bloggers,  
17 interest groups, people, people associated as groups,  
18 are you suggesting that we should start imposing a  
19 disclosure regime on all of that communication about  
20 politics?

21 And let me -- just because I may only get  
22 one question here, compound this question about that  
23 generally. We have a proposal here in the comments  
24 that were submitted to this Commission by the group

1 Citizens for Responsibility and Ethics in Washington,  
2 calling for greater regulation of Internet  
3 communications.

4 And what they suggest on page 5 and 6, 6 and  
5 7, of their proposal is that this Commission expand  
6 regulation of Internet communications that merely  
7 mention candidates, that don't expressly advocate.  
8 They suggest that we regulate just the mere mention,  
9 and issue advocacy mentioning candidates, as  
10 electioneering communications. You know, that's the  
11 pre-60 day window.

12 Now, if I post something --

13 CHAIR RAVEL: Can you wrap up your question,  
14 please?

15 COMMISSIONER GOODMAN: If I post something  
16 online early in the year, and it sits out there on  
17 YouTube throughout the year, and it hits that 60-day  
18 window, I now -- what springs into existence under the  
19 CREW proposal is a requirement that I report my  
20 expenditure to the FEC as well as under the most  
21 recent court decision all my donors for the last two  
22 years.

23 Could you just react to that proposal by  
24 CREW, and also the line that the Commission drew in

1 2006?

2 MS. GETMAN: Sure. So first of all,  
3 California does not regulate true volunteer efforts in  
4 any way, shape, or form. So if you're truly a  
5 volunteer blogger, nobody is going to make you  
6 disclose your identity. That is what the McIntyre  
7 case is all about. But if you are being paid by a  
8 campaign, then you do have to disclose the fact that  
9 you're being paid by a campaign to blog. And that's  
10 only fair, because somebody is paying you to post what  
11 you're otherwise saying is your independent opinion.

12 The other thing about California is that  
13 political committees don't have a major purpose to us.  
14 So it's much easier to become a political committee  
15 in California. There is a very low threshold. Once  
16 you become a political committee, then you do have to  
17 disclose your expenditures.

18 And so it's a much simpler, much simpler  
19 system, that does in fact draw more people into  
20 disclosure. But again, let me make it very clear. It  
21 has not dampened political activity in California. We  
22 are almost the Wild West when it comes to spending  
23 money. And yet we are much better about letting  
24 people know who is spending that money.

1           CHAIR RAVEL: Let me see if there are  
2 others. I'm sorry. Commissioner Weintraub.

3           COMMISSIONER WEINTRAUB: Thank you, Madame  
4 Chair. Brad, I think you talk faster than I can  
5 listen, but since you did mention our prior work, we  
6 have worked together before, and I hope that we can  
7 work together again. But I want to point out that the  
8 527s that we were talking about back then do have  
9 disclosure obligations, just to the IRS, not here at  
10 the FEC. And what we have seen in the comments that  
11 our staff has analyzed, I didn't personally count up  
12 the 32,000 comments, but our staff went through and  
13 told us that 75 percent of them were seeking greater  
14 regulation.

15                   Seventy-five percent of them thought that we  
16 need to do more about money in politics, particularly  
17 in the area of disclosure. And I think that's  
18 something that we can't ignore.

19                   My question, however, actually goes to Mr.  
20 Simon. And I wanted to ask you what you -- if you  
21 could elaborate on what you think an effective  
22 coordination rule would look like.

23           MR. SIMON: Well, I think -- I think what  
24 the Commission should do is take account of the new

1 phenomena in campaigns since Citizens United, not just  
2 super PACs, but specifically a subset of super PACs,  
3 which are candidate-specific super PACs, which I think  
4 are a brand new creature, and very different from  
5 anything we've seen before in the way of supposedly  
6 independent spending, and pose very unique threats.  
7 And I think those issues need to be examined by the  
8 Commission in terms of whether they should  
9 realistically in the terms the Supreme Court has  
10 talked about, independent spending, whether candidate-  
11 specific super PACs should trigger coordination  
12 concerns.

13 For a model of an approach, I would look to  
14 legislation that was introduced in the last Congress  
15 and has been reintroduced in this Congress by  
16 Congressmen Price and Van Hollen. Certainly what I'm  
17 talking about can and I think should be achieved by  
18 Congress. But I also think it is within the  
19 Commission's authority under the existing coordination  
20 standard in the statute to reinterpret that statutory  
21 language in light of the development and growth of  
22 candidate-specific super PACs.

23 CHAIR RAVEL: Thank you. Is there another  
24 question on the other side? Vice Chair.



1                   VICE CHAIR PETERSEN: Thank you, Madame  
2 Chair. I just wanted to ask a question of former  
3 Chairman Smith. You touched upon in your comments  
4 that, because of the length of time you weren't able  
5 to fully flesh out, the distinction between disclosure  
6 as a legitimate anti-corruption and informational  
7 device that the Court has upheld, but that disclosure  
8 can also run afoul of privacy interests and can, when  
9 used as a device to chill legitimate speech, the  
10 courts have not looked so kindly upon disclosure when  
11 used in that way.

12                   I just wanted to give you an opportunity  
13 just to more fully flesh out that line, and as a  
14 Commission, when to identify when disclosure has gone  
15 from its legitimate purposes and crossed the line over  
16 into purposes that would be constitutionally suspect  
17 under Supreme Court precedent and precedent in other  
18 courts.

19                   MR. SMITH: Well, I would say, first of all,  
20 that disclosure rules cannot be passed in the hope  
21 that they will discourage political activity. And it  
22 has sometimes been suggested that that is exactly why  
23 people want them. Some people have specifically said  
24 that when introducing proposals, both in Congress and

1 interest groups that purport to represent reform  
2 positions.

3 I think one thing that can be done is to  
4 wash out small donors and small contributors. But I  
5 think generally we do need to realize that there is a  
6 growing tendency now not to use disclosure to monitor  
7 the affairs of public officials, but to harass  
8 citizens that themselves contribute. And at a  
9 minimum, that's something that the Commission has to  
10 take into account in considering its rules. And  
11 that's one reason why I do think it's important that a  
12 lot of this go to Congress.

13 You know, Congress has had bills in the past  
14 to provide for more disclosure. Reformers rejected  
15 those bills because they were part of a legislative  
16 compromise that would have removed contribution  
17 limits. Reformers didn't want that, right?

18 So that's why this, I think, is best handled  
19 as a legislative matter to take into account that sort  
20 of balancing. And I would say again, yes, 30,000  
21 comments, that's a lot of comments. We've seen a lot  
22 more at this agency and at other agencies, and if you  
23 produce a rule that says we're going to start  
24 regulating this stuff, including the Internet and so

1 on, I think you will then see a lot more than 32,000  
2 comments come in. And I don't think staff will  
3 analyze them and find that 75 percent are favorable to  
4 more regulation.

5 CHAIR RAVEL: Thank you, Mr. Smith. Are  
6 there any other questions? Commissioner Walther?

7 COMMISSIONER WALTHER: Not right now.

8 CHAIR RAVEL: No? Let me just make a  
9 comment, and I want to thank Professor Malbin for your  
10 comments about the web site. We are very concerned  
11 about that, and I myself care a lot about making sure  
12 that it's successful to the public. And I was  
13 wondering if you would be willing to assist us in our  
14 efforts and give us some advice when we're -- as we're  
15 working this year, and hoping to get it done with the  
16 18F group that the federal government has provided to  
17 help us do this project.

18 MR. MALBIN: That's an easy, easy question.

19 Yes, I'd be happy to.

20 CHAIR RAVEL: That's great. Well, we'll  
21 definitely call on you. While you were talking,  
22 Commissioner Walther and I were nodding and, you know,  
23 in agreement. So I thank you very much for your  
24 comments.

1 Commissioner?

2 COMMISSIONER HUNTER: Thank you, Madame  
3 Chair. My question is for Ms. MacNamara. Thank you  
4 so much for coming today and for reporting to us the  
5 information that you've learned from voters outside of  
6 Washington, D.C. Out of the comments that  
7 Commissioner Weintraub referenced, a large number of  
8 them were sent in through the League of Women Voters.

9 I think approximately 6,000 of the 32,000 were very  
10 similar comments submitted through the League of Women  
11 Voters.

12 You know, many of them suggest the FEC do  
13 things that are facially unconstitutional. And as  
14 Commissioner -- former Commissioner Brad Smith said,  
15 we don't view the Supreme Court guidance as guidance  
16 to get around, as obstacles to get around, but it's  
17 doctrinal guidance that we of course must follow. So  
18 we appreciate the comments, but a lot of them suggest  
19 doing things that we're just not able to do.

20 One of the ads that the League of Women  
21 Voters aired, as you know, in April 2011 talked about  
22 Scott Brown and his votes regarding the Clean Air Act  
23 and the ad ends, "Scott Brown should protect the  
24 people, not the polluters." The ad is not an

1 independent expenditure. It doesn't call to not elect  
2 Scott Brown or to elect his opponent.

3 MS. MACNAMARA: Exactly.

4 COMMISSIONER HUNTER: Right.

5 I don't think it's an electioneering  
6 communication because I don't think it was run within  
7 the window. But, you know, these are the kinds of  
8 things that I think some of the outside groups and  
9 some of the outside commenters are saying, I think,  
10 that, you know, fall into the category of dark money  
11 because they mention federal candidates, even though  
12 they talk about issues.

13 You know, many of these groups don't  
14 disclose those donors, as they have a right not to,  
15 you know. They're not political committees. Most of  
16 the work you do has nothing to do with electing  
17 candidates. And so, you know, it's -- we obviously  
18 have to predict that our laws are not the same as they  
19 are in California. And it is difficult to become a  
20 political committee, as it should be.

21 MS. MACNAMARA: I'll be happy to comment.

22 COMMISSIONER HUNTER: Oh, of course.

23 MS. MACNAMARA: Yes.

24 COMMISSIONER HUNTER: If you have any

1 comment --

2 MS. MACNAMARA: Of course, as the Commission  
3 knows, the League is a nonpartisan organization. I  
4 completely agree with you that the ads we ran in  
5 support of EPA rulemaking with respect to clean air  
6 were directed at our properly-elected officials and  
7 not at candidates for public office.

8 I do think, however, that one of the  
9 dangers, the larger dangers, of the situation that we  
10 find ourselves in is that organizations that are  
11 legitimately speaking out on issues are in great  
12 danger of being confused with electioneering  
13 advertising because the climate that has been created  
14 with a lack of disclosure, with all of the issues that  
15 we have with candidates, with pressure on candidates  
16 to raise money, is we've created -- we've created  
17 almost an ongoing election cycle. And it's very  
18 difficult for citizens groups to make their voices  
19 heard in a proper manner to advocate with their  
20 elected officials in this current climate.

21 It is one of the principal reasons why the  
22 League so strongly supports better disclosure laws,  
23 better coordination laws, just clearer regulation in  
24 this area so that groups like ours can in fact do

1 their due diligence and represent the views of the  
2 public.

3 I would also add that we did fully disclose  
4 the sources of the -- the sources of our money, as we  
5 always do, even though we were not required to do so.

6 But I do think that's -- I do think and I do urge the  
7 Commission to take the long view. There is -- I hear  
8 -- I'm not that kind of a lawyer. I spent my career  
9 as a prosecutor. I spent my career having to  
10 distinguish between when I was going to be able to use  
11 the law to win a battle, and when doing so was going  
12 to cause me to lose the larger war.

13 And I think that is the challenge for this  
14 Commission, and for everyone here making comments, is  
15 to determine what is the bigger picture. How can we  
16 draft rules, and how can we draft -- how can we ensure  
17 that the public is protected and that our democracy is  
18 protected in these situations. And it's a difficult  
19 situation right now because of the floods of money.

20 CHAIR RAVEL: Okay. Thank you very much.  
21 Thank you very much to the panel for your  
22 participation. We appreciate it, and we're going to  
23 move to the next panel. It will take a few minutes to  
24 set up.

1 (Pause)

2 CHAIR RAVEL: Thank you, all. It will be  
3 just a couple of minutes. I think we're waiting for  
4 one more panel member. And then just to let you know,  
5 Bob Bauer is flying in, and so he will come in a  
6 little later and be at the end of the panel, for  
7 everybody's scheduling purposes.

8 (Pause)

9 CHAIR RAVEL: Great. Okay. I think we will  
10 begin with the second panel. Thank you all very much  
11 for coming. And let me announce the second panel. It  
12 consists of Professor Briffault of Columbia Law  
13 School; Bruce Cain, professor of Stanford University;  
14 Craig Holman, on behalf of Public Citizen, out of  
15 order; Donald McGahn, on behalf of Freedom Partners  
16 Chamber of Commerce, and Freedom Partners Action Fund;  
17 Mark Schmitt, on behalf of the New America Foundation;  
18 and Zephyr Teachout.

19 Thank you all for coming. As I mentioned  
20 before, Bob Bauer from Perkins Coie, LLP is coming a  
21 little late, and he'll go over to that far corner.  
22 And we've discovered, Ms. Teachout, that it's  
23 difficult for you to reach the -- yes. So we may have  
24 to switch around if you're -- thank you very much.



1 All right. We will begin with Professor  
2 Briffault. Would you prefer to stand there? No  
3 problem.

4 MR. BRIFFAULT: Professor Smith used this --

5 CHAIR RAVEL: Go right ahead.

6 MR. BRIFFAULT: Thank you very much, Madame  
7 Chair and Vice Chair and members of the Commission.  
8 I'm very honored by the opportunity to testify before  
9 you today. I am the Joseph P. Chamberlain professor  
10 of legislation at Columbia Law School. And I also  
11 wear another hat as the chair of New York City's  
12 Conflicts of Interests Board, which is the city's  
13 chief ethics agency. But, of course, the views I  
14 present today are my own.

15 I'm going to focus my comments on two  
16 subjects which are within your jurisdiction. You've  
17 heard about both of them already today: coordination  
18 and disclosure. The evolution of campaign finance  
19 techniques requires the adaptation of the rules in  
20 these areas to current campaign practices. My goal  
21 this morning is to make some modest but concrete  
22 proposals that I hope will help update regulation in  
23 this area within our existing regulatory framework.

24 First on coordination, the rise of single-

1 candidate super PACs has given new urgency to the need  
2 for a more effective and realistic definition of  
3 coordination. Coordinated expenditures may be treated  
4 as contributions and subject to limitation because, as  
5 the Supreme Court recognized in Buckley, coordinated  
6 expenditures are in reality, quote, "disguised"  
7 contributions to the candidate who benefits from them,  
8 and thus pose the same dangers of corruption and the  
9 appearance of corruption as contributions.

10 Over the last three election cycles, single-  
11 candidate super PACs have begun to obliterate the  
12 traditional line between contribution and expenditure  
13 and between coordination and independence, which is  
14 central to our campaign finance jurisprudence. By one  
15 count, 75 super PACs dedicated to advancing the  
16 electoral fortunes of individual -- of specific  
17 candidates were active in the 2012 election cycle, and  
18 accounted for roughly 45 percent of all super PAC  
19 spending in that election.

20 These organizations were able to take  
21 contributions of unlimited size and devote them  
22 entirely to aiding specific candidates. Many enjoyed  
23 close relationships with the candidates they backed.  
24 They were often organized and directed by former

1 staffers to that candidate, and they relied on the  
2 same pollsters, media buyers, TV ad producers, and  
3 other common vendors as those candidates.

4 Candidates often raised funds for the super  
5 PACs backing them, and representatives of candidates  
6 met with the staffs of and donors to their supportive  
7 super PACs.

8 The rules governing coordination are based  
9 on an older model of independent committee, one with  
10 an independent existence apart from the current  
11 election and a set of ideological policy goals beyond  
12 the election of specific candidates, and often more  
13 membership organizations.

14 These rules need to be revised and  
15 supplemented to address the new phenomenon of  
16 nominally independent committees that are really aimed  
17 at electing specific candidates. I suggest that an  
18 organization's expenditures should be treated as  
19 coordinated with the candidate if it, one, focuses all  
20 of its electioneering expenditures on one or a very  
21 small number of candidates; and two, either is staffed  
22 by individuals who worked in the current or past  
23 election cycle for the candidate or the candidate's  
24 committee or political party, or has received

1 fundraising support from the candidate, the  
2 candidate's campaign staff, or party, or has been  
3 publicly endorsed by the candidate or the candidate's  
4 party as a vehicle for supporting that candidate.

5           Donations to such an organization should be  
6 treated as donations to that candidate or candidates.

7     Although the goal is to reach single-candidate  
8 committees, they could easily evade the rule through  
9 some nominal spending for an additional candidate. As  
10 a result, the rule needs to reach committees that  
11 focus on a very small number of candidates, say two to  
12 four, not just one, or perhaps a committee that  
13 devotes more than half or some other very large  
14 fraction of its spending to only one candidate  
15 regardless of the total number of candidates  
16 supported.

17           This obviously paints a fairly broad-brush  
18 approach, but I think it should be -- hopefully, it  
19 will be food for thought as to how to structure a rule  
20 in this area.

21           This change would be no panacea, but it  
22 would safeguard a fundamental feature of the Federal  
23 Election Campaign Act that we often overlook, the  
24 requirement that candidates centralize their finances

1 in a single authorized campaign committee. This is to  
2 prevent the use of multiple campaign committees to  
3 circumvent campaign finance laws that marked the  
4 elections of the 1940s, 1950s, and 1960s.

5 The single authorized committee makes  
6 contribution limits more effective and campaign  
7 finance activity more transparent. Single candidate  
8 nominally independent committees threaten to undo this  
9 signal accomplishment by enabling candidates to have  
10 more than one campaign committee, evade contribution  
11 limits and undermine transparency.

12 Turning to transparency or disclosure, our  
13 disclosure laws are pretty effective at providing  
14 desirable transparency for donations to candidates and  
15 parties. But they fall short with respect to  
16 independent committees, super PACs, and other  
17 organizations that play a growing role in our  
18 elections.

19 These organizations report their  
20 expenditures, but they are vehicles for large donors  
21 to avoid disclosing their campaign role. At the very  
22 least, two steps must be taken to provide the same  
23 kind of donor disclosure for electorally active  
24 organizations as we require of candidates and parties.

1           First, if an organization reports a  
2           contribution from a corporation, it must be required  
3           to pierce the corporate veil and report not just the  
4           corporation as donor, but also the identities of the  
5           principal individual behind that corporation. This is  
6           not an issue for candidates and parties, as they may  
7           not accept donations from corporations under federal  
8           law. But independent spenders can take and use  
9           corporate donations without limit. So major donors  
10          can hide their roles by donating through shell  
11          corporations.

12           This is also not really an issue about  
13          publicly-held business corporations or mass membership  
14          organizations. Publicly-held business corporations  
15          would likely have a broad base of many shareholders.  
16          Mass membership organizations have many, many small  
17          supporters. The problem is posed by closely-held  
18          corporations and especially by politically active not-  
19          for-profits that draw their funds from donors.

20           For all the concern that many people have  
21          expressed about Citizens United, most of the issue was  
22          not involving business corporations, but entities  
23          which have taken the corporate form as nonprofits.

24           When a super PAC accepts a contribution from

1 a nonprofit, it should be required to report the  
2 principal individual donors to the nonprofit, defined  
3 either as those who provide more than a threshold  
4 fraction of the nonprofit's funds, say 10 percent, but  
5 obviously that number could be changed, or given that  
6 such a fraction may be a moving target, more than a  
7 threshold amount, say \$10,000.

8 If the nonprofit chooses to use only funds  
9 specifically contributed to an electoral activity  
10 account for its campaign spending, then only funds  
11 contributed to that account above the threshold would  
12 have to be reported.

13 Second, campaign spenders which are not  
14 political committees subject to political committee  
15 reporting and disclosure still play an important role  
16 through their independent expenditures for  
17 electioneering communications. They too, when they  
18 report concerning an expenditure or electioneering  
19 communication, should be required to disclose their  
20 principal donors, not just those that earmark  
21 contributions for that campaign activity.

22 Such a limitation on disclosure as the  
23 Commission's rules currently provide is an invitation  
24 to evasion. The propriety of that rule is, of course,

1 the subject of Van Hollen litigation. But apart from  
2 the Chevron and other administrative law questions at  
3 issue in that case, the rule is mistaken on the  
4 merits.

5 With shell organizations playing a growing  
6 role in financing expenditures, disclosure of the  
7 principal individuals behind the organization which  
8 are the nominal spenders is essential for the kind of  
9 transparency that's central to our campaign finance  
10 laws.

11 CHAIR RAVEL: You have one minute.

12 MR. BRIFFAULT: Again, the issue is less the  
13 spending of publicly-held business corporations or  
14 mass membership groups, which may have been the focus  
15 of the Commission's concern when it limited disclosure  
16 of the identity of financial backers of these  
17 spenders. The real issue was spending by closely-held  
18 firms, and especially nonprofits. These spenders  
19 should be required to disclose their principal donors,  
20 again defined either in terms of percentage of funds  
21 or more than a high threshold amount of money.

22 As with the proposal for regulating  
23 political committees, if the spender chooses to limit  
24 its campaign spending to funds specifically



1 contributed to an electoral activity, then only funds  
2 contributed to that account above the threshold would  
3 have to be reported. The goal here, as throughout the  
4 proposal, is to provide the same transparency for  
5 electively active independent committees that we  
6 currently require of candidates and parties. Thank  
7 you.

8 CHAIR RAVEL: Thank you very much.

9 Professor Cain.

10 MR. CAIN: Thank you very much. This  
11 represents the first time I've ever spoken before the  
12 FEC, so --

13 CHAIR RAVEL: Welcome.

14 MR. CAIN: Thank you. As I -- I'm not  
15 affiliated with any particular group, so my views are  
16 basically that of a scholar who studies the process.  
17 And as I listen to today's discussion and discussions  
18 before that, there are two ambiguities that I think  
19 arise that make this a hard problem. One is the  
20 constant use of the word corruption that has been used  
21 today already, will be used later on. And the problem  
22 is that there are actually three problems at play, and  
23 we use the word corruption to cover two of them. And  
24 I think it confuses the discussion and takes our eye

1 off the ball when we do that.

2 In reality, we're concerned about material  
3 corruption, which is using the state or the process to  
4 enrich yourself. Secondly, we're interested in  
5 fairness and unequal representation and unequal  
6 influence. And then thirdly, we're interested in  
7 increasing polarization, as the evidence in political  
8 science is that money is part of the polarization  
9 problem.

10 You know, for reasons that people have  
11 already talked about, the Court tends to frown upon  
12 anything other than material corruption as the reason  
13 to limit speech, and that's a constraint we have to  
14 deal with. Whether we like it or not, that's a  
15 constraint we have to deal with.

16 So I think it's important to realize that  
17 there is no evidence that material corruption is on  
18 the rise, that most of what people are concerned about  
19 out there has to do with polarization and unfairness,  
20 if you like.

21 It's also important to recognize the Court  
22 didn't rule out dealing with political polarization or  
23 unfairness. It simply said you can't do it by capping  
24 speech. And if you think of power as a kind of

1 proportion between your input and the inputs of  
2 others, there are two ways you can deal with that.  
3 One is to deal with the numerator, that is, what you  
4 put in, your vote, the number of votes you have, or  
5 the amount of money you put in, and the other is to  
6 deal with the denominator. And political scientists  
7 for years have been saying, let's pay attention to the  
8 denominator, that is to say, you can level up, you can  
9 increase the amount of money. Those are other ways to  
10 diminish the influence of the numerator.

11 So the other thing is the confusion that  
12 other people alluded to in terms of what is going on  
13 here, what role the FEC can play. And Professor  
14 Briffault has some very clever ideas about you might  
15 tighten regulations. I, as a political scientist,  
16 tend to be a little skeptical about regulatory  
17 approaches. I believe it's the responsibility of the  
18 Congress, the Supreme Court, and the state  
19 legislatures to experiment with ways to deal with this  
20 constraint that the Court has given us, but still to  
21 address these very real problems of fairness and  
22 polarization.

23 I've seen us go through this regulatory  
24 process with issue ads and with what is a lobbyist and

1 now, you know, on the issue of, you know, what is  
2 coordinated spending. And obviously, there have to be  
3 some rules, but the reality is they're all evadable.  
4 Just put a clever person on the other side, and  
5 they'll find a way to evade it.

6 So I do start from the following premise,  
7 that like a lot of political scientists -- and we're  
8 beginning to recognize that many of us have the same  
9 view. We believe the way to deal with a lot of this  
10 situation is to encourage aggregation, compromise, and  
11 negotiation by channeling more money through the  
12 mixing bowls of parties, large trade associations, and  
13 multi-candidate PACs.

14 We also think more should be done to  
15 diminish the burden on individual candidates to dial  
16 for dollars and call people directly and ask for  
17 money, and that if we make use of these political  
18 organizations, we can diminish that burden as well.

19 The most important thing we need to do is  
20 make sure we do not make the situation worse than it  
21 already is. And a lot of political reform in the past  
22 has done that, not intentionally, but unintentionally.

23 I worry that in an effort to try to chase down  
24 coordination and various other kinds of uses of the

1 hard-money system for conduit contribution, in reality  
2 what we're going to do is incentivize people to do  
3 more IEs, independent expenditures.

4           If you have to go through more hoops with  
5 respect to the hard money system, you're just going to  
6 encourage people to go the other way, and at least the  
7 hard money system is capped and is disclosed. So what  
8 we should be doing is encouraging people to go in the  
9 direction of giving more hard money to the political  
10 parties and associations.

11           So I completely endorse what was said in the  
12 previous panel by the Republicans. It turns out  
13 Republicans and conservatives can be right sometimes.

14       It's hard to believe, but it's true. And I think on  
15 this point, they're right, that we'd be better off  
16 putting more money into the hard money system by  
17 allowing for more money to go to the parties.

18           The second thing is that I really do believe  
19 that we could -- and this is not the FEC's  
20 responsibility, but I think we should be encouraging  
21 the Congress to think about reforms that allow  
22 individuals to give more money to parties and  
23 associations. I think it should be extended to multi-  
24 candidate PACs so that people that don't feel

1 represented by the Democratic and Republican party can  
2 also have some influence. And I think the amount of  
3 money that you can give and contribute, the input side  
4 of it, should be in relationship to the amount of  
5 money that the organization gets.

6 So again, if you're giving \$2,000, and the  
7 organization only has \$5,000, you have a lot of  
8 influence. But if you're giving \$2,000, and the  
9 organization is collecting hundreds of millions, your  
10 influence in that party is very minor. So if you  
11 index what people contribute to the amount of money  
12 that they get overall, then you're diminishing this  
13 problem of unfairness or unequal influence within a  
14 party.

15 I also think on the issue of disclosure that  
16 actually Professor Briffault and I have occasionally  
17 agreed on this, which is there is no evidence really  
18 that your average voter really knows about or cares  
19 about the identity of the actual donors. Insofar as  
20 we're really interested in donations, we're interested  
21 in donations because of what it tells about the  
22 interests that are behind particular candidates.

23 So I have for a long time said we should be  
24 treating this issue of disclosure the way we do with

1 census data, that is to say, there is no reason to  
2 reveal individual identity. We should be revealing  
3 the interests and reporting them out the way census do  
4 with occupation and other things.

5 This idea of semi-disclosure I think might  
6 be a way that the two parties can see eye to eye and  
7 find some compromise. And it may be that if you offer  
8 it within the hard money system, you can again  
9 encourage people, nudge people -- obviously it won't  
10 get completely rid of IEs, but you can nudge people  
11 into the hard money system.

12 So again, to repeat, I think that this is a  
13 point in history --

14 CHAIR RAVEL: You have one minute.

15 MR. CAIN: I'm actually going to finish in  
16 less than a minute. I'll be the first one. I think  
17 we should be thinking outside the box, not trying to  
18 do everything by regulation. We need to think of some  
19 new ideas, and we need to encourage ways to address  
20 these goals through experimentation at the state  
21 level, and trying to encourage Congress to find some  
22 compromise.

23 CHAIR RAVEL: Thank you, Professor.

24 Mr. Holman.

1           MR. HOLMAN: Good morning, Commissioner, and  
2 thanks for setting up this public hearing. I want to  
3 begin by stating the obvious. The new dark money that  
4 is plaguing federal elections today is an invention of  
5 you. The Federal Election Commission created this.  
6 This was not the creation of any court decision. It  
7 was not the creation of any act of Congress. It was a  
8 product of a rule that you passed in 2007 redefining  
9 what is disclosure as required under the Bipartisan  
10 Campaign Reform Act.

11           Public Citizen did a study entitled, "Fading  
12 Disclosure," that documented that following BCRA we  
13 had nearly 100 percent donor disclosure in the 2004  
14 and 2006 elections. Then in 2007, when the Federal  
15 Election Commission revised its disclosure rule, we  
16 saw that disclosure for both electioneering  
17 communications and later for independent expenditures,  
18 plummeting roughly down to about 50 percent today.

19           So this is a problem that the FEC created  
20 singlehandedly. And you can singlehandedly fix it.  
21 Now, there are several issues I want to try addressing  
22 with eight minutes, so I don't want to spend too much  
23 time on disclosure. But I did want to begin with  
24 stating the most obvious point here.



1           There are other issues. My colleagues have  
2 addressed super PACs, so I'll skim over this fairly  
3 quickly. Super PACs, I want to emphasize, are a very  
4 unique creature. They're not like regular PACs that  
5 tend to give campaign contributions to multiple  
6 candidates, multiple parties. You know, super PACs,  
7 we have documented in a study called, "Super  
8 Connected," are in fact super connected to candidates.

9           Richard Briffault was citing some other --  
10 some numbers earlier, but if you take a look, for  
11 instance, at the spending figures, you'll find in 2012  
12 single candidate and single party super PACs spend 74  
13 percent of all the money that was spent by super PACs  
14 in the 2012 elections. In 2014, it was 45 percent.

15           Super PACs have essentially become an end-  
16 run around the base contribution limits, where  
17 campaigns realize that super PACs have no contribution  
18 limits and thus become an ideal avenue to reroute  
19 campaign contributors and sources of funds for their  
20 own campaign support.

21           Justice Roberts in the McCutcheon decision  
22 said if this is in fact going on, this is something  
23 the Federal Election Commission or Congress should  
24 look at in strengthening the coordination rules. And

1 Public Citizen agrees with Justice Roberts in this  
2 particular case, in the sense that the FEC should  
3 undertake a close examination of whether or not  
4 single-candidate super PACs should be viewed as truly  
5 independent, independent expenditures. And we urge  
6 the FEC to step forward on this one.

7           Some of the other points I want to move  
8 onto: joint fundraising committees. This is another  
9 potential problem source. We're seeing a number of  
10 mega joint fundraising committees now coming into  
11 existence. The Republican Party set up about six of  
12 them. The Democratic Party has set up one of them so  
13 far. I suspect as we get into the election cycle,  
14 we're going to see many more flourish.

15           It is -- and by the way, you know, joint  
16 fundraising committees, a Public Citizen study  
17 concluded that if you include leadership PACs in the  
18 potential for making campaign contributions through  
19 joint fundraising committees and all the party  
20 committees and candidate committees, you can give  
21 anywhere up to \$5.9 million in an election cycle. And  
22 we do that analysis before the Cromnibus, before the  
23 Cromnibus analysis that opened up seven new party  
24 accounts.

1           So this is becoming quite a problem. This  
2 is something that Justice Roberts also said in the  
3 McCutcheon decision that the FEC could undertake to  
4 try to regulate if it becomes a potential problem.  
5 And, you know, some of the -- the potential  
6 limitations are very simple. Limit the size of joint  
7 fundraising committees.

8           You know, joint fundraising committees  
9 originally were set up to help underfunded candidates  
10 pull their resources. You know, you'd get three  
11 candidates that couldn't afford setting up a great  
12 fundraising event. They'd pull their resources and  
13 work together in that type of fashion. I would  
14 recommend that we shy away from these mega joint  
15 fundraising committees that are now possible under  
16 McCutcheon and start moving towards -- back towards  
17 what joint fundraising committees were about.

18           Justice Roberts recommended limiting the  
19 size of joint fundraising committees. I would  
20 recommend that the FEC listen to Justice Roberts on  
21 this.

22           A third issue I do want to mention,  
23 especially since no one has brought it up yet in the  
24 course of the hearings, is the Cromnibus party

1 committees or party accounts. This was a sloppily  
2 written, last-minute rider added on to a must-pass  
3 appropriations bill at the end of last year. The  
4 federal government likely would have shut down had  
5 this bill not passed, and it created such controversy  
6 that the bill almost did not pass. It was almost  
7 killed. And the reason why is it's just breathtaking.  
8 You can tell it's written by attorneys of the  
9 political parties because it opens up seven new  
10 accounts at three times the contribution limit for  
11 party fundraising. And these accounts range all over  
12 the place in what they can raise funds for, from  
13 conventions to building funds to legal expenses, any  
14 kind of legal expenses.

15 You add that on top of what the FEC passed,  
16 a fourth party account -- action, not account --  
17 committee that you guys set up in an advisory opinion.

18 And, you know, the fundraising just becomes  
19 phenomenal, and kind of embarrassing. You know, I  
20 sort of suspect this law may not survive future  
21 scrutiny, just because it's so broad. But it is on  
22 the books now. And something that would be very  
23 responsible for the FEC --

24 CHAIR RAVEL: You have a minute.

1 MR. HOLMAN: -- is to narrow the focus of  
2 what those accounts -- how those accounts can be used,  
3 and narrow -- limit the transfer of funds that can be  
4 bounced between the various different party accounts.

5 Define clearly what the funds can be used for in  
6 building capital expenses or building expenses. So  
7 apply some reasonable limits and rules to how these  
8 new accounts are going to be handled. There is  
9 nothing on the books right now.

10 So just in conclusion, I want to emphasize  
11 that McCutcheon itself, the decision calls for  
12 corrective regulatory measures, and Justice Roberts  
13 has spelled out several of them that I just laid out  
14 to you. I would recommend strongly that you follow  
15 the advice of Justice Roberts.

16 CHAIR RAVEL: Thank you very much.

17 Mr. McCann -- McGahn, excuse me.

18 MR. MCGAHN: Rolls off the tongue, Madame  
19 Chair.

20 CHAIR RAVEL: Yeah.

21 MR. MCGAHN: Thank you for the opportunity  
22 to be here, Madame Chair, Commissioners. I'm here on  
23 behalf of Freedom Partners Chamber of Commerce and  
24 Freedom Partners Action Fund. Freedom Partners

1 Chamber of Commerce is a nonprofit, nonpartisan  
2 501(c)(6) chamber of commerce that promotes the  
3 benefits of free markets and a free society. It has a  
4 membership base that represents several hundred  
5 businesses, large and small, and covers a diverse  
6 range of industries and geographies. One of its goals  
7 is to educate the public about the critical role  
8 played by free markets in achieving economic  
9 prosperity, societal well-being, and personal  
10 happiness.

11 Freedom Partners Chamber of Commerce seeks  
12 to build support for fiscally responsible government  
13 and policies that support entrepreneurship, spur job  
14 creation, and increase opportunities for all.

15 There is also a super PAC. Freedom Partners  
16 Chamber of Commerce is associated with a super PAC  
17 known as Freedom Partners Action Fund. This was  
18 established in accordance with Commission guidance and  
19 Advisory Opinion 2010-09, which is the Club for Growth  
20 Advisory Opinion.

21 The ANPRM asks about the McCutcheon  
22 decision. We're here to talk about the McCutcheon  
23 decision today. Much of what I -- we have heard and  
24 have read in the comments is troubling in that what

1 some call problems we see as solutions. What some  
2 characterize as threats to democracy, we see as  
3 necessary for its survival.

4 Time permitting, I will touch on other  
5 issues that have been raised, but I'd rather focus on  
6 what the actual request for comment talked about. The  
7 first point is earmarking of contributions. Our view  
8 is that -- and our written comments spell this out in  
9 some detail -- the Commission's current earmarking  
10 regulations I think -- we think are adequate. They  
11 are not nearly as porous as some have suggested. They  
12 also have worked well. It's one of the areas in  
13 recent years where the Commission has seen eye to eye,  
14 giving it the name of another, and the like.

15 It's the sort of thing that if done can lead  
16 to criminal penalties, so there is quite a threat out  
17 there that discourages people from getting too cute.  
18 Certainly people give to political committees.  
19 Political committees in turn give to candidates.  
20 People give directly to candidates and the sort. This  
21 has been well known for years. This is why you have  
22 base limits in place. Congress has been aware of  
23 this, and Congress has maintained the idea of base  
24 limits.

1           To the extent the Supreme Court has raised  
2 the issue of earmarking -- and I echo -- I echo former  
3 Chairman Smith's comments on this point. We need to  
4 be real careful when we read McCutcheon to read full  
5 sentences. It's abundantly clear that the Court is  
6 talking about Congress may have options to do things  
7 to the extent Congress wanted to provide a more  
8 tailored solution to its stated problem.

9           That is not the same as empowering an agency  
10 to act in the first instance. And this is a theme  
11 that I will touch on throughout the comments. But  
12 clearly virtually all of that which is contained in  
13 the ANPRM is beyond the Commission's statutory  
14 authority. The Court essentially says this when it  
15 says Congress can do -- can try at least to do a  
16 variety of things.

17           Also, what must be kept in mind is that  
18 there is no surprise that the Court came up with other  
19 ways that are more narrowly tailored. This is  
20 standard fare any sort of constitutional analysis.  
21 This ought not be read as some sort of license to  
22 regulate without statutory warrant.

23           The same is true of affiliation. For years  
24 the Commission has grappled with this as sort of a



1 multi-factor test. It's not something that we  
2 particularly favor. We prefer bright-line rules and a  
3 rule of law as opposed to more of an after-the-fact  
4 balancing test. But for the most part, the  
5 Commission's approach has functioned rather well.

6           What would be helpful in lieu of new rules  
7 is if the Commission could provide perhaps a summary  
8 of its past cases on the point and help those who want  
9 to comply with the law, for example, with real  
10 guidance at least summarizing what the Commission has  
11 done. Right now, to figure out affiliation issues,  
12 one must dig through 35 years of Commission precedent  
13 in the form of advisory opinions, matters under  
14 review, and the like, several of which, although  
15 they're online, they're not easily searched. When  
16 they were put online, at least ones before a certain  
17 time period were merely scanned. There is not really  
18 an index and that sort of thing.

19           Some on the Commission, particularly  
20 Commissioner Walther, have suggested an annotated  
21 code. This has to start somewhere, and perhaps the  
22 affiliation merge is one place to start because for  
23 those who want to comply, as Michael Malbin pointed  
24 out, the web site is not easy, and it's not easy to

1 find law. You really have to know where it is before  
2 you find it, and even then some of us who are  
3 considered experts in the field have trouble finding  
4 the law.

5 So to the extent the Commission could  
6 actually summarize what it has already done in  
7 affiliation, that would probably help.

8 Joint fundraising activities, there is much  
9 talk about this in the comments. Our view is that  
10 much of this is overhyped. Joint fundraising  
11 committees are merely ways to ensure compliance.  
12 There are ways for committees to work together to do  
13 joint fundraising committees and ensure that there is  
14 not in-kind contributions between the various  
15 committees. In other words, it's a way to police the  
16 base limits.

17 If one were to remove the joint fundraising  
18 regulations, committees could still have joint  
19 fundraising events. The accounting would become  
20 exponentially more difficult because they would have  
21 to micromanage whether or not there are in-kind  
22 contributions. One thing we do suggest, however, to  
23 the extent one needs to revisit the regs, is not to  
24 make them more regulatory, but instead it's to exempt

1 out smaller events.

2           There is quite a bit of confusion out there  
3 with respect to joint fundraising committees,  
4 particularly for smaller grassroots events, where you  
5 have two or three campaigns that aren't raising a lot  
6 of money, have to employ a lawyer or a treasurer, set  
7 up a separate bank account, and worry about how many  
8 different bags of Doritos people came -- brought to  
9 their event.

10           I mean, literally, you do have -- you could  
11 have three committees exempted out from this, and  
12 everyone brings their own bag of Doritos and their own  
13 six-pack of Coca-Cola. That's not really corruption  
14 or its appearance.

15           So for home events and that kind of thing,  
16 the Commission, I think, has the authority to create a  
17 more workable solution for grassroots participants.  
18 It has done this for home event exceptions. For  
19 fundraisers, the same thing should be considered with  
20 respect to joint fundraising so as to not tie up  
21 grassroots participants in a way that burns money on  
22 overhead and compliance when the compliance risk is  
23 very minimal.

24           Turning to the larger issues --

1 CHAIR RAVEL: You have one minute.

2 MR. McGAHN: Thank you. That's probably why  
3 the yellow light went on. Disclosure and the like --  
4 McCutcheon was not a case about disclosure. It was  
5 about contribution limits, in particular the aggregate  
6 limit. The Court struck that limit. In other words,  
7 the government lost that case. It is beyond us how  
8 that empowers the government to then create new rules.

9 But one historical note. The FEC has a  
10 history of turning losses into wins, at least when it  
11 comes to its regulatory preferences. And this goes  
12 back many, many, many years.

13 An earlier commenter talked about how the  
14 FEC should essentially just go for it. The FEC, with  
15 all due respect, has been going for it years and years  
16 and years. This has ended badly, the number of  
17 losses. So before going down this road, I would  
18 recommend the Commission take a hard look at its track  
19 record when it comes to such issues.

20 We have several of these cites in our  
21 comments. I don't need to read them out loud. We  
22 appreciate the time here, and happy to answer any  
23 questions.

24 CHAIR RAVEL: Thank you very much.

1 Mr. Schmitt.

2 MR. SCHMITT: Thank you very much.

3 CHAIR RAVEL: Sorry. It doesn't move.

4 MR. SCHMITT: Well, but it swivels. It  
5 swivels. Thank you very much. My name is Mark  
6 Schmitt. I direct the program on political reform at  
7 New America, which is an independent, nonpartisan  
8 think tank here in Washington, D.C.

9 I've been interested in and working on  
10 issues of campaign reform since about the middles  
11 nineties, when I was working in the U.S. Senate. But  
12 this is the first time that I've actually set foot in  
13 the Federal Election Commission, so I'm glad to be  
14 here, and I really appreciate this hearing and the  
15 part of it that's open to the public as well.

16 Over the past several years, I've been  
17 looking particularly closely at some of the state and  
18 municipal programs that seem to work well at balancing  
19 the interests involved in fair elections, reducing  
20 corruption, and ensuring that voters are heard. And I  
21 think one of the things that we see -- and I think --  
22 I'm sure Michael Malbin will agree, who looks at this  
23 even -- much more closely -- will agree one of the  
24 things you see in all of these cases is an agency

1 that's really deeply engaged with the reality of what  
2 is going on in their communities, the nonpartisan  
3 agency that shares -- shares a commitment to the goals  
4 established by statute, and feeds back, doesn't view  
5 itself as just dealing with its own regulations, but  
6 really feeds back to the legislative body, you know,  
7 what they see and what they think are needed changes  
8 so that the systems kind of continually improve, and  
9 you see that with the New York City Campaign Finance  
10 Board, or the California Fair Political Practices  
11 Commission.

12           So I think -- you know, I feel like this  
13 hearings is a marker of this Commission playing a  
14 similar role, and I think it's -- this is why I'm  
15 going to go a little bit beyond the kind of specific  
16 rulemaking questions that Mr. McGahn talked about.

17           My main point -- and I talk about this in a  
18 paper that we published with the Brennan Center for  
19 Justice last week -- is that we should focus -- we  
20 need a clear foundation for what we're trying to do  
21 with these regulations and with the law in general.  
22 And that focus should not be entirely corruption,  
23 which is a concept that has been narrowed by the  
24 Supreme Court.

1           Zephyr Teachout next to me has broadened it,  
2 but even in that broader conception, it doesn't  
3 capture, as Professor Cain said -- it doesn't capture  
4 a lot of what we're really concerned about in the  
5 political process.

6           So I've talked about focusing more on the  
7 idea of political opportunity and asking the question  
8 of the system, you know, do candidates with a broad  
9 base of public support have an opportunity to be  
10 heard, to get their message out, to compete. Is the  
11 political process open to new ideas and perspectives,  
12 or is the staggering in equality of wealth and income  
13 in our country reinforced through the political  
14 process? And if it is, if political -- if economic  
15 and political inequality are kind of in a self-  
16 reinforcing cycle, the danger is not just corruption  
17 or quid pro quo or people being diverted from some  
18 concept of the public interest, but there is a kind of  
19 economic and social stagnation as power reinforces  
20 power.

21           So I would hope that the Commission would be  
22 willing to look at the questions of earmarking,  
23 coordination, and disclosure through that lens rather  
24 than just the kind of stylized arguments about

1 corruption versus free expression.

2 I think all of the issues in this rulemaking  
3 really reflect the simple and obvious fact, which is  
4 that we've allowed a completely alternate system of  
5 funding politics to emerge. And, you know, what rule  
6 did that in 2007 or whatever is less important than  
7 the fact that it's clearly out there. It's a system  
8 dominated by a very few large donors, and it's a  
9 system that rewards a very small number of winners,  
10 mostly incumbents, in some cases ideological  
11 extremists, but not a system that's easy to get into  
12 either as a -- either as a small donor, clearly, or as  
13 a candidate.

14 I was interested in -- I mean, Professor  
15 Cain makes an interesting point that if you allowed  
16 more money to be going through parties, maybe you  
17 would take some of the pressure off of this  
18 alternative system. I think the only difference I  
19 would say is that these structures actually are pretty  
20 close to the parties at this point, in that they're  
21 almost like a pseudo version of the party.

22 I was a struck by a comment in a recent  
23 profile of the chair of one of the major national  
24 parties, and it doesn't really matter which one, and



1 what the profile said was instead of kind of competing  
2 or being in a conflict with the super PACs and the C4s  
3 around the party, the quote was he had found a place  
4 in their ecosystem, that he would kind of encourage  
5 donors to give to the party first, and then go to some  
6 of the outside groups.

7           So, you know, the political scientist Seth  
8 Masket talks about network parties, that, you know,  
9 it's not just that the formal party committees and the  
10 congressional committees and so forth are the party,  
11 that these other groups are part of it as well. So I  
12 think that just saying, well, allow more money to go  
13 through the formal party committees probably doesn't  
14 recognize -- recognize that reality.

15           I think we often think about money and  
16 politics as if it sort of has a force of its own. My  
17 old boss, Senator Bill Bradley, used to say, money is  
18 like ants in the kitchen. You can't keep it out. But  
19 people talk about it as water that's flowing. I think  
20 those analogies actually miss what happens here. It's  
21 not like money is a thing that has a force of its own.

22           It's something that people need to be able to be  
23 heard in the political process. And I don't -- I  
24 never endorsed ideas like money isn't speech because,

1 of course, as you all know, it's essential to people  
2 being heard.

3 And the question is, who is -- you know, a  
4 lot of power lies in the people who are able to be the  
5 brokers of that money, and far more -- that far more  
6 power accrues to those people when they can manage the  
7 ways around the limit. So I think you want to look at  
8 it in those terms, not just in terms of how do we  
9 close this loophole or that loophole, but how do we  
10 open up a system so that there is transparency about  
11 who is doing that, and that there are more and more  
12 other ways to be heard in the system, more and more  
13 other ways to find the resources that a candidate  
14 needs to be heard.

15 I want to say, one -- I want to raise an  
16 issue here that isn't part of this rulemaking, but I  
17 hope that the Commission will consider in the future,  
18 because as we -- I like to think of this -- of the  
19 work that we're doing here. It's not in competition  
20 with free expression. It's not in competition with  
21 people's right to their own political engagement. And  
22 a really good example of that is something that seems  
23 to have emerged since Citizens United, which is  
24 employer coercion or something between communication

1 and coercion of employees in the workplace for their  
2 political activity. And this includes issues you've  
3 dealt with such as the -- I know the case of the union  
4 in Hawaii that asked its employees to --

5 CHAIR RAVEL: You have one minute.

6 MR. SCHMITT: -- its employees, not its  
7 members, to engage in a political campaign. So I  
8 think that's an issue that I hope you'll deal with.

9 I think what we've learned from states and  
10 cities, New York City, Connecticut, is that it's  
11 possible to create systems that do expand opportunity,  
12 create competition, and bring the voices of ordinary  
13 people into the system so that candidates are talking  
14 to the same people that they're seeking for money.  
15 Eventually, we will recognize the need for such a  
16 system at the federal level. And I think the greatest  
17 concern that I have is that it will be too late, that  
18 at that point this alternative system will have so  
19 taken over the regulated campaign finance system that  
20 it will kind of be throwing good money after bad.

21 And so I think what you want to think about  
22 in these rules is create a foundation, not a solution,  
23 but a foundation for a system that can create more  
24 opportunity for people to be heard. Thank you.

1 CHAIR RAVEL: Thank you very much.

2 Professor Teachout, you want to go to the --

3 MS. TEACHOUT: Thank you.

4 CHAIR RAVEL: Thank you.

5 MS. TEACHOUT: Thank you, Madame Chairman,  
6 Mr. Vice Chairman, and all the Commissioners. I would  
7 like to comment. I have enjoyed all of the testimony  
8 so far. I just would like to comment that like Mr.  
9 Smith, I enjoy Plato's *Republic*, and I think it is an  
10 essential part of a liberal education, but it's hardly  
11 a pro-democratic treatise.

12 So I'm going to focus my remarks on a few  
13 different areas that I believe the FEC is not only  
14 well-positioned to act in, but has a direction to act  
15 in from the public, Congress, and the Supreme Court.  
16 Those are rules to regulate the disguised contribution  
17 of single-candidate groups -- yeah, excuse me -- and  
18 rules about earmarking.

19 In both of these instances, current  
20 regulations allow for donors to flaunt the intent of  
21 the law, and both instances risk quid pro quo  
22 corruption. Elsewhere, I have been very critical of  
23 the Supreme Court's definition of corruption, but for  
24 purposes of talking to the Commission, I'm speaking

1 within the Supreme Court's definition of corruption,  
2 the quid pro quo definition of corruption. And I will  
3 refer to the criminal law of bribery.

4 The criminal law of bribery defining quid  
5 pro quo corruption, to be clear, generally does not  
6 require explicit arrangements, but allows for implicit  
7 wink-and-nod deals. And the beating heart of the  
8 definition of quid pro quo is the exchange of this for  
9 that, or the desired exchange of this for that, intent  
10 to influence, not explicit statements.

11 But I want to start by talking about one of  
12 the basic principles of American democracy, this basic  
13 principle that politicians serve their constituents,  
14 not wealthy patrons or sponsors. In the crafting of  
15 our Constitution, our framers tried to protect against  
16 situations where formal power was held by elected  
17 officials, but actual power and policy preferences  
18 were directed by an institution that was not  
19 accountable.

20 They called this at the time the problem of  
21 place men. They saw the British Parliament as  
22 exemplifying this split between formal and informal  
23 power, where parliamentarians were effectively place  
24 men serving the interests of the king instead of their

1 own constituencies because of the power the king had  
2 over their jobs.

3 Our current democracy is threatened by a  
4 variation of this kind of political arrangement. The  
5 current risk of place-men politics, however, does not  
6 exist with a king, but exists where individuals,  
7 wealthy individuals, wealthy companies or groups  
8 effectively sponsor individual politicians. Like  
9 Italian Renaissance patrons of the arts, these  
10 sponsors can make or break their sponsees. They give  
11 them enough funds to be taken seriously by the press,  
12 to run ads, to fund research and policy creations, and  
13 candidates cease to be independent political  
14 operators, but dependent on the sponsor, arguably  
15 opening up the risk of being repeatedly bribed by  
16 quids offering the quo of policy response. And the  
17 politician learns quickly the needs of the sponsor  
18 without them having to be precisely articulated, much  
19 as courtiers have always in a court learned the needs  
20 of a monarch without needing precise explicit  
21 directions.

22 So a political system populated by these  
23 sponsored politicians doesn't leave much choice for  
24 the public. They have the power to vote, but their

1 practical power is only to choose between candidates  
2 who have been selected by these sponsors. They can  
3 choose, in the language of the founding era, between  
4 different place men, and meaningful power resides in  
5 the sponsors, not the public.

6           So why does this matter? This isn't just  
7 the political philosophy of our founding era. I would  
8 say this is also the political philosophy not only of  
9 Congress, but also of the Supreme Court. If you read  
10 McCutcheon, as many other commenters have noticed,  
11 their imagination is that independent expenditures  
12 will be actually truly independent, and they do not up  
13 as a model a system in which there are sponsor and  
14 sponsee politics.

15           In McCutcheon, the Supreme Court again and  
16 again in fact -- sorry. The Supreme Court also then  
17 suggested that the FEC has a very particular role to  
18 play in protecting against this kind of sponsorship  
19 politics. The FEC is held up again and again in  
20 McCutcheon for its successful rulemaking, and held up  
21 as an essential sort of bulwark against this kind of  
22 protection. And then as others have noted, the Court  
23 invites the FEC to act to continue to create new  
24 protections to make sure that you don't get rid of

1 this form of independence.

2 The particular form that I think is most  
3 important to act in is to move to deal with the  
4 problem of single-candidate super PACs who contribute  
5 to candidates while claiming their actions are not  
6 contributions. It also comes from earmarks to  
7 candidates that are not explicitly tagged as earmarks.

8 Other commentators have discussed this. I  
9 fully endorse Richard Briffault's suggestions and  
10 believe that the FEC should implement rules clarifying  
11 what constitutes a disguised contribution. I actually  
12 think the language of disguised contribution is more  
13 helpful than the language of coordination because it  
14 makes more sense to the public, that the public  
15 understands and perceives these single-candidate super  
16 PACs deeply embedded with candidates as making  
17 disguised contributions and doing an end-run around  
18 fully lawful contribution limits.

19 I think the question that we should be  
20 asking is from the perspective of the candidate and  
21 the perspective of the would-be donor. Is there a  
22 risk of quid pro quo corruption? And in the single-  
23 candidate super PAC, there is a high risk of quid pro  
24 quo corruption. Much of it will not be explicit, but



1 if we look to the existing law of bribery in Evans,  
2 Justice Kennedy is fairly clear that for bribery to  
3 exist in the political context, you do not need an  
4 explicit deal, but rather winks and nods, gestures,  
5 implicit arrangements are sufficient for bribery to be  
6 satisfied.

7 The same holds for earmarking. You know,  
8 under existing rules, there is something that is sort  
9 of between a definitional rule and an evidentiary rule  
10 that requires for clear documented evidence of acts to  
11 show earmarking. I think is another area where the  
12 FEC can actually borrow from criminal bribery law.

13 CHAIR RAVEL: You have one minute.

14 MS. TEACHOUT: Thank you. And again, if you  
15 import this sort of conceptual approach of Justice  
16 Kennedy in Evans, you could find earmarking not only  
17 where is it express, but where it is implied from  
18 words and actions, and the relevant question is  
19 whether the earmark is intended and the payer so  
20 interprets it.

21 In my last 45 seconds, I would like to  
22 briefly address the elephants and the donkeys in the  
23 room, so to speak. I truly love the Commissioners  
24 opening up this process. I think it is essential. I

1 think it is a key issue of our time. But we all know  
2 that the structure of the FEC is such that it is next  
3 to impossible for it to operate as it should, and we  
4 should take the opportunity more publicly to talk  
5 about fixing the structure of the FEC itself. I know  
6 that is beyond your purview, but it is not beyond the  
7 purview of others.

8           There are two ways we could fix this  
9 gridlock by design, either add -- have an uneven  
10 number of Commissioners, or have a single director  
11 vest with control, something more like the FBI. Thank  
12 you.

13           CHAIR RAVEL: Thank you.

14           Mr. Bauer, thank you very much for coming  
15 from the airport to here to speak.

16           MR. BAUER: Thank you for accommodating me.

17           I like this spot, and if you don't mind, I'm going to  
18 spend the rest of the day here.

19           (Laughter)

20           MR. BAUER: In any event, I know we don't  
21 have much time, so I'll go briskly through it. The  
22 question I think the Commission faces, at least in  
23 part, is not what it might arguably or in theory or  
24 controversially do, but what it might prudently and

1 practically and unquestionably and constructively do  
2 in the wake of McCutcheon and in light of developments  
3 in the law and in political practice.

4 I'm sympathetic to arguments that there are  
5 opportunities for reform and debates about reform, and  
6 I, in my written comments, note that there are  
7 comments before you, other arguments before you, about  
8 tightening up the earmarking rules by extending them  
9 to implicit understandings or regulating single PAC --  
10 single-candidate super PACs or other super PACs by in  
11 many ways regulating how they spend their money and how  
12 many PACs they can support, or how many candidates  
13 they can support. And my suggestion in the comments  
14 here, and I would reiterate it today, is this isn't  
15 going to happen. You're not going to reach an  
16 agreement on these things, and if you do, you're  
17 likely to be sued, and if you're sued, there is a good  
18 chance you're going to lose.

19 And so the question really is who is  
20 responsible for making these hard calls. And I think  
21 much of this responsibility does lie whenever it's  
22 possible with the Congress, which whatever public  
23 pressure there is on the Congress to address these  
24 issues, these changes in the campaign finance

1 landscape.

2 But the questions are really very, very hard  
3 ones. They're fraught with constitutional complexity.

4 The questions of statutory design are certainly not  
5 simple. And it's very difficult for an administrative  
6 agency like this to deal, as we've heard in some of  
7 the comments before here, with all of the  
8 complications involved in the campaign finance  
9 ecosystem, managing somehow to figure out how its  
10 rules do or do not comport with originalist theories  
11 of dependence, corruption.

12 This is a tall order, and I don't know that  
13 this Commission really is in a position to do that.  
14 Certainly the disagreements that you've expressed in  
15 public among yourselves suggest you're not in a  
16 position to do that. So the question is how do you  
17 practically, prudently, unquestionably, and  
18 constructively act at this point to do what you can as  
19 an agency to promote compliance with the law, and to  
20 promote some of the values and the concerns that the  
21 other panelists have mentioned.

22 And I want to mention a few things. I've  
23 raised them before in other contexts. First of all,  
24 it seems to me that there are some administrative

1 changes, improvements in the way the law is currently  
2 written by the agency, explained to the public, and  
3 enforced that I think could make a difference. We've  
4 pointed out, or I've pointed out in other contexts,  
5 and others have as well, that there are adjustments  
6 that you can make to the enforcement model that I  
7 think would really help significantly clarify the  
8 penalties people face, expand the administrative fines  
9 program, improve the guidance that is provided to the  
10 regulated community. And that's something the  
11 Commission could do without, I think, bogging itself  
12 down in a lot of these contemporary conflicts.

13           Similarly, on the matter of disclosure,  
14 which I think is an important concern for the agency,  
15 I think that it would be in a position -- and some of  
16 the points that I wanted to address are covered in a  
17 petition for rulemaking that I and a number of others  
18 have filed. It's in a position to make some  
19 significant adjustments in the way the disclosure  
20 requirements are administered and explained to the  
21 public that I think could have an overall positive  
22 effect on transparency.

23           So my point is not that the hearing that  
24 you're having today is, you know, pointless in any way

1       whatsoever. In fact, I think it's very good that the  
2       Commission is having this hearing, that it's airing  
3       these issues, that it's hearing from distinguished  
4       panelists like the ones here with me and the ones who  
5       have come before and will come afterwards. I think  
6       that's all to the good.

7                 I think there is a record of information and  
8       views that you can build. Some of that will be  
9       helpful to the Congress in thinking about these  
10      issues. I think panelists like Mark Schmitt, for  
11      example, have discussed in the paper he mentioned  
12      recently ways in which the Commission might think  
13      about the role that you can bring to the disclosure  
14      task of technological developments, the way in which  
15      technology and the Commission can encourage and think  
16      about the uses of technology to improve the reach and  
17      effectiveness of disclosure.

18                All of these things are within the realm of  
19      possibility. But the loud and persistent  
20      disagreements about these complex questions that we're  
21      dealing with and complex constitutional questions, it  
22      seems to me, are ones that it would be very difficult  
23      for this agency to tackle when there are so many other  
24      tasks which I think are practical and are

1 constructive, that it could attend to and address  
2 questions of how it's going about meeting its  
3 responsibilities.

4           And let me just close by saying on the  
5 question of the overall perspective the Commission  
6 might take on its responsibilities -- here again I'm  
7 going to echo Mark Schmitt. I think that you have a  
8 responsibility, of course -- this is not controversial  
9 -- to enforce the law that Congress has written the  
10 best that you possibly can, and in doing so, to do it  
11 in a way that is open to public understanding and  
12 that's consistent and effectiveness, but at the same  
13 time to be thinking about other values, and one of  
14 them is the participatory value that Mark mentioned a  
15 few minutes ago.

16           Nobody is suggesting that you should let the  
17 -- you know, the wrongdoers or the bunglers or however  
18 you want to -- however we want to refer to them go  
19 sort of scotch free and unaddressed. But there is  
20 also the question of administering the statute so  
21 you're balancing both the restrictive elements in the  
22 statute and also keeping in mind the ways in which  
23 this law does have an effect on political  
24 participation and opportunity. And you should be

1 looking as many was you can, asking questions as often  
2 as you can, about measures you can take to address  
3 that fundamental question of political participation  
4 within the framework of our campaign finance laws.

5 Thank you very much.

6 CHAIR RAVEL: Thank you very much. Thank  
7 you to the panel. I'll now turn to questions by the  
8 Commissioners, and I'll turn to this side first. No  
9 questions? And questions --

10 COMMISSIONER WEINTRAUB: Always, always  
11 questions.

12 CHAIR RAVEL: Commissioner Weintraub.

13 COMMISSIONER WEINTRAUB: I think several of  
14 you have raised a really important concern about  
15 increasing participation. And I'm going to direct  
16 this, I think, largely to Professors Schmitt and Cain.

17 Are you a professor, Mr. Schmitt?

18 MR. SCHMITT: I am not.

19 COMMISSIONER WEINTRAUB: Oh, well, see, I'm  
20 giving you a --

21 MR. SCHMITT: I'll take it.

22 COMMISSIONER WEINTRAUB: -- promotion maybe?  
23 I don't know. You should be. What I'd be interested  
24 in hearing is whether you have any creative ideas for



1 us to what we could do as Commissioners, as the FEC,  
2 to encourage greater citizen participation in our  
3 election process because I think that is a role that  
4 we really have not taken a big step towards in the  
5 past, and could perhaps play a really productive role  
6 in our society. Thoughts?

7 MR. CAIN: Well, I'll go first. I don't  
8 think there is much you can do in terms of  
9 regulations.

10 COMMISSIONER WEINTRAUB: Oh, now you're  
11 depressing me.

12 MR. CAIN: Yeah.

13 COMMISSIONER WEINTRAUB: You start off by  
14 saying there is not much we can do.

15 MR. CAIN: But I do think that given the  
16 stage you have and possible connections to state and  
17 local entities, you could encourage some  
18 experimentation. So, for example, a number of us have  
19 over the recent years suggested that we should be  
20 looking more closely at vouchers.

21 One of the objections that people have to  
22 public finance systems is that their money goes to  
23 support speech that they don't agree with. But a  
24 voucher system allows you to put money with candidates

1 that you actually agree with. But we don't know  
2 whether these can work as a practical matter, and the  
3 last thing you want to do is to try it at the national  
4 level.

5 So you could, if you're able to get some  
6 money, the way AEAC at one time did with respect to  
7 technology -- I realize that's not the greatest  
8 analogies, but nonetheless you could try to seed some  
9 experiments at the state and local level so that we  
10 could actually try that idea and many other ideas  
11 about how you can citizens into the money game as  
12 opposed to just worrying about capping the people that  
13 are already there.

14 COMMISSIONER WEINTRAUB: I actually meant  
15 more broadly citizen engagement, not just try to get  
16 more people to pay money into the system because might  
17 have reasons why they don't want to do that, like  
18 maybe they don't have a lot of money.

19 MR. SCHMITT: Well, I think that opening up  
20 opportunities to participate as a donor, it seems to  
21 me -- it seems to have a lot of effect in helping  
22 people engage with the system more broadly. You know,  
23 there are a lot of ways to participate. For example,  
24 when I was teenager, I did a lot of volunteering on

1 political campaigns. I don't do that now because I'm  
2 busy, but I can make the occasional, you know, hundred  
3 dollar contribution and so forth.

4           It is a form of participation of its own,  
5 and so the voucher idea, and I think the tax credit,  
6 the idea of the refundable tax credit, these are  
7 valuable things that give people a way to say I can be  
8 more than a voter in this system. The refundable tax  
9 credit in Minnesota seems -- you know, has very broad  
10 participation, and legislatures are -- legislators  
11 have a much more broader base of contributors because  
12 of that very, very simple system.

13           I do think the agency can be the -- the  
14 Commission can be in some ways a repository of  
15 resource -- of like bringing out things that we know.

16 I often talked about the Minnesota system, and lots  
17 of people haven't heard about it at all. So, you  
18 know, you can use, I think -- I think you can use that  
19 voice to expand things as well.

20           I'd also say I do think it's important to  
21 recognize people participate -- people need mediating  
22 structures to participate in politics. We have this  
23 vision of everybody with their little preferences  
24 operating completely independently. That's not really

1     how politics work.  People are drawn in through  
2     parties, through organizations they belong to, through  
3     unions, through all kinds of intermediary  
4     institutions.  And you can try to look at how those  
5     institutions, particular parties, are really vehicles  
6     for citizen engagement more than just pools of money.

7             And I think the idea that making the parties  
8     bigger and bigger pools of money is -- one of the  
9     dangers there is that that's all they are, and that  
10    they're not playing that traditional role of really  
11    helping organize people's engagement with politics.

12            CHAIR RAVEL:  Thank you.  Is there a  
13    question on this side?  Commissioner Hunter.

14            COMMISSIONER HUNTER:  It's a little hard for  
15    me to react to a lot of these ideas because they are  
16    so -- they are so foreign to me, frankly.  And a lot  
17    of the notions that, you know, too much money in  
18    politics means there is absolutely no participation --  
19    I'd like to read a little bit more and think about it  
20    and follow up with some of you.

21            But I just wanted to comment, as I have  
22    before, that my brother is a county party chairman in  
23    a county in Iowa.  And he'll tell you firsthand that  
24    because of McCain-Feingold and other laws, they're not

1 able to do a lot of the things that they used to do in  
2 the past. And, you know, he goes to the county  
3 conventions. He tries to get volunteers. He has a  
4 little office on the main -- you know, the main town  
5 square in the little town.

6 And I was there on election day and saw  
7 people come in and say, where is my polling place, how  
8 can I -- you know, what is the party ticket for this  
9 election? How can I participate? I saw it firsthand.

10 But I think there are some things we can do. And  
11 John Phillippe from the RNC have suggested that, you  
12 know, making the parties -- making things easier for  
13 the parties again will foster people participating in  
14 democracy.

15 And those are places, yes, the party does  
16 have a lot of money, and some of that is just used by  
17 people in Washington. But to the extent we can allow  
18 local parties to do more, we know that that will  
19 increase participation. It's something that people  
20 are used to. They're used to the Republican Party.  
21 They're used to the Democrat Party. They know where  
22 to find their local parties. And it's a great way for  
23 them to get involved. So I hope we can look to that.

24 It's a fairly obvious way to increase

1 participation.

2 CHAIR RAVEL: Did you have a question for  
3 any member of the --

4 COMMISSIONER HUNTER: Any comment on that is  
5 more than welcome. I don't have a specific question.

6 CHAIR RAVEL: Are there any comments?

7 MR. HOLMAN: Just one quick comment. I  
8 mean, the Cromnibus bill has no opened up fundraising  
9 for the parties to hit 770,600, I think it is, or 200.  
10 Couple that with the fourth party committee that the  
11 FEC added, and you're talking a whole lot of money  
12 flowing into the parties.

13 This measure, by the way, draws such a  
14 surprising negative reaction from members from both  
15 parties in Congress that it almost killed the  
16 Cromnibus bill, and this was a must-pass bill where  
17 the government was going to shut down.

18 I think if it comes to trying to claim that  
19 the parties need more money, they've got a whole,  
20 whole boatload of money available to them right now.

21 CHAIR RAVEL: Mr. Bauer.

22 MR. BAUER: One thing I wanted to mention  
23 apart from parties -- and I commend Dr. Holman for  
24 staying on-message -- is that there are some non-party

1 promotional activities also that the Commission might  
2 keep in mind. And I just mention quickly a few years  
3 ago, I received a call off the Internet from a group  
4 of citizens in California, just a very small number,  
5 who wanted to organize a -- who had a bike club. They  
6 were bikers, and they wanted to travel around the  
7 neighborhood and leaflet against a member of Congress  
8 that they all had unanimously decided shouldn't remain  
9 in office. And the question was how does the federal  
10 campaign finance laws affect what we do.

11 And the answer, you know, if you were really  
12 doing a genuine issue-spotting exercise, was sort of  
13 chillingly complicated. So I think about the bike  
14 club, too. The local parties for sure. I agree with  
15 Commissioner Hunter. I think McCain-Feingold has had  
16 -- there are a lot of other factors that have put  
17 pressure on state and local parties, not McCain-  
18 Feingold alone. But McCain-Feingold certainly didn't  
19 help.

20 But I also think there are citizens out  
21 there not organizing outside the party structure who  
22 find the campaign finance laws a bit of a black box,  
23 and frankly, the application sometimes discouraging.  
24 And thinking about the bike club I think might be very

1 helpful.

2 CHAIR RAVEL: Thank you. Excuse me.  
3 Commissioner Walther.

4 COMMISSIONER WALTHER: A question for Mr.  
5 McGahn. Good to see you again. You were talking  
6 about exempting some or -- some way of exempting joint  
7 fundraisers for the smaller ones. But how would you  
8 define small if you were to go about that?

9 MR. MCGAHN: You can do small in a couple of  
10 different ways. You could do it based upon maybe the  
11 number of committees. You could do -- you could have  
12 an exemption that if the overhead is going to be under  
13 a certain amount of money, perhaps that doesn't  
14 require a joint fundraising committee to make that  
15 clear.

16 This would be similar to the home event  
17 exception, where you could spend up to, you know,  
18 1,000 bucks or 2, depending on how complicated your  
19 family life is, on events in your home. And it seems  
20 to me if you have that kind of event in your home, the  
21 idea of accounting for who pays for what hors d'oeuvre  
22 is a little bit overkill.

23 Keep in mind that the base limits still  
24 apply. We're not suggesting an anything-goes system,



1 but it's one small way the Commission could encourage  
2 more grassroots participation.

3 Now, the reality is when you look to a  
4 system with a rule of law, the rule of law is going to  
5 apply to everyone the same. So certainly if someone  
6 has a lot of money, they would be exempted from this.

7 If someone doesn't have a lot of money, they would be  
8 exempted from this.

9 But I think the key is to keep the eye on  
10 the prize, which is twofold: one, grassroots  
11 involvement generally; and two, compliance. As long  
12 as the limits are not being violated, I think no one  
13 is really going to get particular upset if smaller  
14 events are exempted out.

15 Similarly, there are many thresholds that  
16 are statutory, but there are a number of thresholds  
17 that are creatures of regulations. The Commission  
18 could revisit those in a way to maybe raise them so to  
19 as to uncomplicate the life of folks who don't spend a  
20 lot of money in politics.

21 Related to that, in the third topic is what  
22 I think is the great equalizer of the recent age,  
23 which is the Internet. You know, when it comes to  
24 people being able to directly communicate with each

1 other, they no longer have to wait for the morning  
2 newspaper to do that and figure out what is going on.

3 They can do it themselves. If they want to put up  
4 their own ad, they can put up their own ad and the  
5 like. And I think it has been a great opportunity to  
6 remove much of the power from the beltway class and  
7 return it to the people.

8 So I think with that, I'll yield back and  
9 answer any other questions.

10 COMMISSIONER WALTHER: Thanks.

11 CHAIR RAVEL: Thank you very much.

12 Commissioner Goodman.

13 COMMISSIONER GOODMAN: Yes. Let me pick up  
14 on that point first, but a preface to this. Mr.  
15 Bauer, this Commission has recommended to Congress  
16 that Congress lift the \$1,000 registration threshold  
17 because we're not only grabbing the small bicycle  
18 clubs, but also the small local parties that only want  
19 to spend \$8,000 from their Saturday barbecue funds to  
20 engage in grassroots activity. And so I want to echo  
21 the thoughts on the state and political parties.

22 While the national party has got a big bit  
23 of relief in this legislation, the state and local  
24 parties have not. And they are handcuffed. And as a

1 formal general counsel to state and local parties, you  
2 know, I know of what I speak because how many just  
3 chose not to speak rather than trigger the compliance  
4 regulations of this agency by going over \$1,000.

5 But I want to jump back to many small  
6 groups, Mr. Bauer, and many individuals and many  
7 nonprofit groups speak about politics on the Internet.

8 And so what I'd like to ask -- I'd start with you,  
9 Mr. Schmitt, because you raised the issue of how do we  
10 encourage more participatory democracy. Many people  
11 are doing it on the Internet in ways, you know, that  
12 couldn't have been done just 20 years ago.

13 And so I want to ask you a twofold question,  
14 and I'll ask others to chime in. Is the 2006 Internet  
15 regulation rule of the Commission adequate, or should  
16 it be changed in some way? And secondly, we have  
17 before this CREW proposal to expand Internet  
18 regulation to even issue ads by expanding the  
19 definition of electioneering communications to  
20 Internet communications. Could you react to that?

21 MR. SCHMITT: Yeah. I don't -- I mean, I  
22 remember the 2006 regulation, and I think I even -- I  
23 think I even signed on to the question of regulating  
24 blogs at the time. It feels like obviously, you know,

1 we are a lifetime past that. So I haven't looked  
2 closely at whether I think those need to be regulated.

3 Clearly much more communication is going to move on  
4 it. We still have a television -- you know, the  
5 passive TV watcher model of how we think money works  
6 in politics. And it's a totally different world, as  
7 people do move to Internet communication. And drawing  
8 the line between what is clearly advertising blasted  
9 at people and what is their own political  
10 participation and their own efforts to seek out  
11 information is going to be very, very difficult in a  
12 way that I can't really begin to say.

13 And then there is also the -- there are very  
14 positive elements in the Internet. One of the things  
15 that I think we can see is the beginning of an era  
16 where the barriers to entry to becoming a candidate  
17 can be much lower. You look at a system like Nation  
18 Builder, where for -- you know, you start at \$19 and  
19 you never really spend -- need to spend more than few  
20 hundred dollars to have all the -- you know, you have  
21 the voter list. You have your email. You have all  
22 the startup. It's like what they call a lean startup  
23 in Silicon Valley. That's going to make a very big  
24 difference in people's ability to engage, and it's

1 something to really be encouraged, as well as Internet  
2 vehicles that allow people -- enable people to be  
3 small donors. And they look different from  
4 traditional bundling operations, although in your  
5 eyes, they are bundlers. And I think you want to look  
6 at that, at those issues as well.

7 CHAIR RAVEL: Any other responses to that  
8 question? Is there --

9 COMMISSIONER WEINTRAUB: Can I ask another  
10 one?

11 CHAIR RAVEL: Commissioner Weintraub.

12 COMMISSIONER WEINTRAUB: Thanks. Speaking  
13 of the Internet, I want to ask a question that was  
14 raised in a tweet that I saw in the last few minutes  
15 about this hearing. A lot of people are out there  
16 tweeting about it. Thanks, because I know we have a  
17 small room here.

18 This is really for Professor Briffault  
19 primarily because you talked a lot about coordination  
20 and super PACs. We are also starting to see a new  
21 phenomenon, because there is always new phenomena, and  
22 this is a little hard for me to intellectually wrap my  
23 mind around, I have to admit. And it's a single-  
24 candidate nonprofit organization that claims not to be

1 a political committee and is not disclosing its donors  
2 the way super PACs do, but is still -- appears to be  
3 primarily promoting one particular candidate.

4 So my question is, how or if -- should we be  
5 concerned about that phenomena? Should we be -- what  
6 kind of measures might we consider about that? Should  
7 we leave it to the IRS? Is that primarily their  
8 problem? Interested in your thoughts on that.

9 MR. BRIFFAULT: This does have the feel of  
10 the issue-spotting question that somebody referred to  
11 earlier.

12 COMMISSIONER WEINTRAUB: You're a law  
13 professor. You can handle it.

14 MR. BRIFFAULT: Obviously, this begins to  
15 impact the definition of what is regulable election-  
16 related speech. So it depends -- a lot of it depends  
17 on what they say. And what you can do about that is  
18 less clear to me than what you can do about defining  
19 coordination. And obviously, I know that within the  
20 Commission there has been division about the question  
21 of coordinated communications that don't fall within  
22 the category of election-related speech as opposed to  
23 just plain old coordinated spending.

24 So I think I'm -- I think I've spotted the

1 issue, which is that you all disagree about what to do  
2 with something -- an expenditure which is coordinated  
3 but may not necessarily fall within your definition or  
4 another definition of regulable speech. So I think  
5 that's where this is going.

6 I mean, I think, just to back up for one  
7 second -- I'm trying to avoid the temptation to sort  
8 of nail down every problem and solve everything. I  
9 think we -- like Bob Bauer, I'd like to live in the  
10 real world where some things are going to happen and  
11 some things are going to be beyond regulatory scope,  
12 and at some point you just push -- you can't reach. I  
13 think I've been trying to focus on things which I  
14 think are doable and are consistent with the model  
15 that we have.

16 But at some point, yeah, drawing the line  
17 between campaign actors, you know, defining what a  
18 campaign actor is and regulating campaign actors, and  
19 then separately regulating campaign activity of people  
20 who are not campaign actors is a hard one. But if the  
21 activities of this organization cross the line to the  
22 kind of communication that would be deemed a  
23 regulatable election-related communication, then I  
24 think we can starting applying these ideas.

1 I mean, again, this is looking -- people  
2 talked about the model of the states and locals use.  
3 In some ways -- and it's not the federal laws to focus  
4 less on defining and regulating committees than on  
5 defining and disclosing election-related speech. But  
6 that's again beyond -- that would require a statutory  
7 change, which I think is beyond our scope.

8 CHAIR RAVEL: Okay.

9 MR. HOLMAN: Could I just make --

10 CHAIR RAVEL: Go ahead.

11 MR. HOLMAN: -- one point of information  
12 here?

13 CHAIR RAVEL: Yes.

14 MR. HOLMAN: The study that I gave you, that  
15 Public Citizen data entitled "Super Connected,"  
16 includes an analysis of single-candidate nonprofit  
17 groups as well as super PACs. It's mostly super PACs,  
18 but there are some nonprofits.

19 CHAIR RAVEL: All right. Well, thank you,  
20 all, very much. We really appreciate -- we've got a  
21 -- we've got like two minutes to go. We've got the  
22 public that is due -- can you -- are you okay?

23 VICE CHAIR PETERSEN: Yeah. I'll just ask  
24 my -- I guess maybe be the first questioner on the



1 next panel.

2 CHAIR RAVEL: You are the next questioner, I  
3 promise you.

4 Thank you all very much. We have a lot of  
5 people in the public who are lining up to speak. So  
6 thank you for coming.

7 MR. McGAHN: I'd like to think we're the  
8 public, too, but we appreciate the time.

9 CHAIR RAVEL: I understand. You are the  
10 public. You are the public, and appreciate your being  
11 here.

12 (Pause)

13 CHAIR RAVEL: Right. Let me announce the  
14 members of the public who -- the other public -- who  
15 will be next in speaking. It's Perianne Boring of the  
16 Chamber of Commerce will be first. Rachel Brewer,  
17 Glenn Conway, Susan Grogan, Jonathan Holtzman,  
18 Terrence Thre watt, and Matthew Walchuck, and then Sai  
19 from Make Your Laws PAC.

20 So I would appreciate it if a couple of you  
21 could line up so that as soon as people are back in  
22 five minutes, we'll start. Thank you.

23 (Pause)

24 CHAIR RAVEL: Okay. Could everybody please

1 sit down? We're going to start again. If -- I think  
2 -- are there other Commissioners outside planning to  
3 come back in or not?

4 MALE VOICE: This is it.

5 CHAIR RAVEL: This is it? All right.  
6 That's fine.

7 COMMISSIONER GOODMAN: I'll provide you a  
8 quorum.

9 CHAIR RAVEL: All right. Thank you, Mr.  
10 Former Chair. He is giving me a quorum. All right.  
11 We will begin with those people who have previously  
12 signed up to speak in their comments. Thank you.

13 Ms. Boring.

14 MS. BORING: Thank you.

15 CHAIR RAVEL: Thank you.

16 MS. BORING: Good morning. I'm Perianne  
17 Boring, and I'm the founder and the president of the  
18 Chamber of Digital Commerce. We're a trade  
19 association that represents the digital currency  
20 community. Thank you for inviting us to speak here  
21 today.

22 Both digital currencies and the block chain,  
23 which is the underling protocol and public ledger,  
24 offer exciting opportunities to dramatically enhance

1 and expand voter participation in the political  
2 process. As best stated by the FEC, over the last  
3 decade the Internet has had a profound democratizing  
4 effect on the political process and has led to  
5 increased participation in that process.

6 Digital currencies are the logical next step  
7 in the evolution of the Internet. Millennials are the  
8 first generation in history raised with critical mass  
9 of computers and mobile phones in their homes and  
10 schools. In fact, many millennials logged onto a  
11 computer to play games before even reading or writing.

12 And over the last 12 months, the amount of investment  
13 in the digital currency sector have led to a surge of  
14 jobs with individuals leaving places like Google,  
15 Amazon, and Facebook, as well as major banking  
16 organizations, to join this industry.

17 We have also seen substantial innovation and  
18 growing public awareness, and we expect these trends  
19 and adoption to accelerate.

20 The capital being deployed in this ecosystem  
21 is being used to develop applications far beyond  
22 bitcoins used as just a currency. These applications  
23 have the potential to play a major role in the areas  
24 of voter identity, election transparency, and campaign

1 donations. Digital currencies provide candidates with  
2 alternative sources of funds for their campaigns.  
3 Transactions facilitated by block chain technology  
4 offers users combined benefit of secure and  
5 frictionless payments with much lower transaction  
6 fees.

7 The profound effect this could have on  
8 political inclusion should not be underestimated.  
9 Digital currencies promote greater participation  
10 via --

11 CHAIR RAVEL: You have a minute.

12 MS. BORING: -- micro transactions -- thank  
13 you -- which allows more people to contribute on a  
14 broader level who might have less to give, but can  
15 still have a significant collective voice. Digital  
16 currencies can benefit campaigns. They can also be  
17 spent without directly having to first be converted to  
18 fiat currency.

19 An early example of the power of digital  
20 currency in fundraising was at a football game. In  
21 December 2013, a college student held up a poster on  
22 TV that said, Hi, Mom, send bitcoin, with a QR code,  
23 and it was picked up by ESPN's TV cameras. This  
24 student raised \$24,000 in bitcoin with only seconds of

1 television exposure. And there is a growing list of  
2 other examples demonstrating consumer acceptance and  
3 the ease of making contributions using this  
4 technology.

5 As the Commission tackles other issues, such  
6 as voter identity, the block change should be  
7 considered to bring greater transparency, audit  
8 capability, and security in the election process.

9 CHAIR RAVEL: Thank you. You need to wrap  
10 up.

11 MS. BORING: Technological developments and  
12 innovation in digital currencies will continue to --  
13 will continue to move at a rapid pace, and the Chamber  
14 of Digital Commerce welcomes an open dialogue with the  
15 Commission in order to stay abreast of the  
16 opportunities that lie ahead.

17 CHAIR RAVEL: Thank you. And we absolutely  
18 agree with open dialogue. Thank you so much.

19 Good morning.

20 MS. BREWER: Hello. Oh, good afternoon. My  
21 name is Rachel Brewer, a student at George Mason  
22 University, and an organizer for Represent Us. But  
23 I'm here today not to offer my perspective, but a  
24 reminder. Why do you think that we're all here? I've

1       been told far too often that we're a nation of  
2       apathetic voters, or a nation who barely votes at all.

3       Yet while working with Represent Us, I've learned  
4       that the opposite is true.

5               Voters are far from apathetic. We each have  
6       a passion that drives us to action, regardless of  
7       where on the ideological spectrum that we stand. And  
8       against all odds, there is one issue that unites the  
9       political right and left like no other: campaign  
10      finance reform.

11             To have 80 percent of Americans agree on  
12      anything is nothing short of incredible. And yet  
13      we've done more than simply agree. As countless  
14      testimony you'll hear today will likely reiterate,  
15      we're working, we're organizing, we're protesting.  
16      We're doing everything that we can to return American  
17      politics to the American people.

18             Alongside those who are fighting to change  
19      the current status of all catastrophes under the  
20      campaign finance reform umbrella, this is a battle  
21      that I intend to see through to the end. And so I ask  
22      you to remember why each of us has traveled here  
23      today. We are not the percentage of people who know  
24      our government can change, but a small collection of

1 the vast number of individuals with the desire and the  
2 will to make it do so.

3 Benjamin Franklin once avowed this nation to  
4 be a republic, if we can keep it. And if nothing  
5 else, I am here to declare that this is a right that  
6 we, the people, will not lose. Thank you.

7 CHAIR RAVEL: Thank you very much, Ms.  
8 Brewer.

9 Mr. Conway?

10 MR. CONWAY: Commission, thank you for the  
11 opportunity to speak. I'm a resident of North  
12 Carolina. I'm a private citizen. I'm not getting  
13 paid by anybody to be here.

14 The 2014 North Carolina Senate race saw \$111  
15 million spent for Thom Tillis and Kay Hagan. Two-  
16 thirds of that came from outside organizations and  
17 PACs. For three months we were carpet-bombed with  
18 negative ads by PAC after PAC. These PACs often  
19 provided erroneous and fraudulent information to  
20 voters, which was designed to confuse and mislead  
21 them. The messaging in ads were so relentless and so  
22 similar, that it was impossible to separate one PAC or  
23 super PAC from another. It would seem they were all  
24 coordinated together or produced using a common theme.

1           If there was any real independence between  
2 any of them, it was impossible to distinguish. The  
3 whole thing was sickening. In view of the experience  
4 is why I'm here. So I'd ask you to consider a couple  
5 of things.

6           One, more and more money will come from  
7 fewer and fewer people in the future. Removing the  
8 cap on individual campaign contributions is mostly an  
9 opportunity for the upper 1 percent. The upper 1  
10 percent control 50 percent of the earth's wealth.  
11 This just releases them to use it even more. An upper  
12 1 percenter can contribute 1,000 times or more what an  
13 average American can contribute into a campaign or  
14 PAC. That 1 percent money is going down out the  
15 other 99 percent.

16           Second, this is a game of averages for the  
17 wealthy. At the federal level, my agenda can be just  
18 as easily supported by a senator from another state as  
19 from my own. My PAC money will go to candidates that  
20 most directly relate to my agenda, even if I can't  
21 actually vote for them. My money will buy their face  
22 time. Their time with me will come at the expense of  
23 their actual state constituents. Representative  
24 democracy will decline as federal candidates spend



1 more and more time with billionaires who fund their  
2 super PACs.

3 This is not prosperity for Americans.

4 CHAIR RAVEL: You have one minute, sir.

5 MR. CONWAY: Sophisticated contributions  
6 need sophisticated tracking. With the Internet today,  
7 I can establish a PAC this morning, a web site at  
8 noon, raise \$100 million this afternoon, and file  
9 federal disclosures tonight. You almost need an NSA-  
10 type system to keep track of what is here, much less  
11 what is coming.

12 Required disclosure of all contributions  
13 across all PACs, across all super PACs, and so on.  
14 Close any loophole that allows significant funding of  
15 any type without full and clear disclosure. No  
16 contribution of any significant size should be allowed  
17 to be so privileged that a donor can escape daylight.

18 Thank you for the opportunity.

19 CHAIR RAVEL: Thank you for traveling here.

20 Ms. Grogan.

21 MS. GROGAN: Thank you. I'm Professor Susan  
22 Grogan, of political science, from St. Mary's College  
23 of Maryland, and treasurer of the 18-24 Super PAC.  
24 McCutcheon v. FEC introduces some unrecognized

1 consequences. One is that a de facto mandates  
2 disclosure as much as it mandates the removal of  
3 aggregate limits.

4 Effective disclosure was assumed by the  
5 plurality to justify aggregate limits as unnecessary.

6 Therefore, the FEC is obligated to establish the  
7 foundation of that decision, disclosure as conditions  
8 the FEC is charged with establishing, before lifting  
9 aggregate limits, as already done in an overly hasty  
10 exception to rulemaking procedures.

11 Some Commissioners have commented in the  
12 record that they do not think it proper for the FEC to  
13 impose disclosure rules when Congress failed to pass a  
14 disclosure law. The obvious response to Commissioners  
15 so negligent of their duties to protect us from  
16 corruption, as the FEC was formed to do after the  
17 corruption that spawned Watergate, is that there is a  
18 fundamental distinction between Congress failing to  
19 pass a law requiring certain kinds of campaign finance  
20 disclosure and passing legislation exempting those  
21 elements from disclosure which did not occur.

22 DISCLOSE legislation passed the House. The  
23 Senate failed to invoke cloture. There are many  
24 reasons for voting against cloture beyond mere

1 opposition to the substance of a bill. It is simply  
2 wrong to infer that the failure to enact DISCLOSE-type  
3 legislation means Congress did not want the Commission  
4 to impose additional reporting requirements.

5 Congress has not passed a law exempting any  
6 organizations from disclosure, nor has it rescinded  
7 FECA or BCRA. These laws remain Congress's directive  
8 to the FEC, rather than convenient directives spawned  
9 in the imagination of some Commissioners.

10 The First Amendment rights of middle class  
11 and low income Americans are harmed --

12 CHAIR RAVEL: You have one minute.

13 MS. GROGAN: -- when candidates and  
14 political leaders are compelled to associate with and  
15 serve donors rather than voters. The value or amount  
16 of our First Amendment rights inherent in our  
17 association as purchased by our vote is devalued and  
18 harmed when large sums of money from unknown speech  
19 monopolists disassociate candidates and elected  
20 officials.

21 Please, Commissioner Weintraub and  
22 likeminded, consider a motion to fast-track a new  
23 disclosure rule that would close loopholes allowing  
24 donors to make undisclosed dark money contributions.

1           Having made my call to action, I will close  
2 by saying that the absence of corruption is not  
3 properly opposed to free speech, as has been assumed.

4       Absence of corruption is a prerequisite for the  
5 practical existence of free speech and meaningful  
6 First Amendment rights for all. If republican  
7 government is to be a symphony, then nondisclosure is  
8 one sour and loud note. Thank you.

9           CHAIR RAVEL: Thank you very much for  
10 coming.

11           Jonathan Holtzman. Good morning.

12           MR. HOLTZMAN: Good morning. Good morning,  
13 Commissioners, hello to other witnesses and  
14 distinguished guests. My name is Jonathan Holtzman.  
15 I am soon to graduate from St. Mary's College of  
16 Maryland. And quite frankly, I am scared for the  
17 integrity of our electoral process.

18           As a student of political science, I have  
19 found that rigorous financial disclosure regimes are  
20 necessary for meaningful quantitative studies of  
21 elections. And as a citizen of the United States, I  
22 am deeply concerned with the meteoric rise in the  
23 costs of winning a federal campaign.

24           It's not hard to imagine a future in which

1 all elected officials, Democratic, Republican,  
2 independent, Tea Party, are all brought into office  
3 from the coffers of an extremely small and privileged  
4 class of industrialists, bankers, and financiers.  
5 Now, as much as I and many other people in this room  
6 wish to relitigate McCutcheon before the Commission  
7 today, those arguments will have more impact if they  
8 guide our national conversation up to the 2016  
9 election.

10 In spite of our dire straits, I maintain a  
11 hope that the Commission will be fearless to act as it  
12 is charged to do, by creating robust and necessary  
13 rules that will ensure that both corruption and the  
14 appearance of corruption are squashed, within the new  
15 confines set by McCutcheon.

16 So now although an individual's aggregate  
17 contributions may no longer be limited, the FEC's  
18 charge to limit base contributions to particular  
19 campaigns remains intact, and as such the FEC ought to  
20 crystalize their rulemaking regime around this point,  
21 by eliminating multi-candidate PAC contributions to a  
22 single candidate's campaign committee and  
23 strengthening contribution disclosure regulations.

24 Recent developments in campaign finance have

1 obfuscated what ought to be demonstrably evident in  
2 connections between contributors and campaigns,  
3 limiting the FEC's ability to ensure that individual  
4 donation limits are being adhered to, as well as  
5 stymieing what ought to be a comprehensive disclosure  
6 system.

7           We now live in a time in which a single  
8 person is freely able to donate to each and every  
9 campaign in Congress and their connected PACs. If  
10 said person is particularly well-heeled, then he or  
11 she alone can contribute a cool \$4,088,000 to our  
12 election cycle, legally. And as Chief Roberts sagely  
13 foretells in the McCutcheon decision, when donors  
14 furnish widely-distributed support within all  
15 applicable base limits, all members of the party or  
16 supporters of the cause may benefit, and the leaders  
17 of the party or cause may feel --

18           CHAIR RAVEL: You have one minute.

19           MR. HOLTZMAN: Thank you. They may feel  
20 particular gratitude. Yes, gratitude indeed. And  
21 although quid pro quo style corruption is largely a  
22 relic of a simpler time, Congress's honorable largess  
23 and gratitude towards political contributors can be  
24 witnessed from the ethanol subsidies that shroud the

1 cornfields of Iowa to the film tax credits that  
2 sustain that tragically underfunded movie industry in  
3 California.

4 At this point, the FEC cannot shirk its  
5 responsibility to further comprehensive rules that  
6 foster the timely disclosure, easy access, and  
7 analysis of donor information. Our elected officials  
8 are particularly grateful, and we ought to know at  
9 least who their gratitude manages to reach.

10 I understand that the FEC's rulemaking power  
11 is circumscribed by both Congress and the Supreme  
12 Court. Yet there is still work that this body can  
13 meaningfully take up to improve the public's  
14 confidence in our election system. Thank you.

15 CHAIR RAVEL: Thank you very much.

16 Mr. Thrweatt.

17 MR. THRWEATT: Thrweatt.

18 CHAIR RAVEL: Thrweatt, sorry.

19 MR. THRWEATT: Thank you.

20 CHAIR RAVEL: Thank you. Thank you for  
21 coming.

22 MR. THRWEATT: Good morning, everyone. My  
23 name is Terrence Thrweatt, Jr., a public policy major  
24 and sociology minor at St. Mary's College of Maryland,

1 one of the two public honors colleges in the nation.  
2 I'm president of St. Mary's Votes, a non-biased,  
3 campus-based voter registration organization that is  
4 run through the Center for the Study of Democracy.  
5 And I also served as an election official last  
6 November, I got a pin for it.

7           America was built on two strong beliefs:  
8 individual freedom and justice. The McCutcheon v. FEC  
9 case was argued and ultimately decided in the  
10 affirmative that money is an exercise of individual  
11 freedom to back multiple political candidates in the  
12 national party that one may support.

13           But does this unduly circumvent justice? I  
14 think so. Mr. Shaun McCutcheon and many like him have  
15 the resources to donate to the national party, but  
16 should they have the right to also donate to  
17 candidates that do not represent them? The McCutcheon  
18 decision basically states that one's right to the  
19 individual freedom to choose should be outweighed by  
20 another's individual freedom to spend and choose the  
21 candidates that will ultimately come before the public  
22 for selection.

23           This is a violation of the other basic  
24 principle that America was founded on, the principle



1 of justice. In Latin, the word justice translates to  
2 *equitas*, which means equality and fairness. We should  
3 stand on the principles of equality and fairness  
4 because, after all, this is America.

5 Better rules concerning affiliation, joint  
6 fundraising, and disclosure of donations under  
7 different variations of the same person's name should  
8 be passed to protect the votes of the middle and lower  
9 class.

10 The people that keep America going, their  
11 voice, conservative or liberal, is on the line.  
12 Stricter rules concerning affiliation and joint  
13 fundraising would increase the difficulty for people  
14 seeking to pool their money before eventually making  
15 it to the desired candidate.

16 It would also be accompanied by the second  
17 point of action, disclosure --

18 CHAIR RAVEL: You have one minute.

19 MR. THRWEATT: Thank you. Disclosure sheds  
20 light to the court of public opinion, legislators, and  
21 rule enforcers, making it incumbent upon them to act  
22 in light of any violations of the rules. Absence of  
23 taking action is the same as going against the will of  
24 the founding framers, the American people, and the

1 very principles that America stood and still stands  
2 for.

3 So I close by asking which side are you on,  
4 the one robbing Americans of free choice to select  
5 their own officials, and justice, or that of big  
6 money. Yeah, and that of big money. Who will you  
7 stand up for? My choice is the voice of the middle  
8 and lower class Americans, not because I am one, but  
9 because it is the right thing to do. It is *equitas*.

10 Thank you, Commissioners, for having a  
11 period of public commenting. I ask that all of my  
12 suggestions are fully considered and ultimately taken  
13 into action.

14 CHAIR RAVEL: Thank you. We appreciate your  
15 coming.

16 Mr. Walchuck, please.

17 MR. WALCHUCK: Good morning, everyone. My  
18 name is Matt Walchuck, and I'm a political science  
19 major at St. Mary's College of Maryland. I am  
20 thankful for the opportunity to give my thoughts on  
21 future rulemaking in the aftermath of McCutcheon v.  
22 FEC, specifically on disclosure provisions.

23 I want to ask the question as to how the FEC  
24 can further improve its collection and presentation of

1 campaign finance data. The solution lies not within a  
2 new and innovative medium of communication, but rather  
3 a more stringent concentration of resources in  
4 obtaining a complete data set.

5 It can be argued that some donors have  
6 discovered a gap or loophole in the present disclosure  
7 requirements, making the contribution data incomplete.

8 An incomplete list of major donors contributing to  
9 finance a campaign means that the FEC is not achieving  
10 their primary objective, which is to enforce the  
11 provisions of campaign finance laws and prevent  
12 corruption from slipping into the finance system.

13 Why then would it be necessary to implement  
14 limited resources on the enhancement of already  
15 existing technology to convey this information to the  
16 American people when the people are expecting a data  
17 set that is effective, operational, and able to convey  
18 a real meaning in campaign finance.

19 Furthermore, some Commissioners within the  
20 FEC have argued that it may not be within the agency's  
21 jurisdiction to fully implement the disclosure of all  
22 campaign finance data when Congress has failed to pass  
23 legislation on the matter.

24 In response to this, I argue the FEC is

1 guided by the rules and provisions established in the  
2 Federal Election Campaign Act of 1971 and the  
3 Bipartisan Campaign Reform Act of 2002, which were  
4 passed with the purpose of protecting the First  
5 Amendment rights of all citizens and blocking  
6 corruption from entering the election system.

7 The courts have never declared the  
8 disclosure of donors unconstitutional. In fact, the  
9 Supreme Court based some of its decision in the  
10 McCutcheon v. FEC case on the presumption that such  
11 effective disclosure policies were already in place.  
12 The Court decided to strike aggregate limits from law,  
13 relying on the idea that such limits --

14 CHAIR RAVEL: You have one minute, sir.

15 MR. WALCHUCK: Thank you -- are unnecessary  
16 in the presence of a complete database that reveals  
17 all donors of significant contributions. It is a  
18 necessity that the FEC mandate disclosure rules on all  
19 organizations that make significant political  
20 expenditures and donations in order to prevent  
21 corruption and the deterioration of the people's First  
22 Amendment rights.

23 Thank you for your time.

24 CHAIR RAVEL: Thank you very much.

1 Sai?

2 SAI: Over here.

3 CHAIR RAVEL: Is Sai available? Okay. I  
4 think Sai is next.

5 SAI: Over here.

6 VICE CHAIR PETERSON: He's over here on the  
7 --

8 CHAIR RAVEL: Oh, sorry. Oh, I'm so sorry.

9 SAI: No worries. I'll be tracking me --

10 CHAIR RAVEL: Is Sai -- you're next.

11 SAI: Thank you. Thank you for allowing me  
12 to testify. I have very limited time, so I will be  
13 concise and fairly blunt. We made several specific  
14 suggestions in our comments, and I won't review most  
15 of them. But I would like to focus on one, which is  
16 the laundering of campaign contributions.

17 This Commission deadlocked on the  
18 Conservative Action Fund PAC's request for processing  
19 bitcoin contributions and unanimously approved ours,  
20 in large part due to the issues of laundering present  
21 in that request. There are laws currently on the  
22 books, i.e., 2 U.S. Code (former) 441(a)(8), 432,  
23 434(c)(2), which all clearly say that any donor to an  
24 independent expenditure, a PAC, a candidate, must be

1 disclosed. And the Court relied on that repeatedly,  
2 saying that if it goes through an earmark or a  
3 conduit, it must be attributed. If it goes through a  
4 committee that the donor knows will support a given  
5 candidate, it must be attributed to that donor.

6           However, right now, a (c)(4) can quite  
7 legally launder the identity of 49 percent of its  
8 donors, give that to a super PAC, which then says,  
9 yeah, we got a million dollars from this (c)(4), and  
10 then the (c)(4) tells you to piss off if you ask them  
11 where that money came from. That's illegal. And this  
12 Commission's regulations do not adequately control for  
13 it.

14           Similarly, this Commission has concerns over  
15 the evasion of individual contribution limits. And  
16 currently, the regulations are premised on the notion  
17 that there will be some sort of explicit record of the  
18 donor's earmarking or control over a contribution.  
19 But not to be overly cynical, that record is not going  
20 to exist with even a moderately sophisticated donor  
21 who wishes to launder their contributions through  
22 shell PACs.

23           Instead, I would suggest the Commission  
24 needs to adopt objective, reasonable approaches to

1 looking at the activity and not specific, explicit  
2 agreements in order to attribute money to a particular  
3 donor.

4 Finally, as a side note, Commissioner  
5 Goodman, you raised concerns about regulation on the  
6 Internet, of free speech. And in 2013, you wrote a  
7 very interesting article dealing with this. And I  
8 would like to point out just one segment, which is  
9 your focus on contributions of less than \$100.

10 CHAIR RAVEL: You need to wrap up.

11 SAI: Naturally, such contributions are de  
12 minimis, but if you spend thousands of dollars, even  
13 if you put it on YouTube, you're still spending  
14 thousands of dollars to influence an election.

15 CHAIR RAVEL: Thank you very much, sir.  
16 Appreciate your comments.

17 Representative Hook -- I'm sorry, Istook.  
18 Is that the next person in line? Well, maybe --

19 REP. ISTOOK: I'm not in line, but --

20 CHAIR RAVEL: You're not in --

21 REP. ISTOOK: I'll wait until the --

22 CHAIR RAVEL: All right. Thank you. I'm  
23 really sorry. I have a list here of -- sir, why don't  
24 you come forward, and then we'll go.

1           MR. MELILLO: My name is Michael Melillo.  
2 Thank you for the opportunity to speak in support of  
3 freedom on the Internet. The Internet has been the  
4 most vibrant source for innovation and economic  
5 expansion that we've ever seen. And the primary  
6 reason for that is that the federal government has  
7 pretty much stayed out of the way.

8           This FEC proposal would have a chilling  
9 effect on speech. If you're going to post something  
10 on Facebook or put a video up on YouTube, when you  
11 know it's going to be regulated, this obviously is  
12 going to inhibit participation. It's going to take  
13 something away from what the Internet has been able to  
14 offer to individual citizens.

15           Now, as far as the Supreme Court in the  
16 McCutcheon case, the Court found that the current  
17 regulations that we have are sufficient to make sure  
18 that nobody can get around the law. So we don't need  
19 any more of that.

20           The other thing on this proposal is the  
21 required reporting by Internet bloggers, commentators,  
22 and ordinary citizens. That would be a clear  
23 violation of their First Amendment rights, and  
24 obviously have a chilling effect on participation.



1           Finally, we have thousands, tens of  
2 thousands, of federal regulations inhibiting our  
3 liberty. We really don't need any more of those  
4 regulations. This country was founded on the basis of  
5 limited government. We are now going down the road of  
6 regulatory government with regulators running the  
7 government instead of representative government.

8           Thank you very much for allowing me to  
9 speak.

10           CHAIR RAVEL: Thank you very much, Mr.  
11 Melillo. Let me just make a point from the chair.  
12 There is no regulatory proposal whatsoever being  
13 considered by this Commission with respect to the  
14 Internet, and wherever you got that information, it  
15 was clearly mischaracterized and false. So there is  
16 only a proposal that we have open discussion, such as  
17 what we are having today, and I really welcome your  
18 comments. Thank you.

19           MR. MELILLO: Thank you very much.

20           CHAIR RAVEL: Appreciate it.

21           Yes, sir.

22           MR. WILCOX: My name is Ron Wilcox. I am a  
23 political organizer in northern Virginia and work with  
24 a number of nonprofit grassroots organizations. And I

1 am telling you that the regulatory regime that is in  
2 place in the United States is absolutely chilling to  
3 the grassroots. I knock on doors. I go to a -- I  
4 find a federal worker, and they tell me, I'd love to  
5 be involved in conservative or Republican politics. I  
6 simply cannot because if my name gets out as a donor,  
7 even at a small level, it will be repercussions at  
8 work.

9 This happens on a regular basis. People  
10 tell me, I can't be involved if my name is going to be  
11 public in any way. And it's a shame that the country  
12 has gotten to this point. But over the last five  
13 years, over and over again, same story. We need to  
14 decomplicate things because the grassroots, their eyes  
15 bleed when they read this stuff, and they say, I can't  
16 be involved. I can't do anything.

17 These committees, well, we have a -- it's  
18 not a question of this \$1,000 limit. It's, okay, we  
19 can do up to \$1,000, and we don't have to go through  
20 all that stuff. You've just chilled them. It should  
21 be what they want to do, not what level they have to  
22 get into to then enter into a complicated reporting  
23 regime.

24 This kind of thing needs to end. Freedom

1 needs to rise in America on these issues. And so  
2 people have spoken that it's -- and said it's okay to  
3 be brave. It's not okay to be brave. It's not okay  
4 to make mistakes because you're making mistakes with  
5 people's freedom and their lives, and their values  
6 that they want to implement into public law.

7           And I've heard a lot of things, and I am the  
8 face of the bike club because there are lots of things  
9 that our people would like to be involved with, which  
10 it's just too complicated, onerous, or they have to  
11 put their name out, and if it's over a certain amount,  
12 it's going to run into campaign reform. And maybe  
13 they're persecuted by their family or by coworkers, or  
14 if they're a federal contractor they'll be  
15 discriminated against if they're known as a Republican  
16 in any way.

17           So this is a really actual concern, chilling  
18 thing that's happening in our country at the  
19 grassroots level. Thank you very much.

20           CHAIR RAVEL: Thank you very much for your  
21 participation.

22           Sir, please come forward. Thank you.

23           MR. BUCHANAN: Madame Chairman and members  
24 of the Commission, thank you very much for allowing us

1 to speak today. My name is Rick Buchanan. I'm from  
2 Warrenton, Virginia. I'm a member of the local party  
3 organization in Fauquier County, a very active member,  
4 very active politically.

5 It is claimed that the rule you're  
6 considering is only intended for professionally-  
7 produced political videos. But opening the door to  
8 regulating speech on the Internet is a slippery slope.

9 Would a blog with paid advertisers count as covered  
10 speech? Would a promoted post on social media? Would  
11 a personal video with sponsors?

12 For the FEC to expand its regulatory powers  
13 to the Internet, it's clear overreach, with dangerous  
14 implications for the future. We don't need the  
15 bureaucratic system where I have to consult an  
16 expensive attorney before I can post a political  
17 commentary on the Internet, or share a post or tweet  
18 or retweet something, or spend a few dollars of my own  
19 money promoting the post I like.

20 We have to protect this speech, the freedom  
21 of the Internet, as well as our freedom of speech. I  
22 ask that you carefully consider the rights of all  
23 individuals in your decision. Thank you.

24 CHAIR RAVEL: Thank you, sir.

1           Please come forward. Thank you.

2           MS. BELDEN: Hi. My name is Daisy Belden,  
3 and I'm a student at the University of Michigan. And  
4 I would like to say that I think the current  
5 regulations that the FEC has in place to prevent the  
6 circumvention of the base contribution limits are more  
7 than sufficient, and that the Supreme Court's ruling  
8 in McCutcheon found that the regulatory scheme did not  
9 allow for circumvention, and that the regulations that  
10 are in place are enough.

11           And having grown up with the Internet, I  
12 know that what you're talking about applies to  
13 professionally-produced videos, but people like to  
14 share those videos. I do. I agree that it's a  
15 slippery slope, and I wouldn't want to see the  
16 Internet, which has been a great thing for delivering  
17 information and for mobilizing younger people, and all  
18 people in political circles, have that become  
19 something that's bureaucratic and chilling to free  
20 speech.

21           Thank you.

22           CHAIR RAVEL: Thank you very much for  
23 coming.

24           VICE CHAIR PETERSEN: I would just add that

1 the University of Michigan graduate who works as my  
2 lawyer behind me says, "Go Wolverines!"

3 (Laughter)

4 CHAIR RAVEL: Thank you.

5 MR. CAMPBELL: Hi.

6 CHAIR RAVEL: Good morning, sir.

7 MR. CAMPBELL: Good morning. I'm James  
8 Campbell. I just wanted to say how cool it is to be  
9 speaking before you. I just moved to D.C. less than a  
10 month ago, and here I am speaking before the Federal  
11 Election Committee, so that's pretty cool, just to get  
12 that out there.

13 CHAIR RAVEL: We're so glad to have you.  
14 Thank you.

15 MR. CAMPBELL: And so I also just want to  
16 speak against expanding the current regulations that  
17 we have for the Internet because right now we already  
18 have regulations in place to stop paid advertising  
19 against PACs, political parties, and et cetera. So  
20 they already have to report. And this isn't like, you  
21 know, conventional media, TV, radio, where you have to  
22 have -- which is only really accessible to the wealthy  
23 elite. With Internet added, it allows low-cost and  
24 no-cost people to get involved, create blog posts,

1 share, and get -- actually participate in the process,  
2 like they were speaking earlier about with being able  
3 to get started up earlier and quicker because you just  
4 -- there is no barrier of entry there. You don't have  
5 to prove yourself quite as easily. It's easier to  
6 market yourself.

7 So by creating more regulation, it would  
8 discourage that political participation. And I thank  
9 you for your time.

10 CHAIR RAVEL: Thank you.

11 Yes, sir.

12 MR. NICKERSON: Good morning.

13 CHAIR RAVEL: Good morning.

14 MR. NICKERSON: My name is Zachary  
15 Nickerson. I'm first and foremost an American voter  
16 from the commonwealth of Pennsylvania. I'm also  
17 currently interning at Dr. Ron Paul's nonprofit  
18 organization, Campaign for Liberty. I would like to  
19 thank and applaud the Commission on this open  
20 conversation today.

21 At the risk of being redundant, I'll keep my  
22 comment brief. I'd like to respectfully submit to the  
23 Commission that the FEC should not impose any new  
24 regulations making it harder for ordinary people to

1 participate in the political process, as such  
2 regulations only benefit incumbent politicians. While  
3 on the surface it would seem that money corrupts our  
4 great American political process, may I remind the  
5 Commission that money itself is not the issue. The  
6 problem is, as the Bible states in First Timothy 6:10,  
7 the love of money is the root of all evil. Therefore,  
8 regulating the right of the people to financially  
9 express themselves only infringes on that right and  
10 restricts those that without regulation would  
11 otherwise be free to operate financially or otherwise  
12 in our political process.

13 Any further regulation implemented will not  
14 change the greed of certain politicians, which is the  
15 real problem, but will only inhibit the American  
16 voter.

17 I would also like to respectfully remind the  
18 Commission that forced disclosure of funds donated  
19 does not benefit the American voter, but rather  
20 violates their right to privacy. Someone asked what  
21 does the donor have to hide. But withholding identity  
22 does not imply that something is being hid. It simply  
23 strengthens personal safety and limits any hindrance  
24 born from political opposition.



1           I would also respectfully add that my  
2        comments apply to voting individuals, whether they act  
3        alone or in a group. Exercising their right to  
4        assemble should not be viewed in a negative way, but  
5        rather a great example of our American political  
6        system in process.

7           So to recapitulate, I would urge the  
8        Commission to refrain from any further regulation, and  
9        going forward respect and fight for the rights of the  
10       American voter regardless of their financial status or  
11       affiliations. I feel that the recent Supreme Court  
12       decision has rightly directed the Commission in this  
13       direction. Thank you very much.

14           CHAIR RAVEL: Thank you very much for your  
15        comments.

16           Good morning.

17           MS. COOLIDGE: Good morning. I'm Jacqueline  
18        Coolidge, nothing to do with the Coolidge-Reagan  
19        Commission. I am a citizen, concerned citizen and  
20        voter of the state of Maryland. There has already  
21        been a lot said, so I'll try to avoid too much  
22        duplication.

23           My main concern is about disclosure, which I  
24        think is critically important in order to be able to

1 combat not necessarily quid pro quo corruption. The  
2 Supreme Court has already made its rulings known on  
3 that. But more definitely the appearance of  
4 corruption and how that has contributed to the apathy  
5 of American voters and the discouragement and  
6 disillusionment of American voters.

7 I have heard quite a bit about this concern  
8 about disclosure possibly chilling speech. And  
9 certainly I would agree that there need to be some  
10 thresholds so that the bike club and so on don't have  
11 to be bothered by this and don't have to be worried  
12 about disclosure requirements.

13 However, when we're talking about million-  
14 dollar, thousands of dollars contributions that are  
15 going into attack ads that turn off the voters and  
16 contribute to these feelings of apathy, then I think  
17 that it is actually quite disingenuous to suggest that  
18 these million-dollar contributors should be equated in  
19 terms of their concerns about chilling because I may  
20 decide to boycott them, or I may decide to argue with  
21 them.

22 There is no way you can compare these fat-  
23 cat donors with the civil rights heroes who put their  
24 lives on the line, and those were the ones that were

1 being referred to earlier this morning. I found that  
2 comparison to be absolutely appalling. I think that  
3 if we are going to salvage our democracy, we really  
4 need to have, at a minimum, the disclosure of all  
5 kinds of contributions, direct and indirect, over the  
6 threshold of the so-called bike club. Thank you very  
7 much.

8 CHAIR RAVEL: Thank you very much.  
9 Appreciate you coming.

10 Ma'am, good morning.

11 MS. YOUNG: Good morning. My name is Lih  
12 Young. I'm an economist purely by training, but I'm  
13 here really to protect our democracy, freedom, and  
14 government function, and to improve our social  
15 justice. As you see, currently election is nothing  
16 more than a formality only, but to elect manipulated  
17 by their supporters, whoever they are. So I oppose  
18 the public finance matching the small donor fund,  
19 which as I say, will do more harm than good. And they  
20 will only benefit bad guys as usual.

21 The harm for political campaign affects not  
22 only the election result, but also people's health,  
23 productivity, medical expenditure, individual family  
24 or social lives from both public and social cost-

1 benefit point of view, which harms our people and  
2 communities, for our taxpayers and general public have  
3 to pay the cost for the adverse impact of unfairness  
4 is responsibility, unfair election, and market  
5 mechanism, and unjust influence on corporation  
6 entities or new network, which cause more social,  
7 political problems, and thus cost our society  
8 tremendously.

9 To help you understand the social problem,  
10 as I have identified, see the attachment. I'm giving  
11 you six attachment, including my candidate statements.

12 I have run for public offices from local to federal  
13 since 1994, including U.S. Senate. So social justice  
14 is in great danger, work to be done to promote  
15 fairness, freedom, justice, peace, humanity,  
16 productivity, well-being of the general public, with  
17 also social, political issues, and balancing the  
18 budget. So oppose those unfair election act.

19 I urge the officials and legislature to  
20 resolve murder, fraud, crime, and complaint issues.  
21 All the complaints and the finance, and then  
22 practically every agency and contractors, which is I  
23 really request you to make good effort to --

24 CHAIR RAVEL: You have one minute.

1 MS. YOUNG: -- protect. Eliminate murder,  
2 fraud, crime unjust network, which is including public  
3 and private sectors with all of the misleading  
4 manipulation influence to benefit them. And all, I  
5 ask you to really use these six attachment to tell you  
6 how serious our society is. And I'm serious in this,  
7 and I really think this Federal Election Commission  
8 should really spend your mission more meaningful way.

9 CHAIR RAVEL: Thank you very much. Your  
10 time is up. If you want to -- perhaps give it to the  
11 general counsel. Thank you, thank you.

12 MS. BRIDGES: Hello.

13 CHAIR RAVEL: Good morning.

14 MS. BRIDGES: Good morning. Thank you for  
15 having me. My name is Stacy Bridges. I'm the widowed  
16 fiancée of Francis Charles Perrin, Jr. I'm here today  
17 to talk to you about when dark, dirty money turns  
18 deadly. My fiancée died in 30 days after his doctor  
19 gave him a 30-day free sample of Abilify for stress.  
20 He suffered every adverse side effect associated with  
21 the drug. He lost 20 pounds in one month, couldn't  
22 eat, couldn't sleep, had confusions, delusions,  
23 paranoid delusions, hallucinations, hopelessness, and  
24 despair. And when I say hopelessness and despair, it

1 was as if he was in the pit of hell facing Satan  
2 himself.

3           And once the doctor gave him this poison,  
4 she didn't know how to treat him. She told him to cut  
5 an antipsychotic in half, but keep taking it. It's  
6 working. We cut it in half. The symptoms got even  
7 worse. His blue eyes turned black. He had  
8 nosebleeds. When I say confusion, delusion -- my  
9 fiancée was a CPA with an MPA. He did government  
10 audits for HUD. He did IRS audits. He was not a  
11 schizophrenic, yet his doctor gave him a schizophrenic  
12 drug for stress.

13           Today, schizophrenic drugs are being  
14 advertised on TV without a warning to the public.  
15 When the commercial says the drug may cause heart  
16 attack, stroke, suicide, and sudden death, those  
17 aren't half of the side effects. What they don't tell  
18 you is you can die within a week to 30 days if you  
19 stop taking the drug or alter the dose of that drug.

20           My problem is my fiancée would not have died  
21 if somebody didn't give a politician some money so  
22 that he could slip these poison prescriptions through  
23 the FDA and into the market. Today we have  
24 schizophrenic drugs being advertised on TV. And

1       unfortunately, we have to wait until so many people  
2       die in order for that drug to be pulled off of the  
3       market. And if it is pulled off in the market, tort  
4       reform is put in place to put a cap and balance on  
5       your pain and suffering.

6                Even worse, you have lobbyists who are  
7       writing our laws, not our legislators, and they're  
8       pushing the pills and policies through, and you've got  
9       acts like the PREP Act, which basically gives drug  
10      companies financial immunity when their drug kills  
11      somebody, okay? When their drug kills, they get  
12      financial immunity.

13              If Toyota or GM -- if one person dies in a  
14      car accident, they're going to recall millions of  
15      cars. Two hundred thousand Americans die each year  
16      from taking pharmaceutical drugs correctly, and  
17      those --

18              CHAIR RAVEL: You have one minute.

19              MS. BRIDGES: Okay. I'll wrap it up.  
20      Bottom line. We're going to keep money in politics?  
21      Do it. But hold them accountable. If they push  
22      poison policies through, and innocent Americans die,  
23      anybody who signed off on that, put them in jail.  
24      Take any ill-gotten gains they got from it, and give

1 it to the victims that they left behind because  
2 they're making a killing in order to push these poison  
3 policies through. And right now we have lobbyists  
4 running our country right now. And unfortunately,  
5 innocent people die because when the commercial -- if  
6 you notice that every suicide, homicide, and  
7 murder/suicide in America, meds have been at the scene  
8 of every crime. But everybody wants to talk about the  
9 guns and the bullets and how many bullets you took, or  
10 if he didn't take his medication.

11 Bottom line is, if you stop taking a drug,  
12 if a drug can make you suicidal, it can make you  
13 homicidal, too. I beg of you to protect the American  
14 people.

15 CHAIR RAVEL: Thank you very much for your  
16 moving testimony.

17 MS. BRIDGES: Thank you for having me.

18 CHAIR RAVEL: Sir?

19 MR. BURKSON: Michael Burkson. I'm a lawyer  
20 in D.C. Our democracy is at risk. The United States  
21 is rapidly descending into a Koch Brothers plutocracy.  
22 They have vowed in public news statements to create a  
23 fund of \$890 million for the 2016 election. You have  
24 the power to stop this. All campaign contributors



1 should be disclosed before the Supreme Court comes to  
2 its senses and reverses Citizens United, which is a  
3 disgrace, and it will go down in history as one of the  
4 worst decisions in this country.

5 CHAIR RAVEL: Thank you, sir.

6 Representative Istook, would you like to  
7 come forward?

8 REP. ISTOOK: Thank you.

9 (Pause)

10 REP. ISTOOK: Thank you for this hearing.  
11 I'm Ernest Istook, formerly a U.S. congressman from  
12 Oklahoma, and I'm here on behalf of myself and on  
13 behalf of Tea Party Patriots, a 501(c)(3) organization  
14 on whose board of directors I serve.

15 Tea Party Patriots is a nationwide,  
16 grassroots organization with which hundreds of local  
17 groups have chosen to affiliate. Its funding comes  
18 overwhelmingly from hundreds of thousands of small  
19 donors, and very little from large contributors.

20 I and we oppose any effort by the FEC to  
21 expand its regulation of speech. The current  
22 regulations cause enough problems, expense, and  
23 infringements on liberty. Please do not make things  
24 worse. All government attempts to regulate political

1 speech have fundamental problems with our First  
2 Amendment freedoms, whether you label that activity as  
3 electioneering, dark money, or anything else.

4 The First Amendment protects not only our  
5 speech, but also our freedom of association, which is  
6 part of the right to peaceably assemble. Such  
7 regulations pretend to be narrowly drawn, but in fact  
8 will inevitably expand into ever-growing forms of  
9 government censorship. It also adds very real  
10 prospects of selective enforcement, such as we now  
11 experience in many areas of federal law and agencies.

12 No agency should have tools to suppress  
13 political speech or political opponents. Here is why  
14 the proposed regulation of political speech would  
15 inevitably spread.

16 First, the types of speech that are deemed  
17 political grow as government grows. So as government  
18 constantly expands its reach, every new law, every new  
19 program, every new regulation, every new proposal  
20 enlarges what is therefore deemed part of our  
21 political process, and therefore part of political  
22 debates and political speech. Therefore, the topics  
23 that are subject to regulation grow endlessly.

24 Because government is everywhere, speech

1 everywhere can be deemed political, and therefore part  
2 of electioneering, and therefore regulated by the FEC  
3 or any other agency. Here is just a partial list of  
4 ongoing political debates: our health, our insurance,  
5 our medical providers, the foods we eat, levels of  
6 sodium, cholesterol, and fat, and other content,  
7 millions of school lunches served every day, what we  
8 buy at the grocery, what we buy at restaurants --

9 CHAIR RAVEL: You have one minute, sir.

10 REP. ISTOOK: -- how much water we use even  
11 in the shower, our driving habits, the affordability  
12 of cars, refrigerators, washing machines, toasters,  
13 other appliances, our electric bills, the education of  
14 our children. The values instilled in our children  
15 are undercut in public schools. Whether an  
16 organization can even exist if its goals contradict  
17 those of government. And certainly then we have our  
18 electric bills, and the very definitions of marriage  
19 and family.

20 When government is everywhere, political  
21 speech is everywhere. And you ask for an ever-growing  
22 problem if you try to regulate it. And second, there  
23 is the time factor. Every day is election day --

24 CHAIR RAVEL: Can you wrap up, please?

1           REP. ISTOOK: -- some place, it seems. Yes,  
2           ma'am. Every day it seems is election day some place  
3           in one state or another. When you are trying to  
4           communicate nationwide through the Internet, email, or  
5           otherwise, you cannot confine that communication to  
6           isolate any area, Indiana, Wyoming, Colorado, you name  
7           it. It is impossible to do, so you end up restricting  
8           all national speech on so many issues, and basically  
9           365 days a year.

10           Thank you so much for the opportunity.

11           CHAIR RAVEL: Thank you. Thank you very  
12           much for coming, sir.

13           REP. ISTOOK: Thank you.

14           CHAIR RAVEL: Ms. Mitchell, you -- is Cleta  
15           Mitchell available? She signed up also to speak. If  
16           not, is there anybody else in the audience that has  
17           not been able to speak that would like to come forward  
18           and speak? Okay. Hearing none, then we will recess  
19           this hearing until 1:00. And I would ask that  
20           everybody come a few minutes before 1:00, maybe 10  
21           minutes to 1:00, because the third panel will start at  
22           1:00.

23           For those of you who go outside and want to  
24           return, please be advised that you will have to go

1 through security again. Thank you. We'll see you  
2 this afternoon.

3 (Whereupon, at 11:41 a.m., the hearing was  
4 recessed for lunch, to reconvene at 1:00 p.m., later  
5 the same day.)

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1 So I'd like to begin with Mr. Bopp. Thank you very  
2 much.

3 MR. BOPP: Thank you, and thank you very  
4 much for allowing me to testify. I'm a private  
5 citizen. I'm a member of the general public, and  
6 nobody is asking -- or nobody is paying me to testify  
7 here today.

8 As counsel for Citizens United and  
9 McCutcheon, in the two cases that are at issue before  
10 this hearing, I wanted to thank the Commission for  
11 conforming its regulations with the holdings of  
12 Citizens United and McCutcheon in the rulemaking that  
13 you have already finalized regarding those two cases.

14 You did so with respect to McCutcheon  
15 promptly. Unfortunately, with respect to Citizens  
16 United, it took over four years to remove regulations  
17 from the Commission's set of regulations that were, of  
18 course, unconstitutional under Citizens United. I  
19 really regret that delay, and it demonstrates how  
20 difficult it can be for people who would like to  
21 comply with your rules and regulations because they  
22 cannot even rely upon your published regulations to  
23 find out what the law is.

24 Unfortunately, it took a change in the

1 Commission's membership in order to accomplish that,  
2 and I particularly want to express my appreciation to  
3 the chairman for her role in making sure that this  
4 Commission fulfilled its responsibilities in finally  
5 conforming its regulations. Now --

6 CHAIR RAVEL: Thank you.

7 MR. BOPP: You know, as we know, that holdup  
8 was because Democrat Commissioners on the Commission  
9 were insisting in exchange for removing regulations  
10 that were unconstitutional under the holding of  
11 Citizens United to impose additional regulations and  
12 disclosure requirements that only Congress can  
13 accomplish, and that at best are an implication of  
14 Citizens United. And, of course, it's that question  
15 that you're going to be exploring here.

16 Now, in contrast, the Republican  
17 Commissioners called for immediate revision of the  
18 Commission's regulations to remove those that were  
19 unconstitutional under the holding of Citizens United,  
20 and even went further, and that is that they recognize  
21 the undeniable implication of Citizens United that the  
22 prohibition on labor unions' political speech, which  
23 was, of course, not the holding of Citizens United  
24 because it only involved corporations, but that the



1 regulation and prohibition on labor unions' political  
2 speech was also unconstitutional under Citizens  
3 United, and immediately agreed that that implication  
4 should be carried out as -- and to remove that  
5 prohibition in the regulations of the Commission.

6 So we've had different approaches to this,  
7 bringing the regulations into compliance with Citizens  
8 United, and I'm glad that that is finally all behind  
9 us.

10 Now, the question I want to address, which  
11 is addressed in the testimony of ProtectMarriage is  
12 the implications of disclosure on citizens' political  
13 activity. The Supreme Court has long recognized that  
14 the disclosure of private association with a not-for-  
15 profit organization, an advocacy group in particular,  
16 or one that is controversial like many of them are,  
17 would serve to discourage people's willingness to  
18 associate with that organization, and thereby conduct  
19 the political activity that they would do in  
20 association with that organization.

21 The first case, of course, was NAACP v.  
22 Alabama, where the state of Alabama in the late  
23 forties simply wanted a list of the supporters of the  
24 NAACP that were conducting a boycott of white

1 businesses in Birmingham, Alabama, and the Supreme  
2 Court correctly said that that would chill their  
3 political activity.

4 The Court then recognized in Buckley v.  
5 Valeo a per se rule that disclosure of the political  
6 activity of someone necessarily implicates First  
7 Amendment rights because it discourages and chills  
8 that participation.

9 What ProtectMarriage has submitted here in  
10 their testimony and the over-50 pages of documentation  
11 drawn from over 50 signed affidavits and other  
12 documentation demonstrates the pervasive impact in one  
13 case study of what disclosure of the, in this case,  
14 donors to a particular initiative campaign -- what can  
15 occur as a result of the forced disclosure of the  
16 identity of contributors.

17 And then if the other side of the particular  
18 debate contained at least a faction within that group  
19 of supporters -- that were so intolerant of opposing  
20 views that they were prepared to punish or seek  
21 revenge against people who had contrary views and  
22 participated even in the most modest way in political  
23 activity regarding it.

24 What happened was after Proposition 8 was

1 passed, even though there were a few instances of  
2 harassment and intimidation of Proposition 8's  
3 supporters, there was lodged a comprehensive campaign  
4 of harassment and intimidation against supporters of  
5 traditional marriage through at least 14 web sites  
6 that published the names and addresses and amounts, in  
7 some cases web questing -- I mean Mapquesting the home  
8 location of these people so that you could find any  
9 particular person's home to go and harass and  
10 intimidate them, and calls for those sorts of boycotts  
11 or action against them.

12           The result is we've been able to document  
13 over 250 incidences that include what *The New York*  
14 *Times* described as, quote, "an ugly specter of  
15 intimidation," end of quote. And that is there were  
16 death threats, physical assaults, and threats of  
17 violence, vandalism, and threats of destruction of  
18 property, arson and threats of arson, angry protests,  
19 lewd demonstrations, intimidating emails and phone  
20 calls, hate mail, mail envelopes containing white  
21 suspicious powder, multiple web sites dedicated to  
22 blacklisting those who supported traditional marriage,  
23 loss of employment and job opportunities, intimidation  
24 and reprisals on camps and in the classroom, acts of

1 intimidation through photography, economic reprisals,  
2 and demands for hush money, and gross expressions of  
3 anti-religious bigotry, including vandalism and  
4 threats directed at religious institutions and  
5 religious adherence.

6 CHAIR RAVEL: Mr. Bopp, I'm sorry to make  
7 you the guinea pig, and I'll give you a little extra  
8 time. But I failed to mention that you have eight  
9 minutes. All members of the panel do. And the yellow  
10 light is on, indicating one minute. But since I'm  
11 speaking and didn't tell you, I'll give you a little  
12 extra time.

13 MR. BOPP: One minute.

14 CHAIR RAVEL: But I apologize.

15 MR. BOPP: Yeah.

16 CHAIR RAVEL: So you have about a minute  
17 from now.

18 MR. BOPP: Thank you. I was watching the  
19 web cast --

20 CHAIR RAVEL: Okay.

21 MR. BOPP: And I was --

22 CHAIR RAVEL: Okay. You -- okay.

23 MR. BOPP: -- looking forward to that.

24 CHAIR RAVEL: I appreciate it. I apologize

1 for not letting you know.

2 MR. BOPP: That's all right. Thank you. As  
3 we pointed out in our testimony, the U.S. Supreme  
4 Court has credited this record in three different  
5 cases, one of which involved whether or not the  
6 federal trial regarding the constitutionality of Prop  
7 8 should be televised. And the Supreme Court,  
8 pointing to this very record that we have submitted to  
9 this Commission, overturned the trial court's order  
10 allowing televising of the trial because of the  
11 inherent chill on supporters of traditional marriage  
12 that the televising of that trial would have imposed.

13 So if you are interested in public  
14 participation in our electoral system, one thing you  
15 have to understand is public disclosure of supporters'  
16 various causes and their political activity will chill  
17 their participation and that that should be done only  
18 in the most compelling circumstances. Thank you.

19 CHAIR RAVEL: Thank you very much for your  
20 comments.

21 Mr. Costa.

22 MR. COSTA: Chair Ravel and honorable  
23 Commissioners, thank you so much for the opportunity  
24 to appear before you today. And I offer my comments

1 on the Commission's proposed rulemaking.

2 I'd like to applaud you for both taking the  
3 action to consider how to improve the Commission's  
4 current campaign finance rules, as well as opening up  
5 your process of deliberation on these important  
6 matters to input from the public. In fact, I cannot  
7 underscore enough the value of you doing this.

8 Though I'm officially speaking to you as a  
9 representative of CounterPAC, a registered federal  
10 independent expenditure committee, I say this also as  
11 a citizen and a voter. Elections are the backbone of  
12 American democracy, the chief mechanism that the  
13 public has to exercise its political will. As such,  
14 few issues are as critical to the public interest as  
15 the health and integrity of our elections, and it's  
16 essential not only that said health and integrity be  
17 continually examined, but also that the public be  
18 given a voice in the process of this examination.

19 The 32,000 written comments that the  
20 Commission received in response to its invitation of  
21 public comments are a clear indication of the people's  
22 interest in the state of our country's elections and  
23 the proceedings of this Commission. I sincerely hope,  
24 and I'm optimistic based on this very positive step

1 you've taken today by holding a public hearing, that  
2 this marks the beginning of a new chapter in the  
3 Commission's relationship with the American people,  
4 one characterized by commitment to listening to the  
5 public and advocating on its behalf.

6 This is especially my hope in light of what  
7 the American people are saying. As an enormous number  
8 of the comments submitted to you demonstrate, there is  
9 deep and widespread concern about the state of our  
10 country's elections. At a time when spending on  
11 federal elections totals in the billions, but only .4  
12 percent of Americans give more than \$200, people are  
13 understandably concerned about the possibility of  
14 money having a corruptive influence on our electoral  
15 process.

16 Fortunately, there are some tools available  
17 to us that hold the potential not only to allay these  
18 fears, but to help prevent them from coming to  
19 fruition. And among said tools, disclosure is one of  
20 the most promising. The Supreme Court has repeatedly  
21 affirmed that transparency surrounding the receipt and  
22 expenditure of campaign funds is of critical  
23 importance to the health of our country's public  
24 elections, clearly signaling to both Congress as well

1 as this Commission that this would be an appropriate  
2 area upon which to focus legislative and regulatory  
3 efforts.

4 In Citizens United v. The Federal Elections  
5 Commission, eight of the Court's nine justices  
6 concurred that transparency enables the electorate to  
7 make informed decisions and give proper weight to  
8 different speakers and messages. The Court reiterated  
9 this view in its McCutcheon decision, stating that  
10 disclosure can serve to deter actual corruption and  
11 avoid the appearance of corruption by exposing large  
12 contributions and expenditures to the light of  
13 publicity.

14 An overwhelming majority of Americans,  
15 upwards of 80 percent of people from across the  
16 ideological spectrum, want to see full disclosure of  
17 the money being raised and spent in political  
18 campaigns, and believe that we need better rules  
19 surrounding disclosure than we currently have.

20 When you look at recent trends in political  
21 spending, it's not surprising that this is the case.  
22 In the 2014 midterm elections, hundreds of millions of  
23 dollars were spent by groups for which there is  
24 currently no requirement at all surrounding disclosure



1 of funding sources, and for which the voting public  
2 therefore had no information about who was behind the  
3 campaign messages being paid for.

4 Can we blame Americans for being concerned  
5 about the state of our elections when the campaign ads  
6 that are targeting them, feeding them information of  
7 questionable integrity, and telling them how to vote  
8 at the ballot box are being bought and paid for using  
9 millions of dollars in secret, untraceable money?

10 I'd like to draw special attention to an  
11 aspect of the problem of untraceable money that often  
12 goes overlooked, and one that I believe with a certain  
13 amount of commitment and creative thinking is  
14 something that the Commission can make considerable  
15 headway on.

16 The problem of which I speak is that of dead  
17 end disclosure. By dead end disclosure, I'm referring  
18 to the fact that even in cases where expenditure-  
19 making groups are required by law to disclose their  
20 funding sources, for example, as is the case with  
21 super PACs, all too often the sources that they  
22 disclose are themselves organizational entities whose  
23 sources of funding are unknown, and for which  
24 disclosure of this information is not required.

1           Although this dead end disclosure may not be  
2 an intentionally devious practice in most cases, it is  
3 a highly common practice among independent expenditure  
4 committees. Indeed, it can be observed in the  
5 reporting of *all* of the top spending super PACs, both  
6 liberal and conservative, from the last cycle.

7           This is highly concerning. It exposes a  
8 glaring loophole that in effect makes it possible for  
9 anybody to spend money to influence the outcome of  
10 federal elections and remain in secret. Under the  
11 status quo, there is nothing preventing special  
12 interests from establishing front groups and shell  
13 companies for the express purpose of serving as  
14 funding vehicles for independent expenditure  
15 committees while simultaneously keeping the ultimate  
16 sources of that money hidden from public view.

17           Despite the fact that there is a law  
18 prohibiting foreign entities, for example, from  
19 spending money to influence American elections, the  
20 existence of this loophole in disclosure requirements  
21 means that there is no mechanism to ensure that this  
22 law isn't being broken. For all we know, the campaign  
23 ads that flood our airways leading up to election day  
24 could be being written -- underwritten by foreign

1 interests.

2           Is the Commission comfortable with allowing  
3 this possibility to persist on its watch? In 2014,  
4 CounterPAC, the organization that I'm representing  
5 here today, undertook a campaign to address some of  
6 the failures of campaign finance disclosure.  
7 Specifically, we urged candidates to take a pledge  
8 promising that every dollar spent to support their  
9 campaign, including by outside groups, would be  
10 publicly traceable to what we call the satisfactorily-  
11 transparent source, that is, a source that would be  
12 meaningfully knowable by the public and thus would  
13 reasonably enable them to give proper weight to the  
14 message being paid for.

15           We define the satisfactorily transparent  
16 source to be an individual, a well-known for-profit  
17 corporation meeting a certain threshold of revenue  
18 from trade or commerce for each of the past five  
19 years, or a nonprofit organization that has been in  
20 existence for more than ten years and meets a certain  
21 threshold of membership in all 50 states.

22           Of course, this definition of what counts as  
23 a satisfactorily-transparent funding source is merely  
24 the approach that we chose to promote, and is just one

1 example of how the disclosure of political spending  
2 activity might be made more effective and meaningful.

3 What I wish to highlight about it, however,  
4 for the purpose of today's discussion are two things.

5 The first is that this set of criteria that we  
6 created surrounding acceptable disclosure did not de  
7 facto restrict the political speech of any category of  
8 legal entity. For-profit corporations and 501(c)  
9 organizations, in addition to individuals, were all  
10 permitted to continue spending money under the rules  
11 we set forth. Yet we stop to establish standards  
12 within each of these categories to ensure that every  
13 dollar spent would be traceable to an entity that was  
14 satisfactorily transparent to the public.

15 CHAIR RAVEL: You have a minute.

16 MR. COSTA: Thank you. All too often, the  
17 debate over transparency treats disclosure as being  
18 inevitably combative of the First Amendment rights of  
19 political spenders. What I believe CounterPAC's rules  
20 demonstrate is the balance between the protection of  
21 political speech and the public's right to know is in  
22 fact achievable. As the Commission moves forward in  
23 its deliberations, I encourage you to pursue rules  
24 that strike this balance.

1           The second thing I want to highlight about  
2 the standards we developed is that they made it  
3 possible for organizations to voluntarily transition  
4 themselves into a state of compliance where there are  
5 standards of increased transparency. If an  
6 organizational entity failing in and of itself to meet  
7 our standards, for example, a nonprofit organization  
8 existing for fewer than ten years, wished to spend  
9 money on a race where our pledge was in effect, all  
10 they needed to do was furnish proof that its own  
11 funding came from satisfactorily-transparent sources.

12           In the scheme of CounterPAC's campaign, this  
13 sort of voluntary disclosure was made possible by the  
14 fact that there was a neutral third party, us,  
15 providing an agreed-upon vehicle by which it could  
16 happen. The formal vehicles of disclosure that  
17 currently exist, however, namely the filing schedules  
18 overseen by this Commission, only accommodate  
19 mandatory disclosure, not voluntary disclosure.

20           For example, if I ran a 501(c)(4)  
21 organization that makes --

22           CHAIR RAVEL: Please wrap up.

23           MR. COSTA: -- contributions -- just one  
24 minute -- to an independent expenditure committee, and

1 I wanted to take responsibility for ensuring that the  
2 ultimate source of the money being contributed is made  
3 transparent to the public, there is currently no  
4 formal mechanism for me to make this filing with the  
5 FEC.

6 I wish to suggest that the Commission could  
7 take measure to better facilitate and encourage  
8 voluntary disclosure of funding sources by  
9 organizations spending money for political purposes.  
10 Thank you very much.

11 CHAIR RAVEL: Thank you. Thank you so much.

12 Mr. Mason.

13 MR. MASON: Thank you, Madame Chair, and  
14 Commissioners. It's always a delight to be back.

15 CHAIR RAVEL: Former chair of the  
16 Commission.

17 MR. MASON: "'Will you walk into my parlor,'  
18 said the spider to the fly? 'This is the prettiest  
19 little parlor that ever you did spy. The way into my  
20 parlor is up a winding stair, and I have many pretty  
21 things to show you when you're there.' 'Oh, no, no,'  
22 said the little fly. 'To ask me is in vain, for who  
23 goes up your winding stair can ne'er come down  
24 again.'"

1           Now, many of you may know that this fable  
2 ends badly for the fly, who eventually succumbs to  
3 flattery, goes up the winding stair, and indeed is  
4 ne'er seen again. This cautionary tale applies when a  
5 regulator invites parties who might be subject to  
6 regulation into a conversation. Of course, regulators  
7 don't actually eat their prey. But once ensnared,  
8 once ensnared in the web of regulation, few ever  
9 escape.

10           There is a vast difference in stepping over  
11 the threshold into a regulated status and being not  
12 regulated at all, no matter how sensitive, well-  
13 informed, or light-handed the regulation is.  
14 Ultimately, it's the regulator who is in charge, and  
15 even if that power is exercised rarely and sparingly,  
16 regulated entities become less likely to innovate, and  
17 approved or customary processes are favored.

18           About a dozen years ago, this Commission  
19 made an unusual choice, deliberately, to deregulate  
20 most political activity on the Internet, as a  
21 threshold matter. This was no accident or oversight.

22       The decision was made after reversing several earlier  
23 decisions that proposed much more aggressive  
24 regulation of the Internet.

1           The decision is well-informed. It was made  
2 pursuant to a record number of public comments -- I  
3 should say up to this proceeding -- several hearings  
4 before the Commission and before Congress. The  
5 decision was reviewed in federal court, remanded to  
6 the Commission, revised, reviewed again, approved.  
7 The people who challenged it accepted this.

8           While those of us who were on the Commission  
9 at the time couldn't have predicted every new tool or  
10 app or process that came since, in my view there is  
11 nothing constitutes a surprise that would have changed  
12 those initial -- that fundamental decision.

13           What is particularly telling to me is what  
14 has happened since. Americans were given the freedom  
15 to commit politics on the Internet. And they did.  
16 They said what they wanted without disclaimers. They  
17 formed groups without registering. They pooled  
18 resources without reporting. And nothing bad  
19 happened. No scandal, no abuse crying for reform, no  
20 dark forces overwhelming the Internet.

21           Of course, the Commission is free at any  
22 time to revisit its policy decision, consistent with  
23 the limits that are imposed by the Constitution and  
24 the FECA. But at this point, the Commission needs



1 some reason better than official curiosity to initiate  
2 a rulemaking inquiry. Freedom has been tried, and it  
3 has not been found wanting.

4 So the question that needs asking is not how  
5 to regulate the Internet, but whether to regulate it.

6 Against the success of non-regulation, the Commission  
7 needs to define some problem or abuse requiring a  
8 government remedy before embarking on a free-ranging  
9 consideration of regulation.

10 I don't believe there is such a problem, but  
11 if the Commission does, they should define that  
12 problem rather than simply assuming that in the nature  
13 of things that the Internet is going to be regulated  
14 in some sort of official, even if informal,  
15 conversation should be begun.

16 I think this is especially true in light of  
17 other Commission priorities. The petition that was  
18 recently submitted, for instance, by Mr. Bauer and Mr.  
19 Smith and others represents a range of far more  
20 pressing and practical regulatory issues that need to  
21 be addressed. You have judicial decisions that have  
22 changed the contours of the law, and now a major  
23 statutory decision, that need to be implemented. And  
24 in a number of ways, practices have changed, laws

1 effectively have changed, and the Commission's  
2 regulations and forms simply haven't kept up.

3 Before deciding what additional policy  
4 changes you might need to make, I think it would be  
5 advisable to catch up with what has actually happened  
6 in the courts.

7 Let me end with maybe a note of personal  
8 sympathy for the chair. My turn as chairman came in  
9 2002, and I had a number of things that I thought  
10 needed doing, addressing, I would have liked to have  
11 done. But something called BCRA happened, and my  
12 agenda as chair was to implement the regulations for  
13 that legislation, which some I didn't agree with on a  
14 policy basis, but they simply needed to be done, and  
15 we got that job done.

16 I know that some Commissioners feel like  
17 there are dragons to be slayed. But I would observe  
18 that there are some gopher holes in the lawn that need  
19 to be fixed, and those should be attended to.

20 Thank you, Madame Chair.

21 CHAIR RAVEL: Thank you very much, Mr.  
22 Mason. Yes, I have seen the gopher holes.

23 Mr. von Spakovsky.

24 MR. VON SPAKOVSKY: Since Commissioner Mason

1 didn't use up all his time, will he yield the balance  
2 of his time?

3 (Laughter)

4 MR. VON SPAKOVSKY: As you all are well  
5 aware, I was a Commissioner on the FEC for two years,  
6 served with Commissioner Weintraub, Commissioner  
7 Walther. I have filed a public comment in this  
8 advance notice of proposed rulemaking, along with  
9 three other Commissioners, Lee Ann Elliott, Bradley  
10 Smith, and Darryl Wold. Between us, we have 30 years  
11 of experience on the FEC administering these  
12 provisions.

13 Now, the rulemaking that you all issued  
14 asked for comments on whether you should revise the  
15 regulations on earmarking of contributions,  
16 affiliation factors, joint fundraising committees, and  
17 disclosure requirements in the light of the Supreme  
18 Court's decision in McCutcheon.

19 In a separate statement, the chairwoman,  
20 Chairwoman Ravel, urges the FEC to reexamine, quote,  
21 "the Commission's approach to the Internet and other  
22 emerging technologies," closed quote, which has  
23 absolutely nothing to do with the McCutcheon decision.

24 Chairman Ravel also claims that the current

1 regulation regarding campaign activity on the  
2 Internet, quote, "does not make sense and turns a  
3 blind eye to the Internet's growing force in the  
4 political arena." Taking each of these in turn, the  
5 earmarking -- I hate to bore people with the actual  
6 language of one of our regulations, but the earmarking  
7 regulation, I have to tell you, it defines earmarked  
8 as meaning, quote, "a designation, instruction, or  
9 encumbrance, whether direct or indirect, express or  
10 implied, oral or written, which results in all or any  
11 part of a contribution or expenditure being made to or  
12 expended on behalf of a clearly identified candidate  
13 or candidate's authorized committee."

14           You couldn't have a more encompassing  
15 definition than that. It is very clear that that  
16 regulation has worked. It has been enforced by the  
17 FEC. And you do not need to revise it to make it even  
18 stricter.

19           Now, the affiliation regulation that you've  
20 got provides an extensive list of 10 factors to look  
21 at to see whether an affiliation exists. It prevents  
22 circumvention of the base contribution limits. And  
23 again, there is no evidence in the record whatsoever  
24 that affiliated organizations have been able to avoid

1 compliance.

2 Now, the regulation on joint fundraising  
3 committees is also comprehensive in outlining the  
4 rules, the limits, and the restrictions on such  
5 committees, which were specifically authorized by  
6 Congress.

7 Now, although McCutcheon noted that one of  
8 the options with regard to these committees would be  
9 to limit their size, the FEC doesn't have the  
10 authority to do that. In fact, the opinion specified  
11 that such a limit could be implemented if, quote,  
12 "Congress believes that circumvention is especially  
13 likely to occur." Congress has not chosen to put in  
14 that limit, and you can't do it.

15 Finally, the proposal to regulate political  
16 speech on the Internet is profoundly misguided and  
17 poses a serious threat to free speech. The FEC has no  
18 authority to regulate this area simply because, quote,  
19 "It's a growing force in the political arena." A  
20 proposal that would implicate the First Amendment so  
21 profoundly and greatly expand regulation into an area  
22 that the FEC has only lightly regulated should come  
23 from Congress, not the FEC. And we should note that  
24 in the 10 years since that regulation was -- almost 10

1 years since that regulation was adopted and we took a  
2 hands -- basically a hands-off approach, Congress has  
3 not passed such legislation.

4 This proposal would take the FEC into an  
5 area far outside of its limited authority. It has no  
6 relevance to the kind of corruption that the Supreme  
7 Court has said the rules are supposed to stop, which  
8 is quid pro quo corruption.

9 Now, I should say that one of the other  
10 things that has been said about this is that the  
11 distinctions between the Internet and other modes of  
12 communication are not what an earlier group of  
13 Commissioners may have anticipated when this was  
14 adopted. I was on the Commission when this rule was  
15 adopted. I could tell you that that is wrong.

16 In fact, we understood that modern  
17 technology has led to a Renaissance of ordinary  
18 citizens being able to influence public debate in the  
19 political arena. Anyone with access to a computer or  
20 a smart phone can publish political opinion, social  
21 commentary, YouTube videos, or tweets on important  
22 issues and public policy problems at little or no  
23 cost, and this was noted by the FEC at the time in the  
24 NPRM when it specifically said that these proposed new

1 rules extend explicitly the existing individual  
2 activity exceptions to the Internet.

3 So we knew about it, and we took that into  
4 account. There is no question that requiring  
5 government registration and reporting by the thousands  
6 of online bloggers, web sites, commentators,  
7 podcasters, and kitchen-table journalists and  
8 reporters would not only burden their First Amendment  
9 right to speak freely, but would be entirely  
10 impractical for the FEC, which does not have the  
11 resources to regulate such voluminous activity.

12 And frankly, it would raise the dire specter  
13 of a government agency monitoring everything that is  
14 said and done on the Internet that might have some  
15 influence of some kind on political elections.

16 I want to end with something that I think is  
17 very important, and that is, you know, I keep hearing  
18 these terms about dark money, oh, this terrible dark  
19 money. Well, excuse me, but dark money is private  
20 giving. And I as an American and every ordinary  
21 American has a right to privately give money to and  
22 donate to groups and associations that share their  
23 ideas.

24 That is a basic tenet of the First

1 Amendment. It is a basic right that all of us have,  
2 and there is nothing wrong with it, and it is not  
3 something that this agency should try to abrogate or  
4 in any way end.

5           If I give money to the National Rifle  
6 Association, if I'm a donor to them because they share  
7 my beliefs on the Second Amendment, if I give to NARAL  
8 or I give to a pro-life group, because those groups  
9 share my views on abortion, I have a right of private  
10 giving just like I have a right of private speech.  
11 And it would be frankly an abrogation of my rights to  
12 require me to report that to the government. And the  
13 only reason for that, the only reason for that, is so  
14 that groups that don't like what other advocacy  
15 organizations are doing, whether it's on the left or  
16 the right, is in order to be able to get the names of  
17 those donors, to intimidate and harass them, and to  
18 try to cut out the support of --

19           CHAIR RAVEL: You have one minute, sir.

20           MR. VON SPAKOVSKY: -- organizations that  
21 those people do not like. Private giving is a  
22 constitutional right. That is something that was  
23 recognized, as you all well know by the U.S. Supreme  
24 Court in NAACP v. Alabama. And in that case, the



1 state of Alabama wanted information about the donors  
2 for many of the same reasons that people today keep  
3 pushing for this, particularly the so-called campaign  
4 reform groups, because they don't like what is going  
5 on out there. They don't like the speech that is on  
6 issues that they disagree with. And they want to get  
7 ahold of the names of donors and others so they can be  
8 intimidated and harassed, and so speech can be  
9 limited.

10 If you have a problem with the speech going  
11 on on the Internet by advocacy groups and others, then  
12 counter it with more speech. Start your own  
13 organizations, counter that speech. That is the  
14 answer to it, not saying that people have to report  
15 everything they do in the political arena to a  
16 government agency.

17 CHAIR RAVEL: Thank you very much.

18 Mr. Ryan.

19 MR. RYAN: Good afternoon, Madame Chair,  
20 Commissioners. Thank you so much for this opportunity  
21 to testify at the hearing today. The Campaign Legal  
22 Center has filed written comments in this proceeding,  
23 some key points of which I will highlight today. But  
24 first, I'm going to take issue with some commenters,

1 including Bob Bauer and John Phillippe and others, who  
2 have urged the Commission not to proceed with  
3 rulemaking on the matters discussed in the ANPRM.

4 Mr. Bauer, for example, wrote that these  
5 policy questions are more appropriately the  
6 responsibility of Congress, and that even on matters  
7 that may be within the sphere of the FEC, a rulemaking  
8 is premature because the Commission lacks the  
9 information upon which to base rule changes.

10 The argument that the Commission should not  
11 proceed with the rulemaking because it presently lacks  
12 information misses the whole point of the rulemaking  
13 process. A rulemaking notice, if one were to be  
14 forthcoming, would presumably invite members of the  
15 public to present the Commission with information  
16 specific to the proposed rule, and the Commission  
17 itself would presumably dedicate resources to  
18 marshaling specific information with respect to the  
19 proposed rule, just as it has done in prior  
20 rulemakings.

21 In 2006, for example, in the coordination  
22 rulemaking, the Commission licensed data regarding  
23 political advertising from CMAG, invited the public to  
24 comment on that data, and then based rule changes on

1 the Commission's own analysis of that data in light of  
2 public comment.

3 This is how the rulemaking process is  
4 supposed to work. And Mr. Phillippe wrote that the  
5 McCutcheon decision provides no basis for further  
6 rulemaking, and implied that the Commission lacks the  
7 authority to engage in rulemaking process unless  
8 ordered by a court.

9 The notion that the Commission must await an  
10 order from a court to engage in rulemaking is frankly  
11 absurd. Although the decision in McCutcheon certainly  
12 warranted this ANPRM proceeding, the Commission's  
13 rules-making scope in general is in no way constrained  
14 or limited by the McCutcheon decision or any other  
15 court decision. And the Campaign Legal Center urges  
16 the Commission to proceed with rulemaking on important  
17 policy matters identified in the McCutcheon decision,  
18 as well as with respect to other matters that we  
19 address in our written comments.

20 Regarding earmarking and the aggregation of  
21 contributions, the Court in McCutcheon based its  
22 decision in part on a reading of the Commission's  
23 current rules, which define earmarks to include direct  
24 or indirect, express or implied designations. Yet the

1 Commission only enforces its earmarking rules when  
2 there is an express documented agreement to circumvent  
3 the contribution limits. The Commission needs to  
4 change its practice and start enforcing the earmarking  
5 rules as presently written.

6 Also, the Court in McCutcheon cited  
7 approvingly the Commission's contribution aggregation  
8 regulation at section 110.1(h), which provides that a  
9 person may only contribute to a candidate and also to  
10 a PAC that supports the same candidate if the  
11 contributor does not give with the knowledge that a  
12 substantial portion would be contributed to or  
13 expended on behalf of that candidate.

14 The McCutcheon court suggested that the  
15 Commission might strengthen section 110.1(h) by  
16 defining how many candidates a PAC must support under  
17 the aggregation rule. The Commission should heed the  
18 Court's advice, and based on the current statutory and  
19 regulatory definitions of multi-candidate committee,  
20 establish five as the minimum number of candidates a  
21 PAC must support not to trigger this aggregation rule,  
22 and the Commission should also set 20 percent as the  
23 maximum percentage of a PAC's funds that can be  
24 contributed or expended to support a single candidate

1 in order not to trigger the contribution aggregation  
2 rules.

3 Yes, this would restrict single-candidate  
4 super PACs, and yes, this interpretation is required  
5 by a plain reading of the existing regulations cited  
6 approvingly by the Supreme Court in McCutcheon.

7 The Court in McCutcheon also suggested  
8 limiting the size of joint fundraising committees to  
9 prevent circumvention of the base limits. The  
10 Commission could by regulation limit the composition  
11 of and therefore limit the size of joint fundraising  
12 committees. The governing statute states only that  
13 candidates may designate a political committee  
14 established solely for the purpose of joint  
15 fundraising by such candidates.

16 The Commission's joint fundraising committee  
17 regulation, however, permits any political committee  
18 to engage in joint fundraising committee with other  
19 political committees. We urge the Commission to amend  
20 its joint fundraising committee regulation to make it  
21 consistent with the statute by permitting only  
22 candidate committees to form joint fundraising  
23 committees.

24 When it comes to disclosure, the

1 Commission's job could not be clearer. The public  
2 wants effective disclosure. The Supreme Court and  
3 lower courts have repeatedly and consistently  
4 supported disclosure. Yet the Commission's disclosure  
5 regulations have permitted hundreds of millions of  
6 dollars of independent expenditures and electioneering  
7 communications to be made in recent years without the  
8 spenders disclosing the sources of their funding.

9           You know what you need to do. The  
10 Commission needs to repeal its federal court  
11 invalidated electioneering communication regulation  
12 and replace it with a rule that effectively implements  
13 the statutory requirement that any group making  
14 electioneering communication disbursements in excess  
15 of \$10,000 in a calendar year report the names and  
16 addresses of all contributors who contributed an  
17 aggregated amount of \$1,000 or more to that group.

18           The Commission also needs to amend its  
19 flawed independent expenditure disclosure regulation,  
20 which impermissibly narrows the requirements of two  
21 overlapping statutory provisions. The Campaign Legal  
22 Center has included independent expenditure disclosure  
23 regulatory language in our written comments, language  
24 that again is completely consistent with existing

1 statutes.

2 Rulemaking is also warranted with respect to  
3 the Omnibus Appropriation bill's amendment that  
4 permits national party committees to now accept  
5 \$100,000 contributions into each of three new types of  
6 segregated accounts used to pay for conventions, party  
7 headquarters, and election recounts.

8 Though the amendment purports to restrict  
9 the uses of these funds for specified purposes, the  
10 amendment contains no definitions of such purposes and  
11 no disclosure provisions specific to the funds spent  
12 out of these new accounts.

13 We urge the Commission to promulgate  
14 regulations specifying limiting the permissible uses  
15 of these funds, prohibiting transfer of these funds  
16 within party accounts, and requiring detailed  
17 disclosure of these funds. As we explained in our  
18 detailed written comments, failing to do so will  
19 predictably and undoubtedly lead to misuse and abuse  
20 of these new accounts.

21 Finally, we urge the Commission to revise  
22 its ineffective coordination regulations. As the  
23 amount of outside spending in federal elections as  
24 skyrocketed, there is mounting evidence of

1 collaboration and cooperation between groups funding  
2 ostensibly independent expenditures and candidates  
3 they support, amounting to coordination under any  
4 commonsense definition of the term, but not  
5 necessarily rising to the level of coordination under  
6 the Commission's existing regulations.

7 CHAIR RAVEL: You have a minute.

8 MR. RYAN: Thank you. The Commission must  
9 fix the disconnect between its coordination  
10 regulations and the governing statute. FECA, as you  
11 know, provides that any expenditures made by any  
12 person in cooperation, consultation, or concert with  
13 or at the request or suggestion of candidate are  
14 coordinated with that candidate. The Commission  
15 *could*, for example, follow the lead of the state of  
16 Minnesota, which last year interpreted a nearly  
17 identical state statutory provision to make clear that  
18 candidate fundraising constitutes cooperation so as to  
19 render any expenditures made with funds solicited by a  
20 candidate to be coordinated with that candidate.

21 The Commission should conduct a rulemaking  
22 to explore ways to capture the range of coordinated  
23 activity actually occurring between candidates and  
24 outside groups, and bringing the regulations in line



1 with the Supreme Court's expectation that expenditures  
2 deemed independent under the law are truly  
3 independent.

4 I appreciate this opportunity to testify,  
5 and I thank you.

6 CHAIR RAVEL: Thank you very much.

7 Welcome back, Mr. Weiner.

8 MR. WEINER: Good afternoon, Madame Chair.  
9 If it's okay, I'm going to follow Mr. Bauer's example,  
10 because this is the best spot in the house here; so I  
11 will stay here, if that's amenable.

12 Chair Ravel, Vice Chairman Petersen,  
13 Commissioners, good afternoon. I want to express my  
14 profound appreciation for having the opportunity to  
15 come here and testify before you today. And it's also  
16 a pleasure to be testifying alongside such esteemed  
17 co-panelists.

18 The Brennan Center has long been committed  
19 to fighting corruption and ensuring all Americans a  
20 fair and equal opportunity to participate in the  
21 political process. And I would like to take just one  
22 moment to respond to something Mr. von Spakovsky said.

23 It has never, ever been the Brennan Center's  
24 intention to discourage anyone, anyone of whatever

1 political view, from making their voice heard. That  
2 is actually contrary to the very fiber of our being.  
3 So I just would like to get that on the record because  
4 it's something that's very important to us, and that  
5 we feel very strongly about.

6 What I'd like to do initially is just throw  
7 out a couple of statistics for you based on our recent  
8 research. And I should say many of these statistics  
9 are based on data compiled by the Center for  
10 Responsive Politics and the Sunlight Foundation.

11 Since the Supreme Court decided Citizens  
12 United five years ago, there has been almost \$2  
13 billion in reported federal election spending by super  
14 PACs, C4s, and other outside groups who can raise  
15 unlimited funds.

16 Of that total, roughly a third, about 600  
17 more than a third, \$643 million, is documented to have  
18 come from just 209 individuals, 209 individuals.  
19 Roughly another third, about \$618 million, has  
20 consisted of dark money from groups who do not  
21 disclose their donors.

22 So in 2014, the top 100 reported donors gave  
23 almost as much as all 4.7 million small donors, donors  
24 giving \$200 or less, combined. In the meantime, the

1 total number of people reported to have donated  
2 dropped by over 100,000, and that's the first time  
3 that has happened since the statistics started being  
4 tracked in 1990.

5 And then finally, both outside spending  
6 overall and dark money spending in particular are  
7 generally concentrated in the most competitive races.

8 Nearly 90 percent of nonparty outside spending on  
9 Senate contests in 2014, for example, went to the 11  
10 most competitive races, where it often exceeded both  
11 candidate and party spending. Well over half of the  
12 outside spending, that outside spending in those  
13 races, more than 90 percent of the total directed at  
14 Senate elections, was dark.

15 So everyone can draw their own conclusions  
16 from these statistics, and I know we would maybe draw  
17 some different conclusions. And I'm not going to  
18 rehash every policy recommendation. The Brennan  
19 Center made no written comment. But I would like to  
20 make a couple of broad points.

21 One is that we agree with other commenters  
22 who think that in addition to fighting corruption the  
23 Commission should make one of its core priorities to  
24 encourage political engagement by all citizens. One

1 way for you to do that is by encouraging new  
2 technology, and we appreciate the chair's leadership  
3 on those issues.

4 But I also have to say that probably the  
5 most satisfying experience that I had as a staffer at  
6 the Commission was watching Commissioners collaborate  
7 on the series of advisory opinions that made it  
8 possible for small donations through text message.  
9 And I think I would particularly note the leadership  
10 of then Chair Hunter and then Chair Weintraub showed  
11 that it was possible for the Commission to engage in a  
12 practical balancing process to make that happen, and  
13 it enabled thousands of small donations in 2012.

14 I would hope that the Commission could bring  
15 that same spirit of pragmatism and compromise to other  
16 tough questions, including how we best encourage  
17 political participation on the Internet without  
18 allowing the Internet to become a vehicle for the  
19 wholesale circumvention of contribution limits and  
20 disclosure requirements.

21 Now, disclosure itself in the Brennan  
22 Center's view is another vital tool to promote  
23 engagement, as several other commenters, including Mr.  
24 Schmitt, noted. When it decided Citizens United, the

1 Supreme Court recognized that disclosure fosters an  
2 informed citizenry, and thus is fundamentally an  
3 ingredient for responsible self-government, which is  
4 itself a core First Amendment value.

5 The Court assumed that all the new spending  
6 it authorized would be transparent. But as our recent  
7 work at the Brennan Center has shown, that simply  
8 isn't the case. So as you know, we think the  
9 Commission ought to be doing much more to fix this  
10 problem, including we think you ought to revert to  
11 full enforcement of your 2007 E&J on political  
12 committee status determinations, and we think you  
13 ought to undertake the rulemakings that Mr. Ryan so  
14 eloquently explained to you.

15 We do strongly disagree with commenters who  
16 argue that these steps are foreclosed either by the  
17 FECA or by judicial precedent. Quite to the contrary,  
18 we think they are necessary to carry out your  
19 statutory mandate, and that by not doing so, the  
20 Commission risks a rebuke from the courts akin to what  
21 it received recently in the Van Hollen litigation and  
22 also in the series of Shays cases, in which its  
23 regulations were repeatedly struck down.

24 Now, of course, we understand that there is

1 disagreement on these points. We do still implore you  
2 to at least give experts and the public at large the  
3 opportunity to weigh in further on these issues  
4 through an actual full rulemaking. And I would note  
5 that it would be appropriate in such a rulemaking to  
6 address not only our concern about the misuse of the  
7 Commission's rules to create loopholes, but also  
8 concerns expressed by commenters such as Mr. Bopp and  
9 Mr. von Spakovsky about misuse of the Commission's  
10 data to intimidate contributors and try to keep them  
11 from participating in the political process.

12 If nothing else, this process would give the  
13 public another opportunity to be heard, and would help  
14 crystallize to both the courts and Congress what  
15 Commissioners believe this agency can and cannot do  
16 under current law.

17 Now, just briefly, we also believe that the  
18 Commission needs to step up enforcement. The  
19 plurality in McCutcheon assumed that the Commission  
20 would fully enforce earmarking and affiliation rules,  
21 and other measures designed to protect against  
22 circumvention of the base contribution limits.

23 Yet, unfortunately, alleged violations are  
24 rarely even investigated. We at the Brennan Center,

1 with respect, are especially dismayed by the  
2 Commission's record of non-enforcement with respect to  
3 coordination. As a result, Citizens United's promise  
4 that all the new spending the court authorized would  
5 be, quote, "independent from candidates" has been more  
6 pretense than reality. And I would say with respect  
7 to many of these things that unenforced campaign  
8 finance rules in our view are in some respects worse  
9 than no rules at all. They breed contempt for the law  
10 and foster a system weighted in favor of insiders and  
11 special interests who know how to play the game.

12 CHAIR RAVEL: You have a minute.

13 MR. WEINER: Thank you. We're more than  
14 willing to engage with any Commissioner who believes  
15 that a particular provision is detrimental and ought  
16 to be modified or repealed. There may even be areas  
17 of agreement that surprise you, but we can't have that  
18 conversation without a commitment to full enforcement.

19 And just to close very briefly, I'd like to  
20 leave you with a particularly troubling statistic.  
21 The June 2014 Gallup survey showed trust in Congress  
22 at 7 percent. Another survey from November 2014  
23 reported that just 11 percent of Democrats and 15  
24 percent of Republicans believe that constituents have

1 more influence over their elected representatives than  
2 lobbyists, contributors, and special interests.

3 We think such levels of public dissolution  
4 are very dangerous and that our campaign finance  
5 system is part of the problem. And I'll just say we  
6 are willing to work with any Commissioner to come  
7 up -- and any other organization represented in this  
8 room to come up with real solutions for our democracy.

9 CHAIR RAVEL: Thank you very much, Mr.  
10 Weiner. We have some time prior to the next panel,  
11 about six minutes, for questions. And the first  
12 question goes to Vice Chair Petersen. Thank you.

13 VICE CHAIR PETERSEN: Thank you, Madame  
14 Chair. Just a quick question that I wanted to pose to  
15 former Commissioner von Spakovsky and former Chairman  
16 Mason, since both of you addressed the Internet issue.

17 On the first panel today -- I don't know if  
18 either of you were here for that -- the former chair  
19 of the FPPC, Karen Getman, mentioned that in  
20 California that the Internet B that they've regulated  
21 the Internet to some extent, and that it hasn't had a  
22 chilling effect. And I wanted to -- not only in your  
23 role as authors of the regulation that currently  
24 governs Internet usage in the federal electoral



1 system, but also just from what you've seen now that  
2 you've left the cozy confines of 999 E Street and have  
3 seen how these rules operate out in the real world,  
4 perhaps even with people and organizations that you  
5 represent -- I wanted to get your thoughts on how you  
6 see the Internet rules working and what would happen  
7 if we -- you know, if we cracked open that door, you  
8 know, whether you think that we would start to see  
9 some of the -- some chilling effects or maybe not so.

10 MR. MASON: I would just go back to what I  
11 initially said, which is there is a huge gap between  
12 being regulated and not being regulated, no matter how  
13 you do it. And from -- I spend all day, every day  
14 trying to help clients cope with regulations at this  
15 agency and your counterpart state agencies, all I do,  
16 all the time.

17 And if they have to call me before they do  
18 something, that is just a huge difference between  
19 knowing they can simply go ahead and do it and they  
20 don't have to worry, and if they have to worry about  
21 disclaimers and, you know, who they can talk to and so  
22 on like that.

23 And I understand some people differ with me  
24 about the policy, but I just want to emphasize to you

1 that there is a huge gap between no regulation or  
2 effectively, you know, safe harbors or things that are  
3 carved out, and regulating a little bit. And once  
4 you're in the regulatory suit, then the difference  
5 between a little and a lot is just not as significant  
6 as whether you're regulated at all.

7 MR. VON SPAKOVSKY: Look, the regulation,  
8 the way it was passed, it covered what needs to be  
9 covered, which is if a candidate pays someone to put a  
10 political ad on their web site or a political view --  
11 that has to be reported. But the proposals that I see  
12 are floating around, things like -- I see people  
13 talking about is saying, well, if anybody puts  
14 together some kind of video that has a political  
15 message, and pops it up on the Internet, well, they  
16 should have to register with the government and report  
17 on that.

18 And I think that would have a tremendously  
19 chilling effect. Look, I've done that. I put  
20 together some years ago -- I put together a small  
21 video about a particular individual who is now in the  
22 United States Senate who I thought had said something  
23 particularly stupid. And I got my teenage kids to  
24 explain to me how to put clips and things together,

1 and I put together a video that made fun of this  
2 person.

3 Now, it clearly had a political message.  
4 And the idea that I as an ordinary American citizen  
5 would have to register with the government and report  
6 that and file, you know, who knows how many reports  
7 talking about how much money I spent to put together  
8 something that has a political message, that would  
9 have a far-reaching effect, and it would have a  
10 particularly chilling effect on individuals because  
11 they would have no idea whether they can speak, how  
12 much they can speak, what they can do in not just on  
13 the web, but in social media, on Twitter.

14 You know, if I do a Twitter message that  
15 links to a political video that's on the web, do I  
16 have to report that? The effects of this would be so  
17 far ranging, and why do we want to do that?

18 CHAIR RAVEL: Thank you, Mr. [von]  
19 Spakovsky. We only have five minutes for the next  
20 panel to come, but I will take the prerogative of the  
21 chair and ask you where did you see such a proposal,  
22 and what makes you think that this Commission that  
23 can't, you know, agree on regulations is going to  
24 regulate anything like this?

1           MR. VON SPAKOVSKY: I have seen -- I go to  
2 many meetings. I talk to a lot of people, and there  
3 are many in the campaign reform field who are saying  
4 that that Internet regulation is not -- is too  
5 lenient, it's too minimal, and we need to do a lot  
6 more to regulate that area. And I just completely  
7 disagree with that, and I think we should leave it  
8 wide open. And I think this agency and other agencies  
9 need to completely stay out of that area.

10           CHAIR RAVEL: I appreciate your comments.  
11 Thank you very much. We are about to call up the next  
12 panel. Thank you all very much for coming. We  
13 appreciate your comments.

14           (Pause)

15           CHAIR RAVEL: All right. The next panel is  
16 Lisa Gilbert from Public Citizen; Shaun McCutcheon  
17 from the Coolidge-Reagan Foundation; Stephen Spaulding  
18 from Common Cause; Dan Backer from the Conservative  
19 Action Fund; and Brian Svoboda from Perkins Coie, LLP.

20           And as I've explained before, I know it's kind of  
21 awkward with the microphones there, so if anybody  
22 wishes to get up and go to the podium, you're more  
23 than welcome to do so. Thank you. Thank you for  
24 being there.

1           We're actually a couple of minutes early.  
2           We initially indicated on this panel that it would be  
3           each person approximately three to five minutes. And  
4           given the fact that we are actually ahead of time, and  
5           we probably do not have that many other speakers at  
6           the 4 o'clock time period, you will have five minutes  
7           to speak. And a minute before, the yellow light will  
8           go on, and I'll let you know that you have one minute.  
9           So thank you very much.

10           Ms. Gilbert.

11           MS. GILBERT: Great. Thanks so much to the  
12           Commission. I will certainly just take five minutes.

13           I'm Lisa Gilbert, director of Public Citizen's  
14           Congress Watch division. Public Citizen is a  
15           national, membership-based nonprofit focused on  
16           consumer and good government issues. I really  
17           appreciate the chance to present Public Citizen's  
18           perspectives today, along with my colleague, Craig  
19           Holman, who spoke earlier in the day.

20           The aggregate contribution limits were  
21           upheld in the Supreme Court's decision in 1976,  
22           Buckley v. Valeo. But as we all know, in 2014, the  
23           Roberts court overruled this holding, reversing some  
24           40 years of established campaign finance law.

1 Appropriate actions can and should be taken by the  
2 Federal Election Commission to deal with this.

3 Public Citizen strongly recommends that the  
4 FEC take at least three regulatory actions to address  
5 the new campaign finance environment in the wake of  
6 the McCutcheon decision. You've heard much about all  
7 three already today, so I'll just stick through them  
8 quickly, and then spend more time on the one.

9 So first and foremost, the FEC must  
10 reestablish the comprehensive campaign finance  
11 disclosure system that the agency undermined in 2007.

12 Secondly, the FEC should strengthen the coordination  
13 and earmarking rules to prevent circumvention of the  
14 base contribution limits by such entities as super  
15 PACs. And finally, as recommended by Supreme Court  
16 Justice Roberts in the McCutcheon opinion, the FEC  
17 should place reasonable limits on joint fundraising  
18 committees.

19 My colleague at Public Citizen's Congress  
20 Watch, Craig Holman, has gone into a bunch of detail  
21 earlier today on the need for the changes to the  
22 coordination and joint fundraising committee rules.  
23 And so I'll focus my brief remarks on the extreme need  
24 for changes to our disclosure regime.

1           There is absolutely no question about the  
2           constitutionality of mandating transparency of money  
3           in politics. The Court has repeatedly upheld campaign  
4           finance disclosure laws. Perhaps reflecting the  
5           justices' lack of experience in real-world campaigns,  
6           the Roberts court in Citizens United naively assumed  
7           that Internet age means there is full disclosure of  
8           money in politics, and even partly justified lifting  
9           the campaign finance regulations on the grounds of  
10          that so-called transparency.

11           In Citizens United, Justice Kennedy wrote  
12          for the majority, I'll quote, "With the advent of the  
13          Internet, prompt disclosure of expenditures can  
14          provide shareholders and citizens with the information  
15          needed to hold corporations and elected officials  
16          accountable for their positions and supporters."

17           In McCutcheon, Justice Roberts reiterated  
18          the Court's confidence in disclosure by saying, quote,  
19          "With modern technology, disclosure now offers a  
20          particularly effective means of arming the voting  
21          public with information."

22           What both Kennedy and Roberts are gravely  
23          mistaken about is the real world of campaign finance  
24          disclosure. Transparency of money and politics today

1 is incredibly lacking. And while some parts of the  
2 so-necessary disclosure regime could be enacted by  
3 other agencies, like the SEC on corporate spending  
4 transparency, for example, the bulk of the solution to  
5 this lack of disclosure lies squarely on the FEC's  
6 doorstep.

7 As has been mentioned, at the federal level  
8 the initial fading of campaign finance disclosure  
9 sprang from an FEC rulemaking. In response to  
10 Wisconsin Right-to-Life, the FEC revised the  
11 disclosure rules by exempting groups that made  
12 electioneering communications except in special cases  
13 in which donors specifically earmarked money for just  
14 that purpose, and a similar earmarking requirement for  
15 disclosure has also been applied to independent  
16 expenditures.

17 But, of course, few donors actually attach  
18 those types of specific instructions to their  
19 contributions, and so the effect is just gutting the  
20 disclosure requirements. According to an analysis  
21 done by Public Citizen which we submitted with our  
22 written testimony called, "Fading Disclosure," among  
23 groups broadcasting electioneering communications in  
24 federal elections, nearly 100 percent disclosed their



1 funders in both 2004 and 2006 election cycles, of  
2 course, the first two cycles after BCRA.

3           However, in the 2008 elections, right after  
4 Wisconsin Right-to-Life and the FEC's changed rules,  
5 the share of groups disclosing their funders plummeted  
6 to 50 percent. And by 2010, almost barely a third of  
7 electioneering communications groups were disclosing  
8 their funders.

9           Among groups making independent expenditures  
10 in federal elections, disclosure of donors fell from  
11 90 percent in 2004 and 97 percent in 2006 to only 70  
12 percent in 2010. Combining the loss of donor  
13 disclosure with ECs with the lack of donor disclosure  
14 with IEs, the source of only about half of the funds  
15 spent by outside groups in 2010 were disclosed to the  
16 public.

17           We, of course, saw a little bit of an uptick  
18 in donor disclosure in 2012 due almost entirely to the  
19 new prevalence of super PACs, which of course do have  
20 required disclosure, but still the total amount of  
21 dark money in 2012 was over 310 million, of course,  
22 the highest amount that we've ever seen in undisclosed  
23 money in a federal election. And most recently, in  
24 2014, we clocked in at about 173 million, the highest

1 of any previous election.

2 So I'll just close by saying these numbers  
3 are pretty striking. Dark money is certainly going to  
4 continue to plague our elections and continue to be a  
5 source of real frustration and cynicism for the  
6 electorate until such a time as the FEC takes  
7 action --

8 CHAIR RAVEL: You have a minute.

9 MS. GILBERT: Thank you -- and reestablishes  
10 the regulations that we need to mandate full donor  
11 disclosure in elections. So I urge you to act in such  
12 a way, and we would be happy to chat further and take  
13 any questions.

14 CHAIR RAVEL: Thank you very much.

15 Mr. McCutcheon. Welcome.

16 MR. McCUTCHEON: Greetings, Madame  
17 Chairwoman, Commission members, friends, and  
18 colleagues, thank you so much for this opportunity to  
19 say a few words regarding the specific issues  
20 addressed here today, and most importantly for me, the  
21 larger social and political principles of freedom that  
22 I believe are at stake.

23 It would not -- or it would not be  
24 presumptuous to say that most of you know who I am and

1 what I stand for. You know that I am not a  
2 corporation, and I'm not a billionaire. I'm trying to  
3 implement positive change as one of the people. And  
4 you probably know by now what McCutcheon v. FEC was  
5 all about. It was about aggregate limits, aggregate  
6 spending limits, not limits per contribution, which I  
7 did not challenge.

8           The striking down of aggregate limits speaks  
9 directly to our First Amendment rights, our most  
10 fundamental rights, the right to make reasonable  
11 contributions to as many candidates as we the people  
12 choose, the right of all of us to participate in the  
13 democratic process as often and wherever we choose.  
14 It has everything to do with the constitutional right  
15 of all citizens to support 10 candidates rather than  
16 9, or 21 rather than 20.

17           Happily, the Supreme Court of the United  
18 States agreed with me. Their ultimate message in my  
19 case was that whenever regulators, any regulators,  
20 engage in rulemaking, they and their stakeholders must  
21 carefully consider all such non-negotiable  
22 constitutional rights before they do anything. They  
23 must likewise bear in mind that regulation for the  
24 sake of regulation is self-defeating.

1           Needless regulation will not stop  
2 corruption. It will only play to the advantage of  
3 interests and candidates, usually incumbents, who have  
4 the power to circumvent restrictions while the rest of  
5 us are left holding the bag. The struggle to reaffirm  
6 the inalienable rights of citizens to participate in  
7 the electoral process did not end with McCutcheon. If  
8 the struggle had ended there, we would not need  
9 further discussion.

10           Right now, we are debating additional  
11 proposed rules inspired by the same specious  
12 conjecture that we have heard in the past: further  
13 regulation is supposedly justified because of the  
14 possibility, the mere possibility, that contributors  
15 can conspire with candidates, PACs, and party  
16 committees to circumvent the rules.

17           Well, I know, ladies and gentlemen, that  
18 many things are possible in America. Imagine the  
19 opportunity and prosperity that we can be enjoying if  
20 we had aggregate limits on government spending instead  
21 of limits on the people. I hope you give the comments  
22 by our Coolidge-Reagan Foundation submitted to the  
23 Commission on January 15th the close attention we feel  
24 they deserve.

1           The document touches on areas affected by  
2 the proposed rulemaking. As to the FEC's proposed  
3 revisions concerning JFCs, any further regulatory  
4 restrictions would just simply make it more difficult  
5 for individuals to make multiple campaign  
6 contributions that the Supreme Court in McCutcheon  
7 gave us the power to make. In other words, JFCs just  
8 simply allow us to write one check, but they're still  
9 subject to the base limits.

10           As to disclosure, any special treatment of  
11 Internet contributions can only have a chilling effect  
12 in the exercise of First Amendment Rights. It's the  
13 21st century. After all, Thomas Payne would --

14           CHAIR RAVEL: You have a minute.

15           MR. McCUTCHEON: -- probably be using  
16 Twitter, Facebook, Instagram to promote *Common Sense*.  
17 Friends, the new FEC rulemaking is simply not in  
18 keeping with the spirit of the Supreme Court's  
19 landmark decision. And I don't just say that because  
20 my name is on it. No matter whose name appears, the  
21 case was a stunning reaffirmation of individual  
22 liberty. It would certain dis-serve the American  
23 people if we were to try to chip away at its  
24 foundation. Thank you.

1 CHAIR RAVEL: Thank you very much.  
2 Appreciate it.

3 The next speaker is Mr. Spaulding. Would  
4 you like to stay where you are? You're right in  
5 front.

6 MR. SPAULDING: I can come up, I think it  
7 might shake things up.

8 CHAIR RAVEL: All right.

9 MR. SPAULDING: All right.

10 CHAIR RAVEL: Thank you.

11 MR. SPAULDING: Thank you, Madame Chair, Mr.  
12 Vice Chair, members of the Commission. I'm here on  
13 behalf of Common Cause, a national nonpartisan  
14 advocacy organization that has been working for over  
15 four decades to reduce the undue influence of money in  
16 the political process and over public policy.

17 The Supreme Court's decisions in Citizens  
18 United and in Mr. McCutcheon's case ripped a massive  
19 hole in the fabric of federal campaign finance laws,  
20 which were enacted to prevent corruption, democracy  
21 for sale, and enable Americans to see who is trying to  
22 influence their votes.

23 Since that time, contribution limits have  
24 become increasingly meaningless as candidates freely

1 solicit with a wink and a nod enormous gifts for so-  
2 called independent committees created and run by their  
3 friends, associates, and family to bankroll their  
4 elections. Meanwhile, hundreds of millions of dollars  
5 from secret sources are being used to buy influence  
6 without anyone knowing who is beholden to whom.

7 Now, of course the FEC cannot contravene or  
8 overturn any Supreme Court decisions. But there are  
9 limited and important steps that the court -- that the  
10 Commission can and must take consistent with the  
11 statute and consistent with the Supreme Court's own  
12 decision, which would be in direct line with the  
13 assumptions that underline them.

14 I'll start with disclosure. Part of the  
15 Commission's core mission is to use its lawful  
16 authority to make campaign spending transparent. In  
17 fact, outside of the windows, right down on E Street,  
18 there are three posters, one of which says that the  
19 Commission and the employees inside are, quote,  
20 "informing the public of the funds raised and spent in  
21 federal elections." Another poster quotes Buckley v.  
22 Valeo: "In a republic where the people are sovereign,  
23 the ability of the citizenry to make informed choices  
24 among candidates for office is essential." And there

1 is a third poster that passerby can see right now,  
2 which quotes Justice Brandeis, and it says, "Sunlight  
3 is said to be the best of disinfectants, electric  
4 light the best policeman."

5           Respectfully, the FEC's posters are not  
6 representative of the agency's work to date in a post-  
7 Citizens United's landscape. The Commission has not  
8 informed the public about all of the money raised and  
9 spent in federal elections, which Ms. Gilbert just  
10 explained. It's three-three split votes have failed  
11 to enforce campaign finance laws, and has actually  
12 reduced the ability of the citizenry to make informed  
13 decisions at the ballot box, and it has failed to  
14 update its regulations to keep pace with the Court's  
15 decisions and keep the sunlight shining on political  
16 actors funneling the hundreds of millions of dollars  
17 through secretive organizations.

18           So Common Cause urges the Commission to  
19 revise its disclosure rules pertaining to  
20 electioneering communications and independent  
21 expenditures and bring them into alignment with the  
22 Federal Election Campaign Finance Act -- Campaign --  
23 excuse me, the Federal Election Campaign Act and BCRA.

24           In McCutcheon, the Chief Justice wrote that,



1 quote, "Today, given the Internet, disclosure offers  
2 much more robust protections against corruption  
3 because massive quantities of information can be  
4 accessed at the click of a mouse. Disclosure is  
5 effective to a degree not possible at the time Buckley  
6 or even McConnell was decided."

7 Now unfortunately, reality belies any  
8 pronouncement about the availability of campaign  
9 disclosure, quote, "at the click of a mouse." Even if  
10 the FEC's disclosure systems were more accessible and  
11 user friendly for average citizens, as Mr. Malbin  
12 articulated this morning, the loopholes in the  
13 Commission's regulations in no way render disclosure  
14 as effective as it should be.

15 Given the limited time, I'll just touch on  
16 one other issue that we'd urge the Commission to  
17 really examine, the issue of candidate-specific super  
18 PACs. Just this morning, Politico and *The Wall Street*  
19 *Journal* reports that Governor Jeb Bush is headlining a  
20 fundraiser for the Right to Rise Super PAC, where the  
21 entrance fee is \$100,000. He'll be headlining this  
22 super PAC fundraiser tonight in New York City. And  
23 yet we're to believe with a straight face that this  
24 organization is completely independent of Governor

1 Bush.

2 No one -- no Americans would believe that to  
3 be the case. During the 2012 presidential election,  
4 former Speaker of the House Newt Gingrich made a frank  
5 assessment of why his campaign failed. Although he  
6 said that running for president is "not a rich man's  
7 game," he continued, "It's certainly a game which  
8 requires you to have access to a lot of money. We  
9 couldn't have matched Romney's super PAC, but in the  
10 end, he had 16 billionaires, I only had 1, so that  
11 made it tough."

12 Those 16 billionaires that funded Mr.  
13 Romney's super PAC, not his -- the 16 billionaires  
14 funded his super PAC, not his campaign.

15 CHAIR RAVEL: You have a minute.

16 MR. SPAULDING: Thank you. And yet Speaker  
17 Gingrich didn't make any distinction. Neither do most  
18 Americans. That's common sense.

19 So we urge the Commission to amend its  
20 coordination rules, amend its earmarking rules to make  
21 clear that these candidate-specific super PACs are in  
22 fact independent, and to call their bluff because we  
23 think they are essentially a distinction without a  
24 difference. Thank you.

1 CHAIR RAVEL: Thank you very much.

2 Mr. Backer.

3 MR. BACKER: Thank you. And I'm going to  
4 try to restrain the hand gesturing here with my  
5 colleagues. Good afternoon, my name is Dan Backer,  
6 and I am a member of the public, and I am here on  
7 behalf of the Conservative Action Fund, a political  
8 action committee that is supported by many tens of  
9 thousands of members of the general public. And I'd  
10 like to thank you for the opportunity to speak.

11 I'd just like to comment briefly on my  
12 colleague's statement about Governor Bush's super PAC.  
13 Governor Bush is not a candidate for federal office at  
14 the moment, and so while maybe he should be, and maybe  
15 he should be considered to be, the law is what the law  
16 says that it is. Governor Bush is not running for  
17 anything. I happen to appreciate that fact that he is  
18 not yet, and may lament that he may eventually run,  
19 but he's not. And to say that it is -- there is some  
20 sort of shameful activity going on when people comply  
21 with the law I think is part of the problem here.

22 The Conservative Action Fund has, along with  
23 the Coolidge-Reagan Foundation, submitted comments  
24 detailing the legal arguments against adding further

1 regulatory burdens being considered today in response  
2 to the Supreme Court's ruling in McCutcheon v. FEC.  
3 Broadly, the proposed rules related to earmarking,  
4 affiliation, joint fundraising, and any increased  
5 burdens on Internet speech are largely outside the  
6 Commission's authority to implement and are simply not  
7 called for by the holding in McCutcheon, unless you  
8 happen to have only read the dissent.

9           These are policy choices and choices of new  
10 law, and while you've heard from many today who would  
11 very much like to see these new restraints on speech  
12 implemented, some by any means possible, it is  
13 Congress that makes those policy decisions, that  
14 implements those new laws, not the unelected members  
15 of this Commission, whose role is to enforce the laws  
16 Congress actually does pass as they are written.

17           I would note that in 2012, when Mr.  
18 McCutcheon's matter was here as an advisory opinion  
19 request, certain sympathetic members of this  
20 Commission actually said, we agree with you, but the  
21 law is what the law says it is, and so we have to vote  
22 against you. Mr. McCutcheon, of course, was  
23 ultimately vindicated in his efforts, and the  
24 Commission followed the law as it was written, not as

1 some might like it to be.

2 In large part, these proposed rules appear  
3 to be predicated on an interesting notion that money  
4 is somehow inherently evil. It appears to me the  
5 considered opinion of the money-is-evil scold -- hi  
6 there -- who would restrict our rights to free speech  
7 and association that money is some all-consuming blob  
8 from a fifties horror movie. This blob of evil money  
9 oozes forth, corrupting everything it touches. It's  
10 blob-like gooeyness seduces our elected  
11 representatives away from some path of righteousness  
12 and into a life within dark, dingy, crack den-like  
13 call centers at the national party offices, where they  
14 will spend their days dialing for dollars.

15 This lurid picture of rampant corruption  
16 brings us to the fall of the republic, and thus we  
17 must get money out of our political process,  
18 apparently except for that money that criticizes money  
19 in the political process, which there is apparently an  
20 irony about which we must embrace, unless, of course,  
21 they're reporting incorrectly. I'm still trying to  
22 grasp the entirety of that scenario.

23 But in the five years since Citizens United,  
24 the sky hasn't fallen. The republic still stands.

1 Democrats keep getting elected, despite all  
2 premonitions to the contrary, and somewhat to my  
3 regret. Elections today are more competitive at both  
4 the primary and general election level, and I think  
5 this is the real point of all this. Elections today  
6 are more competitive than they have ever been.

7 There are far fewer safe seats where an  
8 incumbent coasts through both a primary and a general  
9 election to reelection. There are vastly more  
10 individuals and organizations engaged in political  
11 speech, and communicating to many, many more people.  
12 Our electorate is more actively engaged today in  
13 political speech, and on a more active daily basis  
14 than ever before.

15 This rulemaking is a great example. I  
16 believe there are something like 60,000 comments were  
17 received in response to this rulemaking. And those  
18 were not organically --

19 CHAIR RAVEL: You have a minute.

20 MR. BACKER: Oh, wow. All right. I'm  
21 speeding up a bit. Those are not organic comments.  
22 They were driven by politicians and advocacy  
23 organizations communicating to the general public,  
24 largely online. In fact, the day of the McCutcheon

1 ruling, almost every single elected Democratic federal  
2 official sent out an email lamenting this terrible  
3 court case and pleading with Americans to sign a  
4 petition to overturn it, and Citizens United, and  
5 asking for five dollar donations. And good for them,  
6 because that money and the money that is raised in our  
7 political process promotes more and greater engagement  
8 by the electorate.

9           And so skipping all the clever -- sort of  
10 clever jokes that I had, the point that I want to make  
11 is this. We don't need less money in the political  
12 process. We need more money in our process. We don't  
13 spend nearly enough on our politics. \$7 billion in  
14 the last cycle is what we spent on Oreo ads for one  
15 year. We need more money to fund more ideas, to fund  
16 more obnoxious television, to fund more annoying  
17 glossy mailers, to fund more Internet ads and more  
18 online posts because every one of those dollars spent  
19 is an idea which ultimately gets information to the  
20 voters, and it is the voters who ultimately decide.  
21 Thank you.

22           CHAIR RAVEL: Thank you, Mr. Backer. We'll  
23 get to your jokes in the question-and-answer period.

24           MR. BACKER: You might hope not.

1 CHAIR RAVEL: Or not. Mr. Svoboda, you may  
2 want to --

3 MR. SVOBODA: As tempting as it is to share  
4 McCutcheon's microphone --

5 CHAIR RAVEL: Yes. I appreciate it.

6 MR. SVOBODA: I appreciate the opportunity  
7 to be here on behalf of the Perkins Coie Political Law  
8 Group, our chair, Mark Elias, would have been here  
9 today, but we understand there was dispute as to  
10 whether he actually is a member of the public. So we  
11 thought rather than -- rather than pick that scab, I  
12 would come alone.

13 We do appreciate the chance to be here, and  
14 it's appropriate for the Commission, I think, to look  
15 at a major case like McCutcheon and the implications  
16 of that case. They come fairly seldom. They have  
17 large impacts when they do. And in the ordinary  
18 course, whether it was Citizens United, whether it was  
19 the Colorado Republican case in 1996, whether it was  
20 Wisconsin Right-to-Life, it's appropriate for the  
21 Commission to look at what the Court has said and see  
22 how that might affect its rules.

23 Now, the happy thing here is that the  
24 holding in McCutcheon was actually pretty



1 straightforward, and the Commission has written its  
2 rules to conform to it. It did it actually very  
3 promptly, for which the Commission should be  
4 commended. And the Commission has got a lot of other  
5 urgent things to do at the present moment.

6 So while the Court in McCutcheon did make  
7 suggestions as to areas that the Commission might be  
8 able to look at, and while certainly appropriate for  
9 the Commission to look at that, the Commission has  
10 other court judgments that have invalidated its rules,  
11 that have recently in the Van Hollen litigation  
12 vacated its electioneering communication disclosure  
13 rules, in the case of Citizens United has made major  
14 changes to the entire architecture of campaign finance  
15 that the Commission has yet fully to grapple with.  
16 And it's an urgent matter for the Commission, I think,  
17 to deal with these questions, and it's particularly  
18 urgent with respect to one aspect, I think, that comes  
19 from Citizens United, and it's the aspect of  
20 disclosure, which I know some Commissioners have  
21 expressed particular interest about.

22 Citizens United and more recently with the  
23 Van Hollen litigation particularly, has changed the  
24 framework by which organizations now disclose when the

1 make independent expenditures or when they make  
2 electioneering communications.

3           Before Citizens United came down, I think it  
4 was fair to say that the dominant assumption in the  
5 political community was that there would be three  
6 types of organizations making electioneering  
7 communications or independent expenditures. There  
8 would be political committees registered and  
9 disclosing to the Federal Election Commission. There  
10 would be non-political committees that would be making  
11 electioneering communications and providing disclosure  
12 to the FEC. And you would have a small universe of  
13 nonprofit corporations under Massachusetts Citizens  
14 for Life that would be making independent  
15 expenditures, not typically disclosing donors, but as  
16 such a small part of the overall political activity  
17 you saw. And because they had a catholicity of  
18 interests in terms of what their purposes were, you  
19 had not much information being lost in the course of  
20 that process.

21           With Citizens United, you now have a  
22 completely different situation. So, for example, with  
23 the electioneering communication rules now as they are  
24 after Van Hollen, a sophisticated actor is going to

1 shun electioneering communications to make independent  
2 expenditures. I mean, there is no upside. You have  
3 one path by which you would have compelled disclosure  
4 if you made electioneering communications, and on the  
5 other hand, if you're a nonprofit corporation raising  
6 money voluntarily from the public at large, you might  
7 well make independent expenditures and not have to  
8 register a report with the Commission. You would take  
9 the position that you weren't a political committee,  
10 that you lacked the major purpose of influencing  
11 elections, and hence you wouldn't have to register a  
12 report.

13           And that's the reality you're seeing now.  
14 As important as the electioneering communications  
15 rules were before Citizens United, now they're not  
16 actually capturing that many communications that  
17 people are actually sponsoring. And so the lack of  
18 disclosure that you're seeing in the system is a  
19 function of the fact that you have corporations making  
20 independent expenditures, nonprofit corporations and  
21 other entities that aren't registering as political  
22 committees with the Commission.

23           So that's a subject where the Commission can  
24 at least look at how the law sits now versus the

1 activity that actually exists on the ground and see  
2 how you can get to a balance that's closer to what was  
3 understood at the time Citizens United came down.

4 Certainly there are subjects in McCutcheon  
5 that the -- or raised by McCutcheon that the  
6 Commission could examine. So, for example, I mean,  
7 the Commission asked about bundling. It asked about  
8 joint fundraising committees. It asked about  
9 affiliation. But it's important to understand that an  
10 examination of these subjects are disproportionately  
11 going to impact those groups that are already  
12 registering with the Commission, already reporting  
13 their activities, and already for the most part  
14 raising money within the limits and restrictions of  
15 the law.

16 If it's really the Wild West out there, then  
17 maybe at some point you want to look at what the code  
18 requirements are for the sod houses. But it might not  
19 be the first thing that the Commission wants to do.  
20 It may want to look at what is really driving, I  
21 think, a lot of what you've heard about today.

22 So I appreciate the Commission's time. I  
23 hope the Q&A is helpful. I appreciate the chance to  
24 be with the other panelists, and I thank you very

1 much.

2 CHAIR RAVEL: Thank you very much. Really  
3 appreciate it.

4 All right. Are there questions from  
5 Commissioners? No questions?

6 COMMISSIONER GOODMAN: No.

7 CHAIR RAVEL: No?

8 COMMISSIONER GOODMAN: On the last panel, I  
9 had a question.

10 CHAIR RAVEL: Okay.

11 COMMISSIONER GOODMAN: Well, let me ask a  
12 question of the gentleman from Common Cause.

13 CHAIR RAVEL: Commissioner Goodman.

14 COMMISSIONER GOODMAN: It may be a little  
15 unfair because I'm really sort of addressing more the  
16 issues that were raised by Public Citizen and Common  
17 Cause.

18 MR. SPAULDING: My colleague from Public  
19 Citizen, so --

20 COMMISSIONER GOODMAN: Oh, I'm sorry. There  
21 we go, yes. Let me -- bear with me a second. The  
22 prior panel, if you don't mind, you were here for the  
23 prior panel? Maybe you can help me. The prior panel,  
24 we ran out of time, but the issue sort of posed is the

1 big issue, and it's a policy issue. It's maybe beyond  
2 the FEC's ability, although I understand people want  
3 to take granular steps toward it.

4 But what you heard on a prior panel that is  
5 touched upon in Public Citizen's remarks and its  
6 comments before us, it goes at this issue of requiring  
7 organizations, non-political committees that make IEs  
8 to report all donors instead of just those who gave  
9 for the purpose of. And it strikes me that what we  
10 heard on the panel previously was a debate of  
11 competing values and interests, the value of full  
12 disclosure to the American people of every dollar  
13 spent in politics -- some would narrowly define that  
14 as expressed advocacy; some went further, in McCain-  
15 Feingold; some would still go further than that --  
16 versus the right of privacy of association,  
17 particularly for issue-advocacy groups that make some  
18 political expenditures.

19 And it seems to me Congress drew a  
20 compromise between those two competing values in the  
21 statute that asked this Commission to require  
22 disclosure of those who gave with the intent or  
23 earmarked purpose of influencing elections. And if  
24 you didn't give to a nonprofit organization with that

1 intent and purpose or earmark, that your name wouldn't  
2 be disclosed even if that group later used your money  
3 for political purposes.

4 And so with that line drawn currently in the  
5 regulations of this Commission, about 3 to 4 percent  
6 of the money that's being spent in our electoral  
7 system is by nonprofit organizations that are making  
8 this limited disclosure. So rather than being  
9 rampant, it is a narrowly-drawn line, and only about 3  
10 to 4 percent of the money. It's about 132 million in  
11 the 2014 election, about 300-320 million in the 2012  
12 election.

13 And so I guess I would just ask, after  
14 Buckley said there needs to be the purpose of giving  
15 for political purposes in the definition of  
16 contribution, and after MCFL explicitly considered  
17 this issue and said you need to disclose donors who  
18 gave with the intent of influencing an election, how  
19 do we -- how do we expand for the purpose of when  
20 Congress has given us that line?

21 MR. SPAULDING: Sure. I mean, I would refer  
22 you, Commissioner, to our written testimony, also the  
23 testimony of the Campaign Legal Center, which  
24 discusses this at length. But I think the text of the

1 statute, particularly when it comes to electioneering  
2 communications -- we've seen that through the Van  
3 Hollen litigation, but also the IE statute. I mean,  
4 it's clear. It says every person that makes an  
5 independent expenditure in excess of \$250 during the  
6 calendar year is required to disclose donors whose  
7 aggregate contributions exceed \$200. That is the text  
8 of the statute, and the text of the regulation is  
9 narrower.

10 So I don't see that distinction that you  
11 just articulated, at least not in the text here of the  
12 statute.

13 MS. GILBERT: Yeah. I completely agree, and  
14 then just say that just in practical terms, so few  
15 people earmark. They don't designate specifically  
16 whether their money is going to be used for political  
17 purposes or not. So in the real world, it just  
18 doesn't play out as leading to any disclosure at all.

19 MR. SPAULDING: That said, of course,  
20 legislation that has been proposed, the Disclose Act,  
21 would allow organizations to get -- if we want to, you  
22 know, really get to the -- peel back the onion and get  
23 to, you know, transfers between shell organizations,  
24 you could -- Congress could set up a situation where



1 you could have a separate segregated fund, and only  
2 donations to that fund would be disclosed. So it  
3 would be clear if you gave to that fund that your  
4 money would be used for electioneering.

5 CHAIR RAVEL: Okay.

6 COMMISSIONER GOODMAN: Madame Chair, could I  
7 just ask a --

8 CHAIR RAVEL: Oh, sure.

9 COMMISSIONER GOODMAN: -- followup on this?

10 CHAIR RAVEL: Please.

11 COMMISSIONER GOODMAN: But that statute, the  
12 one that you just read, the Supreme Court reviewed  
13 that statute in Massachusetts Citizens for Life, and  
14 it interpreted it to require all contributors who  
15 provided in the aggregate \$200 in funds intended to  
16 influence elections. And that follows from Buckley  
17 that had a broader statute that did not deal with a  
18 for-the-purpose of statute. By the way, we now have  
19 two statutes. I understand that some of the comments  
20 said that we should read those cumulatively.

21 But then we got a subsequent more specific  
22 statute from Congress in about 1980 that said require  
23 the disclosure of those donors who gave for the  
24 purpose -- and that followed a broader statute that

1 Buckley v. Valeo had reviewed that said it needed to  
2 be contributions made to organizations or individuals,  
3 but earmarked for political purposes.

4           So the earmarking concept in nonpolitical  
5 committee IE reporting rules appears to be -- have  
6 both a specific statutory basis with some competition  
7 between a more general and an after enacted specific  
8 statute -- usually the after enacted specific statute  
9 controls.

10           But we've also got a judicial gloss  
11 requiring some concept of earmarking and/or an intent  
12 to influence elections which was the language of  
13 Massachusetts Citizens for Life. And what I'm asking  
14 is what power do we have as a Commission to exceed  
15 what appears to have been congressional intent and a  
16 gloss by the Supreme Court.

17           MR. SPAULDING: Respectfully, I don't think  
18 you would be exceeding congressional intent. I don't  
19 think you -- I think it would be consistent with the  
20 Court's jurisprudence on disclosure in Citizens  
21 United. Justice Kennedy laid out the three reasons  
22 why we need transparency in spending. A, because  
23 voters deserve to know who is speaking to them.  
24 Number two, it prevents corruption. It allows voters

1 to know if their elected officials are in the pocket  
2 of so-called monied interests. And third, it enables  
3 this Commission to enforce the law.

4 And I don't think the problem is  
5 necessarily, you know, mom and pop shops that are, you  
6 know, spending money on IEs and ECs. What we had are,  
7 you know, Crossroads GPS, which this committee  
8 deadlocked on, spent over \$70 million influencing the  
9 elections, and we don't know where that money came  
10 from. The money came from secret sources. There was  
11 no disclosure because of these flawed regulations.

12 So I think -- and again, I would refer you  
13 to our testimony and that of many of our colleagues.  
14 This Commission has failed to do its job to really, as  
15 it says right downstairs on its posters, to make  
16 political spending transparent so that voters know  
17 whether their elected officials are furthering the  
18 public interest or those of special interests campaign  
19 contributors.

20 CHAIR RAVEL: Thank you.

21 Commissioner Weintraub.

22 COMMISSIONER WEINTRAUB: Thank you. I'm  
23 going to resist the temptation to engage with my  
24 colleague on this, although I would welcome the

1 opportunity to do so in the rulemaking context, which  
2 is where I think we really ought to be addressing  
3 these issues. And I also think -- I mean, it has been  
4 discussed -- it has been raised several times by  
5 witnesses about what the status is of somebody who is  
6 not quite a -- not a candidate yet, and who knows, may  
7 or may not become a candidate. And I have also talked  
8 to some of my colleagues about the fact that I think  
9 we are -- we have a window of opportunity right now  
10 where we actually could perform a great service for  
11 the American people in stepping in to try to clarify  
12 the rules about how candidates and super PACs can and  
13 cannot interact.

14 And I think, you know, we should do that now  
15 before anybody throws their hat into the ring and  
16 potentially gets themselves in trouble. And I think  
17 that would be a -- I welcome anybody on the Commission  
18 who wants to work with me on that because I really  
19 think that we could do some real good there. And, you  
20 know, providing guidance in advance and not trying to  
21 play gotcha after the fact, that would be my  
22 preference.

23 CHAIR RAVEL: Do you have a question?

24 COMMISSIONER WEINTRAUB: I do. I do have a

1 question. And it's for Mr. McCutcheon. It's really a  
2 pleasure to actually have the opportunity to talk to  
3 you. We talk about you so much, or at least your name  
4 comes up frequently.

5 MR. McCUTCHEON: I don't know what to say.  
6 I never knew I had it in me.

7 COMMISSIONER WEINTRAUB: You're really a  
8 charming man, and I like your folksy manner and the  
9 way you say, you know, well, I'm not a billionaire.  
10 But the reality is, you challenged a law that said  
11 that 123,000 every two years was too little to be able  
12 to give to political candidates. And, you know, so  
13 you're obviously a successful businessman. More power  
14 to you.

15 But what do you say to -- when you talk  
16 about all the freedom that this decision has given,  
17 what do you say to the average American family that  
18 doesn't have 123 -- literally doesn't have \$123,000 to  
19 give every two years because that's more than the  
20 average family income in a two-year period of time.  
21 What kind of freedom do they get out of this decision,  
22 and what do you say to the many, many -- I am going to  
23 let you answer. What do you say to the many, many  
24 commenters who expressed frustration because they feel

1 like their voices are not heard because the people who  
2 do have 123,000 or \$123 million to give are the only  
3 voices that they feel that politicians are listening  
4 to?

5 MR. McCUTCHEON: Well, I say many things.  
6 You know, everyone can hear what we're saying. And I  
7 didn't always have \$123,000. I would like for -- I am  
8 working so they will have the opportunity to achieve  
9 prosperity that comes from freedom, not from limits on  
10 the people. So I think it's important to understand  
11 where the opportunities that I've been so lucky to  
12 have come from, and the prosperity that I've enjoyed  
13 came from freedom.

14 And regardless of economic status,  
15 regardless, you know, whether you're rich or poor,  
16 you're entitled to free speech, okay? So we can't  
17 punish rich people just because they have money, any  
18 more than we can punish someone who doesn't have  
19 money. So again, it's about freedom and opportunity,  
20 and I would say it's free speech.

21 CHAIR RAVEL: Thank you, sir.

22 Other questions, further questions? Vice  
23 Chair Petersen.

24 VICE CHAIR PETERSEN: Thank you, Madame

1 Chair. A quick question I guess to Ms. Gilbert about  
2 -- you cited the statistic I think of \$312 million in  
3 dark money. One matter that I've had a difficult time  
4 getting my arms around is I hear all sorts of  
5 different figures bandied about, both high and low,  
6 about how much dark money is the system. Yet I very  
7 rarely see how it's defined.

8 Are we taking into account only 50(c)(4)  
9 organizations that under IRS law do not have to  
10 disclose their donors? Are we talking about any  
11 group, you know, a super PAC that accepts a  
12 contribution from a 501(c)(4)? Do we then count all  
13 of their -- because I've sometimes heard it defined as  
14 it was, you know, X million dollars, you know,  
15 hundreds of millions of dollars in dark money from  
16 groups that either don't disclose or accept money from  
17 groups that don't disclose.

18 And I just want to get a better idea of how  
19 are we defining this. I mean, how fine are we slicing  
20 the baloney when it comes to determining how much dark  
21 money really is in the system because, like I said, I  
22 hear figures from all over the place, from relatively  
23 modest amounts to astronomical amounts, and, you know,  
24 obviously I think as a decision-maker, we want to have

1 the best and most complete information we can. So to  
2 any -- any enlightenment you can give to me on the  
3 definitional issue would be helpful.

4 MS. GILBERT: Yeah. So this number is  
5 probably one of the more conservative ones. We  
6 garnered it from Open Secrets data, Center for  
7 Responsive Politics, not intended to capture super PAC  
8 data where there is obviously eventual disclosure, but  
9 all the other entities that can take in money from  
10 sources that we can't follow back.

11 So if it's a C4 or a trade association, we  
12 consider that a dark entity.

13 VICE CHAIR PETERSEN: Okay.

14 CHAIR RAVEL: Let me ask a question of Mr.  
15 Svoboda because in your testimony, you seem to  
16 indicate that you thought that there -- it might make  
17 sense to maybe tighten up the rules with regard to  
18 independent expenditure disclosure. And tell me if  
19 I'm wrong in making that assumption. You didn't say  
20 it explicitly, but if you did, do you have any  
21 thoughts, any suggestions about how we should look at  
22 that issue?

23 MR. SVOBODA: Well, Madame Chairman --

24 CHAIR RAVEL: And, you know, you could maybe



1 go over to that best seat in the house, I gather it  
2 is.

3 MR. SVOBODA: Thank you. Thank you very  
4 much.

5 CHAIR RAVEL: You're welcome.

6 MR. SVOBODA: I think it requires the  
7 Commission to engage with the questions that  
8 Commissioner Goodman was raising, you know, a moment  
9 ago, which is what does the -- first off, I mean,  
10 determine what is happening on the ground based on the  
11 data that you've seen, and the second is to see what  
12 authority the Commission has to interpret the existing  
13 statute and apply it to unregistered organizations  
14 that are making independent expenditures.

15 And, you know, there is a couple of things  
16 that have happened since the MCFL case and the  
17 decision in Buckley. Recall that these cases came  
18 down at a moment when corporations were presumed as a  
19 matter of law not to be able to make independent  
20 expenditures at all. Citizens United invalidated  
21 that. MCFL created a very sparing exception to that  
22 that the Commission interpreted even more sparingly  
23 still since. But that was a -- that was one thing  
24 that occurred beforehand.

1           The second thing that has occurred since is  
2 actually Citizens United, where the Court talks very  
3 broadly, almost glibly, about the level of disclosure  
4 that Congress can actually seek. So to the degree  
5 that there is a constitutional concern motivating the  
6 policy -- the interpretation -- to the degree that  
7 there is an imperative to construe the '79 statute to  
8 avoid constitutional difficulties, then the one  
9 question to be answered is to what degree does  
10 Citizens United give you more room with that.

11           So those are subjects, I think, that the  
12 Commission certainly could, you know, examine, you  
13 know, more closely than it has to date.

14           CHAIR RAVEL: Okay. Thank you very much.  
15 And please be assured I consider you a member of the  
16 public.

17           Ms. Hunter.

18           COMMISSIONER HUNTER: I do too. My question  
19 is for Mr. Backer. But I'll start by saying, you  
20 know, congratulations to Mr. McCutcheon for being  
21 willing to put your name behind the donations that  
22 you've given, the contributions that you've given, and  
23 furthermore to put your name behind your beliefs and  
24 take your beliefs all the way to the United States

1 Supreme Court, and you won. So congratulations to you  
2 and to your successes.

3 The Supreme Court has said time and time  
4 again that leveling the playing field is not an  
5 acceptable reason to curtail people's First Amendment  
6 rights. And whether you like it or not -- I mean,  
7 I've heard a lot -- sort of a theme to me of the day  
8 is it's okay for some groups to speak, but not others.  
9 Some groups are well-established. You know, everyone  
10 knows who gives money to them. They disclose the  
11 people they want to. So they're fine. They're not  
12 dark. Don't worry about them.

13 These new crazy people who are just  
14 springing up from, you know, God knows where, who want  
15 to elect these crazy Tea Party people, I mean, they're  
16 the ones we really need to curtail. We need to make  
17 sure we know if they're new. You know, where does  
18 their money come from? I mean, it's crazy to me.  
19 It's just -- you know, it's really just, you know,  
20 favoring some speakers over another. And that's  
21 perfectly impermissible by the First Amendment.

22 So my question, Mr. Backer, is, you know,  
23 Mr. McCutcheon is able and willing to put his name  
24 behind contributions. But I have a friend who I was

1 talking to recently who is also a member of the  
2 public, and he said he would love to give to certain  
3 candidates, but he literally can't because he's afraid  
4 that essentially he'll be fired from his job if he  
5 does so. He doesn't want his name to appear on our  
6 disclosure records because he's fearful of losing his  
7 job.

8 So he's considering, you know, finding some  
9 organization that he can support. He didn't tell me  
10 what it was. Maybe -- I don't know. I don't know  
11 what he's thinking of, but some organization maybe  
12 like the NRA where he gives money, and he can make  
13 sure that that organization helps, you know, further  
14 the issues that he cares about, and maybe even runs a  
15 couple of IEs here and there, a couple of ECs, but  
16 doesn't end up becoming a political committee, and  
17 therefore his name isn't disclosed. But he can  
18 participate in the democratic process in that way.  
19 And, of course, he has the right to vote.

20 So the question to you is, is he somehow now  
21 not, you know, an American citizen who is willing to  
22 disclose his name because he wants to give to a group  
23 that doesn't disclose his donation?

24 MR. BACKER: Well, first I would say that I

1 think it's unconscionable that anybody should feel  
2 that making a political contribution in this day and  
3 age is going to lead to any kind of retribution. But  
4 as this Commission -- and I think most of you who are  
5 here will recall the 1,400 pages of evidence that my  
6 client the Tea Party Leadership Fund -- we are the  
7 crazies -- submitted documenting the pattern of  
8 harassment and abuse that making political  
9 contributions can subject you to. And certainly we've  
10 all heard I think every single elected Democrat in the  
11 last Senate going to the floor and talking about the  
12 Koch Brothers, who have the audacity to support  
13 political viewpoints contrary to their own.

14 That is to me really horrible. In terms of  
15 your friend, I think what we're getting at is a burden  
16 that's never really talked about. And it's not the  
17 burden of -- it's -- well I guess in truth it is  
18 talked about. It's this burden of disclosure on the  
19 individual contributor, the likelihood of problems  
20 occurring and what we can do to solve that.

21 And the reality is, as long as we disclose  
22 individuals from making what are incredibly modest  
23 contributions of \$200 and a penny, they're going to  
24 face these abuses. And so there ought to be

1 mechanisms that allow them to participate in the  
2 political process without facing that burden.

3           You know, and it's funny. During my  
4 colleague's comment about the sign downstairs, the  
5 quote, "Sunshine is the best disinfectant," I was  
6 reminded of something from first year of law school.  
7 I think we all probably remember Judge Learned Hand.  
8 And the formula in first-year torts class, the burden  
9 versus the probability of loss versus the cost of  
10 loss. And in weighing particular tort remedies, you  
11 have a probability that this bad thing is going to  
12 happen, and you have the cost of that bad thing  
13 happening. And then on the other side of the  
14 equation, you have the burden of implementing the --  
15 of placing liability there, and that there needs to be  
16 a balancing test.

17           I don't know what the cost is of losing your  
18 right to free speech. I don't think it should be  
19 \$200. I think individuals ought to be entitled to  
20 substantially greater amounts of political  
21 participation without having to hire me as their  
22 attorney or somebody else in order to engage in speech  
23 because right now, the burdens are substantial. And  
24 I've had that conversation with donors. I had a donor

1 who donated \$199 to a small political action committee  
2 because he didn't want to be disclosed. He made a  
3 contribution in a state campaign where the disclosure  
4 limit was \$100, and we refused to disclose his name to  
5 that state because why should that individual risk  
6 potential repercussions.

7 So I think it's a tremendous and  
8 unconscionable problem, and I think we need to pay  
9 much more attention to the burdens faced by  
10 individuals in the political process, not -- you know,  
11 not the large organizations, but the individual donor  
12 who wants to be part of the system.

13 CHAIR RAVEL: Thank you. All right.

14 Commissioner Walther.

15 COMMISSIONER WALTHER: Just following up on  
16 that, so it's an unconscionable problem. But how  
17 would you solve it? I mean, just simply raising the  
18 limits for disclosure?

19 MR. BACKER: I would -- well, I would  
20 suggest twofold. One, I think the disclosure  
21 threshold should be substantially increased. I think  
22 \$200 is an unadjusted number for inflation. I also  
23 think that certain organizations -- well, I mean, I've  
24 argued before this Commission that certain

1 organizations where there is an obvious record of  
2 harassment ought to be allowed to shield their donors  
3 to some extent. And maybe that's an increased layer  
4 of protection.

5 You know, perhaps there ought to be in  
6 camera filings of some kind. But at a minimum,  
7 increasing the level at which individuals are  
8 disclosed on the public record I think is a necessary  
9 step to reduce the element of burden. I understand  
10 Justice Scalia's position where he says, look, you  
11 have to stand up for your beliefs. You have to put  
12 your name out there. And sometimes that's true.

13 But I don't think doing it at a level of  
14 \$200 and a penny is a reasonable threshold for that.  
15 And so I definitely think at least a higher threshold.

16 CHAIR RAVEL: Okay. Thank you. We really  
17 appreciate your participation. And the next panel  
18 will begin at 3:00, so I suggest that everybody take a  
19 break because after that panel there will be public  
20 testimony. Thank you.

21 (Whereupon, a brief recess was taken.)

22 CHAIR RAVEL: Good afternoon. Welcome,  
23 everybody. This is panel five. Thank you very much  
24 for being here. The members of this panel are -- and



1 we appear to be -- okay. The favorite seat. All  
2 right. So the members of this panel are Heidi Abegg.

3 Is it Abegg?

4 MS. ABEGG: Abegg.

5 CHAIR RAVEL: Abegg, from Our Generation;  
6 Norm Singleton from Campaign for Liberty; Andrew  
7 Langer from Institute for Liberty; Jeremiah Morgan,  
8 Free Speech Coalition, Free Speech Defense and  
9 Education Fund, and U.S. Justice Foundation; Daniel  
10 Smith from United States PIRG, U.S. PIRG; David  
11 Williams from the Taxpayers Protection Alliance.

12 And let me ask my fellow Commissioners,  
13 since it appeared we had extra time at the end of the  
14 last one. Should we give each panelist eight minutes  
15 as opposed to -- okay. All right. Well, we're being  
16 flexible here today, so you will all have eight  
17 minutes. And the light on the table will turn yellow  
18 when you have one minute, but I'll also inform you as  
19 well. And it's kind of squished there, so you are  
20 welcome if you feel more comfortable to get up and  
21 speak at the podium as well.

22 So we will begin with Ms. Abegg.

23 MS. ABEGG: Thank you, Madame Chairman, Vice  
24 Chair, and members of the Commission. I appreciate

1 the opportunity to testify today on behalf of Our  
2 Generation. As noted in our written comments, Our  
3 Generation is a section 501(c)(4) organization  
4 dedicated to government reform through grassroots  
5 organization and public education and discussion of  
6 issues.

7 Our Generation regularly expresses its  
8 opinion on issues in the media and uses the Internet  
9 to educate and lobby the public. It educates the  
10 public and takes positions on issues that generate  
11 strong and often adverse reactions from the government  
12 and the public. Donors highly value the ability to  
13 contribute to an organization that espouses positions  
14 and advocates change on controversial issues, while  
15 remaining free from disclosure with its attendant risk  
16 of threats, harassment, and reprisal from those who  
17 disagree with their positions.

18 This morning, Commissioner Weintraub asked  
19 for suggestions to encourage greater citizen  
20 participation. Regulating the Internet will most  
21 certainly not encourage greater citizen participation,  
22 but it will chill and discourage participation. The  
23 Internet is today's public square. If you have a  
24 computer or a phone, you have equal access to your

1 fellow citizens, even if you don't have \$123,000.

2           Anyone's video can go viral, and millions of  
3 dollars for a TV buy aren't necessary to reach large  
4 numbers of people. Free and equal access to the  
5 creation of impactful or forceful speech should be  
6 encouraged, and the Commission should continue a  
7 hands-free approach to the Internet.

8           The Commission said in 2006 that Internet  
9 communications involve minimal barriers to entry,  
10 including low-cost and widespread accessibility, and  
11 are distinct from other media in a manner that  
12 warrants a restrained regulatory approach. The  
13 examples we provided in our comments demonstrate the  
14 importance that an open Internet has had on the  
15 political debate. We've seen innovative and creative  
16 communications from the Obama Crush video to JibJab's  
17 presidential animation parody videos.

18           The video contest sponsored by Our  
19 Generation is yet another example that ordinary  
20 citizens want to speak on the Internet, and in doing  
21 so can create very clever and impactful videos.  
22 Through the Internet, ordinary citizens can enter into  
23 the public debate without millions of dollars in  
24 resources, and are only limited by their imaginations.

1           When looking at ways to encourage greater  
2 citizen participation, it is important to remember  
3 that we should not just be talking about individuals  
4 acting alone. The First Amendment also protects the  
5 freedom of association. People participate through  
6 their associations. So-called dark money groups are  
7 associations of citizens who have joined to further an  
8 issue or issues about which they care. Internet  
9 speech by these associations is no less deserving of  
10 protection than if it were done by a citizen speaking  
11 on his or own behalf.

12           The complexities of the campaign finance  
13 reporting system often turns people off. I have seen  
14 ordinary citizens who are not attorneys or CPAs after  
15 having served for a short time as a treasurer of a  
16 small PAC who say never again. If the Commission  
17 wishes to encourage greater citizen participation,  
18 there are ways other than regulating the Internet that  
19 this could be done.

20           Update the forms. A citizen forming a super  
21 PAC should be able to simply check a box on form one  
22 rather than searching the FEC web site to learn that  
23 they also need to file a letter notifying the FEC of  
24 this.

1           Update the regulations. I've had clients  
2 who have attempted to educate themselves by reading  
3 the regulations and arrive understandably at an  
4 incorrect conclusion because they weren't aware that  
5 subsequent court cases have overturned or modified the  
6 regulations.

7           Crosscheck the advisory opinions. While you  
8 can currently search by keyword for many, it is  
9 helpful to have advisory opinions also indexed by  
10 subject matter. A number of states do this so  
11 citizens can click on the subject matter, such as  
12 coordination, and immediately see every advisory  
13 opinion that relates to that area.

14           Whatever the Commission decides to do, the  
15 touchstone should be the encouragement of more speech,  
16 not less, with the least amount of complexity. Thank  
17 you.

18           CHAIR RAVEL: Thank you very much for your  
19 comments.

20           The next speaker is Norm Singleton. Thank  
21 you, sir.

22           MR. SINGLETON: Thank you, Madame Chairwoman  
23 and the rest of the Commission. Thank you very much  
24 for this opportunity to testify. My name is Norman

1 Singleton. I am vice president of policy at Campaign  
2 for Liberty, a 501(c)(3) social welfare organization  
3 that works to mobilize Americans in support of  
4 individual liberty, free markets, and limited  
5 government.

6 We do not endorse or oppose any candidate  
7 for office. We do survey candidates for federal and  
8 state offices and inform our members of the results of  
9 the survey so that they are aware of their candidate's  
10 stand on issues. We also regularly mobilize our  
11 members to contact their elected representatives to  
12 get them to support or oppose various pieces of  
13 legislation, depending on how it will impact their  
14 liberties and prosperity.

15 We use the Internet to enhance our  
16 effectiveness. Thanks to the Internet, we can contact  
17 our memberships, sometimes literally the day of a vote  
18 that we just heard the night before was coming to the  
19 House or Senate floor. Any attempt by the FEC to  
20 regulate an organization like Campaign for Liberty  
21 would hurt our members, most of whom are not the  
22 123,000 and up that the last panel expressed concerns  
23 about giving special privilege to, but are average  
24 middle and working Americans who either don't have the

1 time or the ability to influence the policy process in  
2 the same way that, say, a billionaire does, and they  
3 find strength in numbers to joining with Campaign for  
4 Liberty, which amplifies their voice on Capitol Hill  
5 and in their statehouses.

6 Any regulations that would cripple our  
7 effectiveness by forcing us to divert our limited  
8 resources to complying with new rules would thus harm  
9 the ability of these Americans to influence the policy  
10 process. I don't understand how America is benefitted  
11 by making it more difficult for average Americans to  
12 make their voice heard in Washington, D.C.

13 In addition to that, the Commission should  
14 consider that protecting the ability of Americans to  
15 impact the policy process is actually the central  
16 reason why the Constitution has the First Amendment.  
17 As Chief Justice -- and as Chief Justice Roberts said  
18 in the previously mentioned FEC v. Wisconsin Right-to-  
19 Life case, in judging these statutes, dealing with  
20 campaign finance reform and dealing with regulations  
21 of organizations such as Campaign for Liberty, the  
22 Court will give the benefit of the doubt to speech,  
23 not censorship.

24 I would hope that the Commission would

1 follow Chief Justice Roberts's lead and not impose any  
2 regulations giving the benefit of the doubt to  
3 censorship instead of to speech.

4 We have a particular concern in addition to  
5 new regulations that would affect our ability to  
6 communicate with our members via the Internet, also  
7 with proposals that we've disclosed the names of our  
8 donors and our members to federal agencies such as the  
9 FEC.

10 As has already been mentioned, there are  
11 several -- there are numerous court -- federal court  
12 cases protecting the rights of organizations like  
13 Campaign for Liberty to protect the privacy of our  
14 members from government officials. Already been  
15 mentioned is the main case on point, which is NAACP v.  
16 Alabama. As Chief Justice Marshall -- as Justice  
17 Marshall Harlan wrote in the majority opinion of that  
18 case, "Privacy and group association may in many  
19 circumstances be indispensable to the preservation of  
20 freedom of association, particularly when a group  
21 espouses dissident beliefs."

22 Many of the beliefs that are espoused by  
23 Campaign for Liberty, for example, that the Patriot  
24 Act should be repealed and the Fourth Amendment should



1 be respected and warrantless -- and our online and  
2 other activities should never be spied on by the  
3 Internet without a warrant and probable cause, or even  
4 that the Federal Reserve should not be allowed to  
5 operate in secret because it's arguably the main force  
6 behind income and equality and the decline of the  
7 middle-class American standard of living, so it should  
8 be audited, might qualify to some people in this town  
9 as dissident beliefs.

10 Just recently, as I believe was mentioned in  
11 a prior panel, last -- just -- which was just last  
12 year, very recent, the dangers of forcing public  
13 policy organizations to divulge their donors' names to  
14 the federal government was shown when the IRS had to  
15 pay \$50,000 to the National Organization for Marriage  
16 after an IRS employee accidentally leaked the name of  
17 the organization's donors to one of the organization's  
18 political opponents.

19 Finally, I'd like to point out that in 2010,  
20 Congress did consider and rejected the Disclose Act.  
21 That was a Congress that was much more favorable to  
22 regulation of political activity than subsequent  
23 Congresses have been. But the Disclose Act was still  
24 rejected.

1           This indicates that despite what a lot of  
2 the polling numbers that has been thrown around here  
3 today, the American people really don't want the  
4 federal government to regulate their political  
5 activity. And even if the American people do want the  
6 federal government to regulate their political  
7 activity, I'm just saying that -- not because I  
8 believe it or think it's true, but just for the sake  
9 of argument -- that's not the role of the Federal  
10 Election Commission to impose any regulations that are  
11 similar to legislation that has already been  
12 considered and rejected by the people's elected  
13 representatives.

14           To impose Disclose Act-like regulations  
15 unilaterally through agency action would not only  
16 violate the First Amendment, but would also violate  
17 the constitutional structure of Article 1, Section 8,  
18 which vests legislative -- lawmaking authority solely  
19 in the Congress and the Senate, not in unelected  
20 bodies, such as yourselves. No offense. I'm sure  
21 you're all fine people, but none of you -- I don't  
22 think any of you were ever actually on a ballot for  
23 this position.

24           So in conclusion, on behalf of Campaign for

1 Liberty's three-quarter of a million members, I urge  
2 the FEC to reject any proposal to increase regulations  
3 on 501(c)(3) organizations such as Campaign for  
4 Liberty, particularly regulations that would in any  
5 way limit our ability to use -- to effectively use the  
6 Internet to communicate with and mobilize our members  
7 or regulations that would increase disclosure  
8 requirements of the names of our donors and our  
9 activists.

10 Thank you very much for your time.

11 CHAIR RAVEL: Thank you very much.

12 Mr. Langer.

13 MR. LANGER: Thank you. Madame Chairwoman  
14 and members of the Commission, thank you for the  
15 opportunity to testify this afternoon. My name is  
16 Andrew Langer. I am president of the Institute for  
17 Liberty, not to be confused with our good friends at  
18 the Campaign for Liberty or our good friends at the  
19 Institute for Justice.

20 We're a 501(c)(4) organization based here in  
21 Washington, D.C. We focus on the impacts of the  
22 federal executive branch regulatory policy on the  
23 American public, the problems of unilateral expansion  
24 of executive branch power, and the growing war against

1 political speech.

2 In our substantive comments to the FEC on  
3 this issue, we outline the unceasing forays by the  
4 executive branch over the last six years into  
5 interfering with political speech. Not a year has  
6 gone by without some effort by either the  
7 administration directly or executive branch agencies  
8 engaging in some attempt to harass, limit, or  
9 discredit oppositional speech.

10 This is why we were quite blunt in our  
11 comments in calling these efforts a fetish. We mean  
12 that in the most literal sense of the world, a  
13 seemingly compulsive focus on a single act over and  
14 over again, rooted it seems, in something deeply  
15 psychological. How else to explain an administration  
16 that in one year asked for people to report to the  
17 White House on opposing narratives, and in the  
18 following years takes the unprecedented step of using  
19 public health agencies to try and discredit their  
20 primary opposition movement.

21 This is why this particular proposal is  
22 sadly unsurprising. It comes in the intermission  
23 between two acts in the Internal Revenue Service's  
24 anti-conservative Kabuki theater. No sooner had the

1 IRS been sharply repudiated by the public in its  
2 attempts to rein in political speech than the FEC  
3 comes in with this proposal, just months later, and  
4 now months before the IRS is set to engage in its next  
5 efforts to try and curtail the free speech rights of  
6 advocacy organizations.

7           The right of individuals to freely engage in  
8 political discourse is a well-settled matter of  
9 constitutional law. Restrictions on time, manner,  
10 place, and spending are supposed to be narrowly  
11 focused, sharply limited, and based on overwhelming  
12 public interest to justify limitations on a sacrosanct  
13 individual right. And that limitation on power rests  
14 on one very basic principle: the more political  
15 speech we have, the more vibrant our republic. The  
16 more people involved in the process, the more people  
17 engaged, the better our society functions.

18           Time and again courts from the Supreme Court  
19 on down have overturned rules like this proposal that  
20 would have a chilling effect on free speech. As  
21 important, these same rules -- these same courts have  
22 upheld the concept that people have a fundamental  
23 right to assemble privately, even anonymously, in the  
24 pursuit of political goals. This is why the FEC's

1 powers vis-a-vis disclosure are limited to donations  
2 to candidates and PACs engaged in the process of  
3 electing candidates, and not to groups advocating on  
4 these issues.

5 The reason for this is straightforward. As  
6 the Supreme Court has recognized and has been  
7 discussed by other panelists, in NAACP v. Alabama,  
8 people can and do find themselves regularly targets  
9 for harassment, often through the utilization of  
10 government power, when they are advocating views that  
11 others do not agree with.

12 In that particular case, it was the state of  
13 Alabama who is trying to find out who was supporting  
14 the NAACP. Their stated justification was to ensure  
15 that state laws were being followed, but the high  
16 Court saw through that ruse, knowing that once those  
17 donors became public, they would be harassed.

18 Such has been the case in recent memory.  
19 Donors to the aforementioned American Legislative  
20 Exchange Council were harassed by the public and  
21 members of Congress when donor information was leaked.

22 Donors to organizations supporting California's  
23 Proposition 8 were similarly harassed.

24 The message this sends to people is simple.

1 Don't participate, the very opposite of what our  
2 founders intended and what is vital to the survival of  
3 our republic. Worse, laws about disclosure, laws that  
4 extend to the enforcement -- laws that extend to the  
5 involvement of individuals in the process, as this one  
6 does, create barriers to entry, further discourage  
7 involvement, and open up the possibility of those laws  
8 being used to harass and intimidate.

9 One such incident was reported on just weeks  
10 ago here in Washington, D.C. by *The Washington Post*.  
11 Institute for Liberty, my organization, is an  
12 organization that supports marijuana reform efforts  
13 like the referendum that happened here in D.C. in the  
14 fall. We were appalled to learn that an anti-pot  
15 activist, Walter Jones III, had a complaint filed  
16 against him by the D.C. Cannabis Campaign for failing  
17 to properly register and disclose his individual  
18 political activities, activities engaged in outside of  
19 a group that he had properly registered.

20 Shockingly enough, Mr. Jones was fined  
21 \$2,000 for violating D.C.'s laws, a staggering sum,  
22 especially in a nation where such civic involvement is  
23 supposed to be encouraged, and most especially here in  
24 the nation's capital. And yet, here we are, having

1 this discussion over a similar proposal coming from  
2 the FEC.

3 In our written comments, we talk about the  
4 bureaucratic nightmare that would ultimately ensue  
5 should this proposal be implemented. But assuming  
6 that bureaucracy could even be implemented, a  
7 bureaucracy, incidentally, that would surpass agencies  
8 like the Consumer Products Safety Commission and the  
9 Mine Safety and Health Administration in what would  
10 have to be its size -- assuming that bureaucracy could  
11 be implemented, the end result would be literally  
12 millions of potential Walter Joneses around the  
13 country being held liable for violation of FEC rules  
14 simply because they engaged in their civic duty.

15 For whatever reason, the administration and  
16 its allies have a problem with opposing speech, so  
17 much so that they have engaged in a continuous assault  
18 on it since this administration's first year. Most  
19 importantly, regardless of the animus that proponents  
20 of this proposal must harbor towards the  
21 administration's critics, as the NAACP rightly pointed  
22 out in their comments to the IRS last year, such rules  
23 aren't restricted to those who believe in limited  
24 government or free speech. They discourage and can



1 criminalize the speech of anyone and everyone.

2 As such, this proposal should be dropped,  
3 dropped. Thank you again for allowing me to testify.

4 I'm happy to answer any questions that you have.

5 CHAIR RAVEL: Thank you, sir.

6 The next speaker is Jeremiah Morgan. Good  
7 afternoon.

8 MR. MORGAN: Good afternoon, Chair Ravel and  
9 Commissioners. My name is Jeremiah Morgan. I'm an  
10 attorney with the law firm William J. Olson PC, and  
11 I'm appearing today on behalf of the Free Speech  
12 Coalition, the Free Speech Defense and Education Fund,  
13 and U.S. Justice Foundation.

14 Thank you for the opportunity to testify  
15 regarding the Chairman -- the Commission's ANPRM. On  
16 January 15th, our firm filed written comments on the  
17 same PRM. Previously, in May of 2013, we filed an  
18 *amicus* brief in the McCutcheon case before the U.S.  
19 Supreme Court urging the aggregate contribution limits  
20 to be stricken.

21 The Commission already responded to the  
22 Supreme Court's McCutcheon decision by conforming its  
23 regulations to that decision. Now the Commission  
24 seeks comments on whether it should further modify its

1 regulations or practices in response to certain  
2 language from the McCutcheon decision.

3           The ANPRM refers to the Court's decision,  
4 which stated that there are multiple alternatives  
5 available to Congress that would serve the  
6 government's purported interest in preventing  
7 circumvention of the base contribution limits. Simply  
8 put, the Commission is not Congress, and the Supreme  
9 Court's language relied upon by the ANPRM does not  
10 support any action other than what the Commission has  
11 already done, conforming its regulations to the  
12 McCutcheon ruling.

13           Instead, we view the ANPRM as an attempt to  
14 extend Commission regulations to accomplish a variety  
15 of policy objectives under the pretext of responding  
16 to various comments made in the McCutcheon decision  
17 about preventing circumvention. The Supreme Court did  
18 make certain suggestions about possible legislation  
19 which Congress may consider to better detect or deter  
20 circumvention of the base limits if that problem even  
21 existed.

22           However, the Court's so-called suggestions  
23 were not directed to the FEC, but to Congress. In  
24 fact, existing enforcement mechanisms of the base

1 contribution limits appear to be working. For  
2 example, the Court identified the Commission's  
3 affiliation factors as an example of enforcement  
4 mechanism that had achieved the results sought.

5 The Court also pointed out that the  
6 Commission's Internet disclosure on its web site was  
7 helpful in preventing circumvention, but did not  
8 suggest that it needed a major overhaul. The ANPRM  
9 appears to manipulate the Court's language to maximize  
10 the Commission's own role. The ANPRM claims that the  
11 Court identified four mechanisms that could be  
12 implemented or amended to prevent circumvention of the  
13 base limits. This is inaccurate because only two of  
14 the four mechanisms were actual suggestions, and those  
15 again were directed to Congress, not to the  
16 Commission.

17 Chair Ravel's statement issued concurrently  
18 with the Commission's approval of the ANPRM goes even  
19 further, describing the ANPRM as asking wide-ranging  
20 questions on how to improve Commission regulations to  
21 prevent corruption of the political process. In the  
22 same paragraph she said the Commission seeks wide-  
23 ranging public comment on issues fundamental to  
24 campaign finance, a grand characterization of ANPRM

1 that supposedly was targeting the issues in  
2 McCutcheon.

3           The Commission has the power to submit and  
4 regularly makes legislative recommendations to  
5 Congress. However, in the absence of new statutory  
6 authority, the only legal outcome of this rulemaking  
7 docket is for the Commission to complete its fact-  
8 finding mission, add to its legislative Christmas  
9 wish-list, and send it off to the Hill. Otherwise,  
10 regulations that emanate from this rulemaking would be  
11 *ultra vires*, exceeding the scope of the Commission's  
12 lawful authority, bypassing bicameral and presentment  
13 principles in Article 1, Section 7 of the  
14 Constitution.

15           If so, as Columbia Law Professor Philip  
16 Hamburger has observed in his *Administrative Law*  
17 *Unlawful*, the Commission would be, like the old  
18 English prerogative bodies, outside the law, the  
19 legislature, and the legislative process to impose  
20 binding rules and interpretations. The agencies  
21 thereby return to extra-legal governance, which is  
22 precisely what the constitutional law developed in the  
23 17th century to prevent.

24           Hopefully, the Commission will terminate

1 this proceeding and leave to Congress the job of  
2 considering, debating, and enacting laws. Thank you,  
3 and I'd be pleased to answer any questions.

4 CHAIR RAVEL: Thank you very much.

5 The final -- no, not the final. The next  
6 speaker is Daniel Smith. Thank you, Mr. Smith.

7 MR. SMITH: Thank you. Good afternoon, and  
8 thank you for inviting me to speak here today. My  
9 name is Dan Smith, the democracy campaign director for  
10 the U.S. Public Interest Research Group Education  
11 Fund, which works to protect consumers and promote  
12 good government.

13 We investigate problems, craft solutions,  
14 educate the public, and offer meaningful opportunities  
15 for civic participation. With public debate around  
16 important issues, often dominated by special interests  
17 pursuing their own narrow agendas, the U.S. PIRG  
18 Education Fund offers an independent voice that works  
19 on behalf of the public interest.

20 In the wake of the 2014 midterm elections,  
21 which once again broke records and became the most  
22 expensive midterms in our nation's history, it has  
23 become clear beyond dispute that the tide of big money  
24 unleashed by the Supreme Court's Citizens United

1 decision risks drowning out the voices of ordinary  
2 Americans.

3 With campaign fundraising dominated by mega-  
4 donors and super PACs, our elections are increasingly  
5 becoming the playground of an elite few, with the \$50  
6 or \$100 contributions that average citizens can  
7 contribute growing less and less relevant.

8 Last year's McCutcheon decision doubled down  
9 on this misguided jurisprudence by striking down  
10 aggregate limits, and has given large donors even more  
11 power to channel big money into our elections. While  
12 the Commission, of course, must abide by the Court's  
13 decisions, at the same time, it is clear that this  
14 Commission has an opportunity to strengthen its  
15 regulations to better protect their democracy.

16 Implicit in both Citizens United and  
17 McCutcheon is the premise that adequate disclosure  
18 will allow the public to know the source of all  
19 electoral spending and that safeguards are in place to  
20 prevent the rules from being too easily gamed. We  
21 urge the Commission to update its regulations to bring  
22 them more closely in line with that premise, which  
23 currently falls far short of reality.

24 On transparency, the Commission should

1 modify its regulations to bring dark money  
2 expenditures into the light of day. As the court in  
3 Van Hollen v. FEC ruled, the current regulations make  
4 it too easy for special interests to funnel their  
5 electoral spending through innocuous-seeming  
6 organizations that cloak the true origin of their  
7 funds.

8           The Commission should use the opportunity  
9 provided by the court's ruling to close loopholes in  
10 the current disclosure regime so that all electoral  
11 spending is subject to the same disclosure rules.

12           The McCutcheon and Citizens United rulings  
13 pose special dangers to the extent that they allow  
14 large donors to circumvent per-candidate contribution  
15 limits by taking advantage of super PACs and joint  
16 fundraising committees that can accept larger  
17 contributions, and are able to funnel these increased  
18 contributions to the intended candidate.

19           The current per-candidate limit of \$5,200,  
20 counting primary and general limits together, is  
21 already unreachably high for most Americans. The  
22 additional contributions made possible by these  
23 alternate fundraising vehicles make the voices of  
24 ordinary Americans less and less relevant.

1           To reduce the risk of these vehicles being  
2           used to create an end-run around the per-candidate  
3           contribution limits, the Commission should revisit its  
4           treatment of single or few candidate super PACs to  
5           ensure that they provide more than a fig leaf of  
6           reassurance that a particular contribution is not  
7           necessarily going to a particular candidate.

8           This could involve setting bright lines for  
9           the number of candidates such super PACs support, as  
10          well as creating a more searching context-based  
11          analysis that could look, for example, at the identity  
12          of a particular super PAC's officers or staff.

13          Similarly, parties should not be permitted  
14          to participate in joint fundraising committees along  
15          with candidates, as this provides another easily gamed  
16          loophole by which funds in excess of per-candidate  
17          limits can be directed to a favored politician.

18          The Commission has an opportunity to play an  
19          important role in helping to protect our democracy  
20          from the tide of big money unleashed by recent Supreme  
21          Court decisions, and we urge you to take strong  
22          actions to require broader disclosure and eliminate  
23          the easiest to game loopholes in the current  
24          regulations.



1           We thank you for the opportunity to submit  
2           our comments and testify today before you.

3           CHAIR RAVEL: Thank you very much. And the  
4           final witness is David Williams.

5           MR. WILLIAMS: Good afternoon, and thank  
6           you, Madame Chairwoman and Commissioners. My name is  
7           David Williams. I am the president of the Taxpayers  
8           Protection Alliance. We are a 501(c)(4) organization.  
9           We are a lobbying organization. I've been in D.C.  
10          working on behalf of taxpayers for 22 years. So  
11          needless to say, the Internet has changed a little bit  
12          over the last 22 years.

13          I'm here today to express TPA's deep  
14          concerns and opposition to the advance notice of  
15          proposed rulemaking. This new rule would severely  
16          undermine and limit the ability of groups to  
17          participate in online political and policy debates.  
18          What you're asking and looking for, the privacy  
19          implications are really scary because we have a number  
20          of members and supporters who expect a level of  
21          confidentiality when they donate to the organization  
22          out of fear of reprisal from the government when we  
23          criticize certain government programs, projects.

24          One of the projects that I have worked on

1 has been earmarking. And in particular, the bridge to  
2 nowhere is a great example of how the Internet and  
3 people got together via social media to kill a  
4 wasteful project that was supported by two very  
5 prominent Republicans in the Senate and in the House.

6 And I can only imagine if we had to disclose when we  
7 made these videos, disclose who our donors were, the  
8 two members -- I'm not going to name names, but they  
9 -- they don't take criticism very well. And so this  
10 was important, that our members retain this  
11 confidentiality.

12 We believe strongly in the public's ability  
13 to participate in ongoing policy debates that impact  
14 the daily lives of really all Americans. The FEC  
15 rules regulating online political speech would take  
16 away that chance for many individuals to have their  
17 voice heard, as I mentioned, out of fear of  
18 retribution.

19 The new rules would severely restrict the  
20 sharing and usage of social media platforms like  
21 YouTube, Facebook, and Twitter. These and many other  
22 social media platforms have all had an important part  
23 in today's political debates. These sites have also  
24 been utilized as a way for groups to communicate with

1 their members.

2 We're a small organization. This is how we  
3 communicate with our members, is through the Internet.

4 The new measures being proposed by the FEC would  
5 hinder the opportunity for TPA and others to  
6 contribute to future debates on major policy issues.  
7 Online political activity regulations silence debate  
8 and should be vigorously opposed by everybody who  
9 supports free speech.

10 We have a number of videos on YouTube, and  
11 those videos have been -- also been on multiple  
12 platforms. And as we, you know, move into the future,  
13 I'm sure there is going to be more platforms that  
14 people can view these videos. So we just have an  
15 expanding universe of options for people to view  
16 videos or listen to podcasts.

17 These new rules open a dangerous door with  
18 new regulations on the Internet. There have been  
19 attempts to enact net neutrality regulations. And  
20 while the focus of these new regulations from the FEC  
21 would apply to online political activity, there is no  
22 guarantee they won't be used as a basis for Internet  
23 regulation as well.

24 We have seen government bureaucracies

1 expand. We've seen agencies expand their mission.  
2 And we're concerned that this will establish that  
3 precedent.

4 The Internet is the great equalizer, whether  
5 you're a group of a budget of \$100 or \$100 million.  
6 Full disclosure, we're closer to the \$100 mark,  
7 nowhere near the \$100 million mark as an organization.  
8 And again, full disclosure, we get zero funding from  
9 the government.

10 But the Internet allows both of these  
11 different types of organizations to have the same  
12 voice. A viral video is not dependent upon how much  
13 money you spend on it, or how big or how small your  
14 organization is. A viral video happens because it  
15 just clicks with a large amount of people. The kid  
16 that was coming back from the dentist's office, no one  
17 thought that was going to be a viral video.  
18 Obviously, it's not political in nature. But, you  
19 know, the nonprofit groups that produce these, we want  
20 all of our videos to be viral. Maybe less than 1  
21 percent go viral, but as I just repeat, it's not the  
22 size of the organization that determines what these  
23 videos do.

24 Facebook, YouTube, and many other social

1 media platforms are critical in impacting these  
2 debates. Now consider this scenario. A debate  
3 between two nonprofits, one on one side of the  
4 political aisle, the other on the other, having, you  
5 know, a lively debate. So do we have to -- and we  
6 turn that into promotional material for both  
7 organizations.

8 Do both organizations have to disclose who  
9 their donors are? I mean, this would be very  
10 troublesome. We urge you to reject these new  
11 regulations. I mean, this is -- in a land of free  
12 speech, this is, in our opinion, not what you want to  
13 be moving towards. And let me just finish up with one  
14 question, and I was less than eight minutes, so I hope  
15 I get extra credit for that.

16 CHAIR RAVEL: You definitely do.

17 MR. WILLIAMS: What is the legacy of the FEC  
18 going to be? Is it going to be an agency that  
19 embraces free speech, or is it going to be one that  
20 enacts regulations that limits it? And I hope that at  
21 the end of the day, you consider the implications --  
22 the free-speech implications of this, and you move  
23 back from these rules.

24 Again, thank you very much, and I appreciate

1 the ability to testify.

2 CHAIR RAVEL: Thank you. Thank you very  
3 much. Let me start by speaking to both you, Mr.  
4 Williams, and also Mr. Langer. You, Mr. Williams, are  
5 talking about rejecting the new regulations and about  
6 the new measures proposed by the FEC today, and you,  
7 sir, Mr. Langer, talked about that there was a similar  
8 proposal coming from the FEC, and the proponents of  
9 the proposal and this proposal. And I unfortunately  
10 -- I mean, perhaps you did not hear the comments  
11 earlier this morning when I addressed this.

12 There is no proposal today. We have no  
13 proposal, and I think it's kind of unfortunate that  
14 there has been falsehoods promulgated, and I don't  
15 know by whom, potentially by people at this dais. So,  
16 you know, if you could point me to the proposal, the  
17 precise proposal, that you're talking about, it would  
18 be helpful.

19 MR. LANGER: I've just been operating under  
20 what I read in the -- what I read --

21 CHAIR RAVEL: Right.

22 MR. LANGER: -- in the *Federal Register*, and  
23 more to the point --

24 CHAIR RAVEL: No. And what did you read in

1 the *Federal Register* that related to a proposal with  
2 respect to the Internet?

3 MR. LANGER: Well, a proposal in the general  
4 sense, not in the term of art that's used in the  
5 regulatory process. But clearly the issues that are  
6 being discussed here are remarkably similar to issues  
7 that are being discussed in other agencies, especially  
8 as the other panelists sitting here in front of you  
9 and testifying, and those who have testified earlier,  
10 to go and essentially seek disclosure of what they  
11 incorrectly term dark money, which really ought to  
12 better be termed private or anonymous money, which is  
13 a cherished principle in American jurisprudence.

14 Clearly, you know, we wouldn't be here were  
15 there not a discussion being held about greater  
16 disclosure and I guess piercing the veil of anonymity.

17 That's what I'm speaking to.

18 CHAIR RAVEL: Okay. So you were referring  
19 to the proposal about -- potentially about dark money.

20 Is that a clarification?

21 MR. LANGER: Well, the proposal of -- I'm  
22 speaking of the discussion that is being held  
23 regarding Internet speech and disclosure of those who  
24 are supporting Internet speech and online speech.

1           MR. WILLIAMS: And to be clear, I think the  
2 word discussion is probably a better word than  
3 proposal.

4           CHAIR RAVEL: I appreciate that.

5           MR. WILLIAMS: Okay.

6           CHAIR RAVEL: And do you have concerns about  
7 having a discussion? Do you think that open  
8 communication such as we have here, where anybody can  
9 come and speak to the Commission about whatever their  
10 views are, is problematic?

11          MR. WILLIAMS: Absolutely not. This is  
12 fantastic. I mean, I have been trying to get more  
13 transparency in the federal government for 22 years.  
14 So any time we have these discussions, I embrace that  
15 and hope the rest of the government has more of these  
16 discussions.

17          CHAIR RAVEL: Great. I appreciate --

18          MR. LANGER: I will take a slightly  
19 different point on that, and that's only because  
20 having now been in the regulatory world for almost a  
21 quarter century, I know that when discussions happen  
22 at agencies, those discussions eventually turn into  
23 policy. And so, you know, I believe it is important  
24 -- while it's important to have the discussions, my



1 aggressive pushing back against the discussion is to  
2 nip this in the bud before it gets down the road  
3 because having just seen what happened with the IRS  
4 and what is going to happen with the IRS again -- when  
5 folks tilt at this windmill, what they're eventually  
6 looking for is for somebody to sit down and not come  
7 and play their A game.

8 And I don't want to be in an America where I  
9 -- just because somebody has sat back and rested, all  
10 of a sudden free speech rights are given away.

11 CHAIR RAVEL: I appreciate that, sir, and I  
12 -- yes, sir.

13 MR. SINGLETON: I just want to take a little  
14 bit different angle. I appreciate the fact that I was  
15 offered the opportunity to testify here. But I do  
16 find it disturbing any time anybody anywhere, but  
17 especially in this town, discusses taking away  
18 Americans' First Amendment rights, especially in front  
19 of government officials who actually have the power to  
20 attempt to do that.

21 CHAIR RAVEL: Okay. I appreciate it. Other  
22 questions from other members of the Commission? Mr.  
23 Goodman, Commissioner Goodman.

24 COMMISSIONER GOODMAN: Yeah. Let me just

1 say, whether we use the technical term proposal or  
2 not, it is a debate. And this debate has been debated  
3 within this Commission since about October. We've had  
4 two enforcement matters go public in the last five  
5 months where this Commission has split three-three on  
6 the breadth and clarity of the 2006 Internet freedom  
7 regulation. And so whether you're responding to a  
8 specific proposal that has been written on paper --  
9 there are none. But whether we regulate in a proposed  
10 rule or whether we regulate in an adjudicated fashion  
11 in a case-by-case basis that begins to restrict  
12 freedoms on the Internet, we have had those debates,  
13 and that's a very live debate within this agency, and  
14 it's a fair debate to have, and we're having it.

15 And it's a very timely and topical debate  
16 because we just released another file just within  
17 about a month ago involving a three-three split on  
18 this body about the breadth of the Internet exemption  
19 involving, it just happened to be, Citizens for  
20 Responsibility and Ethics in Washington. And three  
21 Commissioners here voted to dismiss a case against  
22 them because they had posted some press releases on  
23 their own web site and sent out an email. And three  
24 Commissioners did not feel comfortable dismissing the

1 case on that ground, but dismissed it on another  
2 ground that still implied that we have regulatory  
3 jurisdiction over those emails and those postings,  
4 depending on their value.

5 So it's a topical and relevant issue, and  
6 I'm glad you're here. But there is a proposal on the  
7 table here, and it's not from anyone on this  
8 Commission. But we do have a comment from the same  
9 organization. Citizens for Responsibility and Ethics  
10 in Washington has submitted a comment, and I'd like to  
11 know what the implications for your organizations,  
12 including PIRG, because I'm sure you discuss  
13 politicians and political issues on the Internet. And  
14 that is that they propose that we expand the  
15 electioneering communication doctrine. That is, if  
16 you merely discuss a candidate within 60 days of an  
17 election, currently you have to disclose the  
18 expenditure associated with that expenditure, with the  
19 Federal Election Commission, and under an extant  
20 federal district court opinion, you'll have to  
21 disclose all of your donors for the last two years.

22 And CREW has proposed that this Commission  
23 consider expanding those electioneering communications  
24 from television and radio ads to also include

1 communications on the Internet, so that if you post  
2 videos on YouTube, and they're out there, and you  
3 spent cumulatively on your whole series of YouTube  
4 videos, you spent in production costs and the  
5 equipment that you have, you spent \$10,000, now you  
6 are regulated by us.

7 So electioneering communications don't  
8 require any express advocacy. They require only a  
9 reference to a candidate. Tell me how such a rule  
10 would affect your organizations.

11 MR. WILLIAMS: Well, I think that, you know,  
12 the 60-day rule -- technically, every member of the  
13 House runs for reelection minus a few retirements or  
14 -- so we're talking 400 members of the House, a third  
15 of the Senate. So what you're saying is that we can't  
16 comment on policy or pieces of legislation in that 60-  
17 day period because everyone is running for reelection.

18 And we're concerned about the expansion of that.  
19 I've heard that, you know, some groups want to expand  
20 that out to maybe 180 days, but that's just it. It  
21 really limits our ability to educate people about  
22 government spending per se, and other groups about  
23 whatever issues that they're working on.

24 Left -- on the -- you know, center-left and

1 center-right groups do the same thing. So I think it  
2 really would limit our ability to do our job as an  
3 organization.

4 CHAIR RAVEL: Yes.

5 MR. SINGLETON: Chairman -- or --

6 CHAIR RAVEL: Commissioner.

7 MR. SINGLETON: -- Commissioner Goodman, I  
8 don't want to talk about how it would affect Campaign  
9 for Liberty. I want to talk about how it would affect  
10 Campaign for Liberty's members because it's -- our  
11 members support us because they -- as I said in my  
12 comments, they rely on us to help them get information  
13 about what is going on in the capital, and to amplify  
14 their voice to affect public policy.

15 Campaign for Liberty's first major battle  
16 was actually in the fall of '08, which was in  
17 opposition to the Wall Street big bank bailout. Had  
18 that rule been in effect, the bailout, which I was  
19 working on Capitol Hill at the time, and the phone  
20 lines were shut down. That might not have happened.  
21 The biggest act of economic policy could have gone  
22 through with every group, every grassroots group, like  
23 Campaign for Liberty, being muzzled, and thus the  
24 American people losing a vehicle with which to learn

1 what was going on and be mobilized to express their  
2 opinions.

3 And again, I don't think -- I don't see how  
4 that would strengthen the American policy process, to  
5 put a muzzle on the American people at the time, when  
6 politicians are arguably most receptive to hearing  
7 from their ultimate bosses because their job review is  
8 two months around the corner.

9 CHAIR RAVEL: Thank you very much. Is there  
10 a question from one of my fellow Commissioners on this  
11 side? Or a speech, like others have made?

12 COMMISSIONER WALTHER: I'd just add briefly  
13 that -- this isn't a speech, but it's a comment. I  
14 don't really have a question except on this one. But  
15 this wasn't designed to create regulation, and that is  
16 kind of a -- I don't know, kind of a myth that has  
17 gone on. We're interested in knowing what is going on  
18 out there. We haven't been in touch with the public  
19 in any real hearing to look at how people see things  
20 these days.

21 And, you know, I was one of those that voted  
22 on the first regulation. I had to get involved in  
23 that, so has Commissioner Weintraub. So it's not as  
24 if you got people here who are trying to develop a way

1 to increase regulation, but rather to better  
2 understand it because there is just a lot of stuff  
3 coming at us all the time.

4 CHAIR RAVEL: Thank you, Commissioner  
5 Walther.

6 Is there a question, additional question?  
7 Commissioner Weintraub.

8 COMMISSIONER WEINTRAUB: I'll just make a  
9 comment. I've been trying to avoid going back and  
10 forth with my colleagues today because I think that's  
11 not really the purpose of this. But I do think that  
12 if we have any hope of moving forward on any issue and  
13 trying to find common ground, that it's not helpful  
14 when Commissioners take cases where we actually agreed  
15 on the result -- and, you know, Commissioners may have  
16 had different ways of getting there, but we agreed on  
17 the results. We agreed that various conduct shouldn't  
18 be addressed by the Commission. It was free and  
19 clear, and we wanted to dismiss the complaint. And  
20 when we don't sign on to our colleagues' statements  
21 and agree with every sentence of their analysis of the  
22 issue, then we're told we're threatening free speech.

23 And I just think that's not -- you know, if  
24 you want to work with us and try and actually attempt

1 to find common ground on anything, then to be picking  
2 apart like that at us and constantly -- you know, any  
3 time we don't agree 100 percent with you, oh, we're  
4 threatening free speech. We're trying to clamp down  
5 on this. We're trying to clamp down on that. I just  
6 don't think that's helpful.

7 And I'll echo something that Commissioner  
8 Walther said. We have -- the last time we did -- we  
9 are not -- first of all, I'll echo something that the  
10 chair said. We don't have any proposal before us  
11 today to regulate anything to do with the Internet, at  
12 all. The -- but I understand people's concern about  
13 that, and I understand that people have tried to raise  
14 your concern about that, again, in a way that, you  
15 know, perhaps is not so helpful.

16 But the last time the Commission looked at  
17 Internet issues, a lot of people were also very  
18 concerned then, and we made a real effort to, A, hear  
19 from a lot of people and incorporate their ideas into  
20 anything that we did moving forward, and to be very  
21 circumspect in the regulation that we did issue, and  
22 to address the biggest concerns on both sides.

23 And I have to say that the day that we  
24 issued that regulation was probably my best day at the



1 Commission because I had two advocates come up to me  
2 after a lot of people got very, very agitated all the  
3 way through the process. At the end of the day, two  
4 advocates came up to me who had been strong, strong  
5 advocates, each on opposite sides of the issue, and  
6 each of them said, we are so happy with what you have  
7 done. You listened to what we said. You heard our  
8 concerns. You incorporated them into your -- into  
9 what you did, and this was a really successful  
10 experience, and an empowering experience for us as  
11 citizens.

12 And that was, as I said, probably the best  
13 day in my entire tenure here. And so I say to all  
14 those who have expressed concern on this that, you  
15 know, the fact that we want to educate ourselves on  
16 technology issues, the fact that we look at a  
17 regulation that is six or seven years old, and raise  
18 the question, gee, has anything changed since then,  
19 and can people help to inform us about that is not  
20 something that really ought to strike fear and  
21 trembling into the hearts of all of us, and I count  
22 myself among them, who love and use the Internet.

23 I've been sitting here all day tweeting  
24 while we've been sitting here, and it's great, you

1 know. It's empowering. It's cheap.

2 COMMISSIONER GOODMAN: Madame Chair, may I  
3 have a point --

4 CHAIR RAVEL: Yes.

5 COMMISSIONER GOODMAN: -- in response?

6 CHAIR RAVEL: Sure.

7 COMMISSIONER GOODMAN: My fellow colleague  
8 engaged me with some colloquy, but one of the cases  
9 that we're discussing was Checks and Balances, where  
10 there was a three-three divide not over different  
11 legal grounds for dismissal, but three who wanted to  
12 open investigation and enforce, and we have the  
13 attorney for that organization right here, Ms. Abegg.

14 Ms. Abegg, when your client -- we're not  
15 going to -- maybe not a specific client, but when your  
16 clients come before us with a thought they had an  
17 exemption, and they find out there is a three-three  
18 disagreement over an exemption because that's what  
19 Webster Chamberlain and Bean invoked in their response  
20 in that case, does that place a chill on their  
21 interest or ability or enthusiasm for communicating on  
22 YouTube in the future?

23 MS. ABEGG: Well, I think it does. I mean,  
24 they were surprised that there was even a question

1 about this. And I guess I would just say that I would  
2 much rather be here having this debate than having it  
3 in an enforcement action. So I appreciate that.

4 CHAIR RAVEL: All right. Thank you very  
5 much. We really appreciate all your viewpoints.  
6 Thank you for coming before us. We now have a number  
7 of people from the public -- not that you were not the  
8 public, but other people not on panels to come speak.

9 MALE VOICE: Thank you.

10 CHAIR RAVEL: Thank you so much.

11 (Pause)

12 CHAIR RAVEL: All right. First, we're a  
13 couple of minutes early, but let's begin. The first  
14 individual to speak is Linda McGregor. If you want to  
15 come forward. Good afternoon, Ms. McGregor.

16 MS. MCGREGOR: Good afternoon, members of  
17 the Commission. Thank you for the opportunity to  
18 speak before you today. My name is Linda McGregor. I  
19 am a registered nurse, and I live and work in Suffolk  
20 County, Long Island, New York. I'm here today as a  
21 private citizen on my own dime. I'm traveling 12  
22 hours today, driving, in order just to speak to you  
23 for three minutes because these issues are very  
24 important to me. I do not have tax-exempt status, and

1 I am not protecting any anonymous donors or sources.

2 The ruling -- the ruling by the five  
3 Republican justices of the United States Supreme Court  
4 in Citizens United legalized bribery. Many  
5 politicians are selling their votes to the people and  
6 artificial entities with the largest bribe, aka  
7 highest bid, aka highest campaign contributions, and  
8 highest independent expenditures. The majority of  
9 Americans are not being represented by this bribed  
10 politicians. Only the ones doing the bribing are  
11 benefit.

12 President Obama, Republicans, and Democrats  
13 have been successfully bribed by Wall Street. They  
14 get their legislation passed, which is good for them  
15 and bad for the rest of America, and have been immune  
16 to criminal prosecution. They got to keep the rewards  
17 from their crimes, remain in their positions, not go  
18 to jail, get bailed out by the taxpayers, and are  
19 passing on the judgments to the taxpayers.

20 U.S. Attorney General Eric Holder and New  
21 York State Attorney General Eric Schneiderman refused  
22 to do their jobs and bring criminal prosecutions.  
23 Andrew Cuomo was New York State Attorney General when  
24 the 2008 crisis hit, and he too failed to prosecute

1 anyone.

2 We have a crisis of law enforcement in this  
3 country as a result of legalized bribery by the five  
4 Republican SCOTUS justices. I follow the work of the  
5 Brennan Center for Justice, Public Citizen, Move to  
6 Amend, and the other organizations who have spoken  
7 here today in support of campaign finance reform and  
8 regulations. There needs to be limits restored in  
9 order to combat the bribery and the corruption.

10 Not one newspaper in Suffolk County carried  
11 the story that a hedge fund executive spent a million  
12 dollars on a super PAC to get my congressman, Lee  
13 Zeldin elected. I read about it in *Mother Jones*,  
14 which is based here in Washington, D.C. As a New York  
15 State senator, Mr. Zeldin declined signing on to make  
16 New York State the 17th state to call for a 28th  
17 amendment to overturn Citizens United -- New York  
18 State is still three signatures shy of becoming the  
19 17th state -- and instead took \$10,000 from the  
20 Citizens United political victory fund, and the group  
21 also made expenditures on his behalf.

22 That information was not publicly disclosed  
23 either. I had to research it and look at his campaign  
24 contributions. Move to Amend Brookhaven worked to get

1 a resolution presented before the town of Brookhaven,  
2 asking the town of Brookhaven council members --

3 CHAIR RAVEL: You've got one minute.

4 MS. MCGREGOR: -- to approve the resolution  
5 showing support for a 28th Constitutional Amendment to  
6 overturn Citizens United. The resolution failed with  
7 three yeas and four abstentions. The abstentions were  
8 all by Republicans and conservatives, one of whom is  
9 now a judge.

10 There is a correlation between the amount of  
11 money spent on getting people elected and defeated and  
12 revenue to all levels of government and services  
13 provided to the public. The more money spent on  
14 getting people elected through direct contributions  
15 and indirect electioneering communications and  
16 independent expenditures, the less revenues to all  
17 levels of government, elimination of public services,  
18 and layoff of public employees.

19 On disclosure, the documentary *Hot Coffee*  
20 alerted me to the corruption in the United States  
21 Chamber of Commerce. In order to get their pro-  
22 Chamber of Commerce, 11 state supreme court justices,  
23 elected, they spent hundreds of thousands of dollars  
24 on negative attack ads, destroying the career and life

1 of the opposing judge. This true story is now being  
2 made into its own documentary, *The Oliver Diaz Story*.

3 CHAIR RAVEL: You need to wrap up, ma'am.

4 MS. MCGREGOR: On the 501(c)(3)s that engage  
5 in indirect election communications and independent  
6 expenditures and direct contributions should lose  
7 their tax-exempt status and disclosure required of all  
8 the names of the businesses and individual  
9 contributors. The public deserves to know exactly who  
10 is behind all these negative attack ads and dark  
11 money. And I disagree with the gentleman who spoke  
12 that it will limit free speech and lead to harassment  
13 of their members. If you're acting with honesty and  
14 integrity, you have nothing to worry about.

15 CHAIR RAVEL: Okay. Thank you. Thank you.

16 MS. MCGREGOR: And earmarked Suffolk County  
17 executives on earmarks -- this is very important.  
18 Suffolk County executive Steve Malone and the Suffolk  
19 County legislators are enjoying earmarks, aka member  
20 items, pork, community support initiative grants,  
21 economic development grants, while they use the budget  
22 deficit as an excuse to lay off public employees,  
23 circumvent the New York State RFP law, and conduct a  
24 fire sale first on the county nursing home, which

1 failed, so they defunded and closed it.

2 CHAIR RAVEL: Thank you. Thank you for your  
3 comments. We need to --

4 MS. MCGREGOR: And then with the fire sale  
5 on the county public health centers --

6 CHAIR RAVEL: We need to give equal time to  
7 everybody. I'm sorry.

8 MS. MCGREGOR: I'm sorry.

9 CHAIR RAVEL: I apologize.

10 MS. MCGREGOR: My Suffolk --

11 CHAIR RAVEL: I know you came a long way,  
12 and we appreciate it.

13 MS. MCGREGOR: My Suffolk County election  
14 county executives are failing to disclose their member  
15 items and their earmarks, violating New York State  
16 law.

17 CHAIR RAVEL: Thank you, ma'am. I  
18 appreciate your coming. Thank you. The next person  
19 is -- thank you -- Dr. Janette Parker.

20 MS. MCGREGOR: I was told I could leave this  
21 because there is stuff --

22 CHAIR RAVEL: Please do, please leave it.  
23 We're accepting any materials. Thank you.

24 Is Dr. Janette Parker available?



1 DR. PARKER: Oh, okay.

2 CHAIR RAVEL: Oh, okay. Thank you very  
3 much, Ms. Parker.

4 DR. PARKER: I thank the committee, the  
5 Chairman, and Vice Chair, and the committee for  
6 allowing me the opportunity to speak to you about this  
7 important issue. My name is Dr. Janette Parker. I am  
8 the executive director of Medical Whistleblower  
9 Advocacy Network. We are a grassroots organization.  
10 We are not currently organized as a tax-exempt  
11 organization. We do reports to the United Nations,  
12 and we are a active reporter to both the first cycle  
13 of the universal periodic review of the U.S.'s human  
14 rights record, and we are now participating in the  
15 second cycle of the universal periodic review of the  
16 U.S.'s human rights record. And our mission and goal  
17 here is to bring issues in regards to human rights, of  
18 which voting rights and the rights to participate in  
19 elective government is considered a human right.

20 I am here to express our concern that we --  
21 the Supreme Court decisions like Citizens United has  
22 allowed many political spenders, such as the  
23 pharmaceutical industry, to effectively hide their  
24 true identities and greatly influence legislation and

1 administrative policies. These policies do affect  
2 constitutional and human rights of our citizenry.

3           When we as a nation do not have transparency  
4 or accountability regarding political lobbying efforts  
5 of huge corporate interests, we cannot draft  
6 legislation that protects the human rights of patients  
7 to safe and effective healthcare. We also cannot  
8 protect vulnerable patients from being human subjects  
9 of research without their informed consent, as  
10 medicine is a profit-driven business and patients are  
11 very vulnerable and trusting of their medical  
12 providers.

13           Medical Whistleblower Advocacy Network is  
14 extremely concerned that the political power of the  
15 pharmaceutical industry has further profit-making  
16 agenda which has overshadowed the rights of patients,  
17 and has led to the loss of human rights protections  
18 for vulnerable populations.

19           CHAIR RAVEL: You have a minute remaining.

20           DR. PARKER: The pharmaceutical industry,  
21 according to the Center for Public Integrity and  
22 Health -- the pharmaceutical products and health  
23 products industry has spent over \$800 million in  
24 federal lobbying and campaign donations at both the

1 federal and state levels over the past seven years.

2 The Supreme Court decision in Citizens  
3 United v. The Federal Election Commission has now  
4 further extended the pharmaceutical company's  
5 influence over policymakers --

6 CHAIR RAVEL: Please wrap up. Thank you.

7 DR. PARKER: -- through unbridled, secret  
8 contributions to 501(c)(3), (c)(4) organizations,  
9 which then can lobby legislators on the behalf of the  
10 pharmaceutical industry.

11 We therefore request that you update and  
12 strengthen the FEC's disclosure rules to protect our  
13 democracy. Thank you.

14 CHAIR RAVEL: Thank you very much.

15 DR. PARKER: Thank you.

16 CHAIR RAVEL: All right. The next speaker  
17 is Megan Stiles. Please come forward. Thank you.  
18 Good afternoon.

19 MS. STILES: Good afternoon. Thank you.  
20 My name is Megan Stiles, and I work with a small  
21 501(c)(4) nonprofit, which I believe one of your  
22 previous panels referred to as a dark-money  
23 organization. But I would respectfully disagree, and  
24 I believe our thousands of donors who send in

1 contributions in the amount of one dollar at times,  
2 and also many of our supporters who are members of the  
3 military or their spouses who wish to remain  
4 anonymous, would disagree with that dark-money  
5 assertion.

6           While rules governing disclosure have the  
7 idealistic intention of stopping corruption, the  
8 actual effect would be to limit the political  
9 participation of ordinary Americans while empowering  
10 incumbent politicians, political consultants, and  
11 large donors.

12           Small nonprofit political organizations  
13 provide a way for ordinary Americans to be involved in  
14 the public process. Any regulations further burdening  
15 these groups by forcing them to spend more resources  
16 on compliance and less on actual legislative process  
17 would lessen the ability of ordinary Americans to be  
18 involved in the legislative process.

19           Furthermore, many smaller and lesser-known  
20 candidates and ideas have tremendously benefitted from  
21 the Internet. Placing any restrictions on political  
22 speech on the Internet would only hurt candidates and  
23 ideas that currently challenge establishment  
24 politicians and the status quo, thus eliminating

1 dissenting ideas.

2           The First Amendment protects all voices, not  
3 just popular ones, and this Commission should be  
4 promoting more speech and not less. Thank you.

5           CHAIR RAVEL: Thank you very much.

6           The next speaker is Alain Robert, I believe.  
7 Thank you, sir.

8           MR. ROBERT: Hello. My name is Alain  
9 Robert, and I --

10           CHAIR RAVEL: And you're too tall for the  
11 microphone. Sorry.

12           MR. ROBERT: I'm just a regular person. I  
13 mean, I'm just kind of worried because I'm pretty sure  
14 you all are wonderful people, and you have the best  
15 intentions, and you're nonpartisan. But we don't know  
16 after you leave, the next person can come around and  
17 decide, you know what, I hate this organization, or I  
18 don't like them, or I think they're doing the wrong  
19 thing. And I'm going to, you know, lean on them and  
20 say that they can't say this and that because of this  
21 new -- we can do it because of this new regulatory  
22 power. And I think you should consider that before  
23 you go about your discussions and deciding if the FCC  
24 should be able to regulate Internet.

1           I mean, the Internet is a wonderful  
2 invention. You know, I mean, I wasn't really  
3 politically astute all my life, but being able to go  
4 online and read the different debates and discussions  
5 from left-wing, right-wing, anarchist, socialist,  
6 communist, it's enlightening. It's wonderful. And I  
7 think when the FCC decides, well, we're going to start  
8 regulating the Internet, or whatever it is, you know,  
9 as light or as broad it might be, it's just a slippery  
10 slope. We don't know. Hopefully, angels come in  
11 after you guys, but we don't know that. And I think  
12 that is just a really dangerous premise to decide  
13 you're going to regulate the Internet.

14           Hopefully you consider that, and you keep  
15 the Internet free. And if it was just you guys who  
16 were going to regulate the Internet, I'd be okay with  
17 it because I know you all here are really just and  
18 awesome people. But I just don't know what is going  
19 to happen afterwards, and so I'm a little nervous  
20 about that. So hopefully you can consider that when  
21 you sit down, and you think about should we broaden  
22 our powers, or at least get Congress involved in it or  
23 something like that. And that's all I have to say.  
24 Thank you.

1 CHAIR RAVEL: Thank you, sir. Thank you  
2 very much for your comments.

3 The next speaker is Rio -- I'm sorry. Is it  
4 Tazewell, sir?

5 MR. TAZEWELL: It is, yes, Tazewell. Thank  
6 you.

7 CHAIR RAVEL: Okay. Thank you.

8 MR. TAZEWELL: Thank you all for having us.  
9 I've been watching the webcast all day, so I decided  
10 to come down. I've been hearing a lot of red herring  
11 and slippery slope arguments, so I just wanted to come  
12 down and share my opinion as a citizen, but then also  
13 as an employee of People for the American Way. We're  
14 an advocacy organization working on free speech  
15 issues, First Amendment rights, and money in politics.

16 I'm also here today as one of the millions  
17 of Americans that believe that there is too much money  
18 in politics, and that has gotten out of control, and  
19 that it's affecting many of the most important issues  
20 of our day. It's affecting income inequality. It's  
21 preventing progress on issues like climate change.  
22 It's affecting students and their ability to get  
23 affordable loans for college. There is a whole  
24 spectrum of issues that are just made worse by the

1 ability of special interests to finance politicians  
2 and campaigns that go against their bottom line.

3 And in the work that I've done, I've  
4 realized that people really understand this, and are  
5 frankly just discouraged. They believe that there is  
6 no hope. But there is actually indeed, you know,  
7 hope. There are proposed solutions to address these  
8 problems.

9 Public opinion is overwhelmingly clear. As  
10 many as nine in ten people believe that there is too  
11 much money in politics. But at the same time, almost  
12 eight in ten people believe that there is nothing that  
13 can be done about it.

14 So one of the things that we do at People  
15 for the American Way -- and many of the partners that  
16 we work with, including folks that have spoken with  
17 you all today -- one of the things that we're doing is  
18 trying to raise awareness that there is indeed  
19 proposed solutions, including disclosure, including  
20 transparency, including public financing of elections,  
21 and ultimately a constitutional amendment to overturn  
22 Supreme Court cases like McCutcheon, like Citizens  
23 United, and really democratize the democratic process  
24 to really allow people to have equal voice -- have



1 their voices be equally represented in the political  
2 process.

3 And, you know, people might say that passing  
4 a constitutional amendment --

5 CHAIR RAVEL: You have a minute.

6 MR. TAZEWELL: -- is unrealistic, and it  
7 certainly is a heavy lift. But there is an incredible  
8 amount of momentum already. Sixteen states have  
9 passed resolutions supporting a constitutional  
10 amendment. Six hundred towns and cities have done a  
11 similar thing. And the reform community, including  
12 environmental organizations, labor organizations,  
13 social justice groups, economic justice groups, faith  
14 groups, even business groups are binding together and  
15 realizing that we need to coordinate our efforts to  
16 create a concerted public movement, social movement,  
17 calling for the solutions. And we've begun this  
18 process of coordinating our efforts by writing a unity  
19 statement of principles that over 150 organizations  
20 have signed.

21 Collectively, we have tens of millions of  
22 members, and we're in the process of figuring out what  
23 next steps we can take to mobilize them around these  
24 solutions that have been introduced in Congress

1 already and in state legislatures around the country,  
2 and ultimately translated to political power.

3 Thank you.

4 CHAIR RAVEL: Let me just say -- I just got  
5 a really good note from one of my assistants here.  
6 And I know some of you were cut off a little early.  
7 And since we gave the last panel eight minutes each to  
8 speak, I'm happy to increase your times to be fair and  
9 equal. So if you have a few more minutes that you  
10 would like to speak -- and, ma'am, you're sitting  
11 there. I know I cut you off, too. We're happy to  
12 give a little more time. Okay. Just about three  
13 minutes each more time, to be equal to what we  
14 provided to the other panel.

15 So would you like -- do you have anything  
16 that you would like to add?

17 MR. TAZEWELL: Sure. I mean, I guess I just  
18 framed my comments to try to fit it in three minutes.

19 I could probably reiterate some things. I mean, we  
20 have been just in the process of reaching out to all  
21 different types of groups and talking about how money  
22 and politics affects their issues, the issues that  
23 they work on. And there is an overwhelming  
24 acknowledgment that money and politics is the

1 underlying systemic problem that's preventing progress  
2 on many different fronts. And once we can overcome  
3 the cynicism and the pessimism about this, I think  
4 ultimately we'll have a very powerful movement,  
5 comparable to the civil rights movement.

6 And it's very much on that level. I mean,  
7 so many -- well, several of the amendments that have  
8 been passed have been to expand participation in our  
9 democracy. And ultimately, I think that's what the  
10 28th Amendment is about, the Democracy for All  
11 Amendment. It's about increasing the ability of  
12 people to participate equally in our democracy and  
13 leveling the playing field.

14 And I think the momentum is beginning to  
15 shift. I think a lot of people are recognizing that  
16 in order to address climate change, in order to  
17 address any of the, you know, most important issues of  
18 our time, we need to get the overwhelming influence of  
19 money and politics and corporate control in our  
20 political process together.

21 So we're working very hard to figure out how  
22 we can kind of combine our efforts. We represent a  
23 very broad swathe of issues and, you know, through  
24 this unity statement, we're really making a statement

1 to ourselves that we're going to figure out how to  
2 work together, but also making a statement to the  
3 general public that we're not isolated interest groups  
4 working on environmental issues, working on social  
5 justice issues, working on economic reform policy  
6 issues. We're a growing movement that is recognizing  
7 that we ultimately need to fix our democratic  
8 processes to get progress on any number of fronts.

9 So looking forward to hopefully having this  
10 Commission act in the best interests of the American  
11 people. I know you all are very limited in the scope  
12 of what you all can do at this point, given the  
13 decisions that the Supreme Court has made, but --

14 CHAIR RAVEL: You have a minute.

15 MR. TAZEWELL: Then thank you very much.  
16 That's all. I yield the rest of my time.

17 CHAIR RAVEL: Okay. Thank you so much. And  
18 I will cede another three minutes to you.

19 DR. PARKER: Again, I'm Dr. Janette Parker,  
20 from Medical Whistleblower Advocacy Network, and we  
21 are human rights advocacy network, and we report in  
22 regards to what U.S. Government agencies and the  
23 Congress and the Supreme Court do relative to our  
24 obligations under international human rights treaties

1 and human rights instruments.

2           The concept of one person/one vote is a very  
3 critical concept for our democracy, as you are  
4 certainly well aware. And when that -- the elected  
5 officials are responding instead to large amounts of  
6 anonymous money, which might potentially come from  
7 corporate sources such as the pharmaceutical industry,  
8 then we do not have government agency officials  
9 responding to the needs of the citizenry. We instead  
10 have them responding to the money that helps get them  
11 elected.

12           And this is where I see the interface  
13 between the human rights issues that I am so concerned  
14 about and the Federal Election Commission's role in  
15 trying to make sure we have fair and appropriate  
16 elections.

17           We have found that the pharmaceutical  
18 lobbying has been hidden within so many countless NGOs  
19 that it's almost impossible to figure out how  
20 extensive their influence is on elected officials, and  
21 they clearly spend on both sides of the aisle. They  
22 spend on anyone they feel will get into a position of  
23 power and will be able to affect legislation or  
24 administrative policies that might affect their

1 profit-driven businesses.

2 And I am here to stand for those persons who  
3 don't have the ability to stand here in front of you.

4 Many of the disabled persons are unable to get out of  
5 their homes. Many of the disabled persons are  
6 potentially in the mental health system and therefore  
7 wards of the court.

8 I have had to speak to the Supreme Court  
9 justice --

10 CHAIR RAVEL: You have one minute.

11 DR. PARKER: -- in regards to my concerns  
12 for wards of the court and the rights -- their  
13 protection of their human rights against  
14 pharmaceutical industry influence.

15 So I beg you to make sure that the election  
16 Commission will make big corporate donors like  
17 pharmaceutical industries identify their influence on  
18 our elective process. Thank you.

19 CHAIR RAVEL: Thank you very much. Okay.  
20 There are three people who are new to speak. I  
21 understand those of you who before only had three  
22 minutes will get an additional three minutes. But let  
23 me call the list of people who have signed up.  
24 Jessica Newman, and after that it will be Sean

1 Trambley, and after that Malin Moench, I believe. Ms.  
2 Newman.

3 MS. NEWMAN: Good afternoon. Thank you for  
4 this opportunity. My name is Jessica Newman. I am  
5 with the Communications Workers of America, who  
6 represent over 700,000 workers in private and public  
7 sector employment across the United States, Canada,  
8 and Puerto Rico.

9 CWA has worked hard for bargaining and  
10 organizing rights, sustainable jobs, fair trade, good  
11 healthcare for all, and retirement security. But  
12 blocks to our democracy our preventing real change.  
13 If we are to move forward toward economic justice, we  
14 must curb the growing influence of the wealthy elite,  
15 who seek to manipulate our electoral process.

16 The Supreme Court's misguided decisions in  
17 Citizens United, McCutcheon, and Buckley v. Valeo  
18 opened the floodgates to unlimited spending in our  
19 elections. The Court's five-to-four decision struck  
20 down aggregate contribution limits so that one super  
21 wealthy donor can now inject over \$3.6 million into  
22 our politics, and actually as much as \$1.6 million  
23 more per election cycle after last year's Cronnibus  
24 vote. This is to candidates and parties, and this

1 shatters one of the remaining campaign finance laws on  
2 the books.

3 This last cycle saw recordbreaking spending  
4 in state and local elections across the country. The  
5 super rich have joined with corporations in using  
6 their millions to pressure elected officials for  
7 special access, policy agendas, and tax breaks to  
8 flood the airwaves with anonymous political messages.

9 Working and middle class families will find  
10 their voices even more diminished. The result is even  
11 more pay-to-play politics and political inequality  
12 than we've ever seen. And Citizens United has caused  
13 even more disillusionment in the political process by  
14 ordinary Americans. Commonsense limits are critical  
15 to curbing the corruptive influence of money in our  
16 political system and restoring faith in our democracy.

17 Thank you.

18 CHAIR RAVEL: Thank you very much. Sean  
19 Trambley.

20 MR. TRAMBLEY: Hi there.

21 CHAIR RAVEL: Hi.

22 MR. TRAMBLEY: Chairman Ravel, thank you for  
23 this opportunity. My name is Sean Trambley. I come  
24 here today as a concerned citizen and activist, very



1 much more concerned, though, about the state of our  
2 campaign finance system.

3           Since the 2010 Citizens United decision and  
4 the subsequent McCutcheon decision, money has poured  
5 into our political process in amounts never before  
6 seen, which much of this money coming from undisclosed  
7 donors in the form of super PACs and outside spending.

8           According to the Supreme Court, money is  
9 speech, a notion that I fundamentally disagree with.  
10 But speech shouldn't be anonymous, particularly when  
11 that speech comes in the form of billions of dollars  
12 meant to sway the outcomes of our elections. Our  
13 country was built on the premise of self-  
14 determination, and we are in danger of turning that  
15 over to oligarches and plutocrats like the Koch  
16 brothers, whose goals are at odds with everyday  
17 Americans. And everyday Americans can't afford to  
18 drop thousands of dollars every campaign cycle to make  
19 their voices heard, let alone millions and billions.  
20 And the Koch brothers know this, giving them an  
21 enormous advantage.

22           Americans have every right to know who is  
23 trying to influence their vote and the direction of  
24 their country. I implore you, make contributions

1 public, restore credibility to our electoral process,  
2 and put a stop to dark money in our electoral system.

3 Thank you.

4 CHAIR RAVEL: Thank you. The next speaker  
5 is Malin Moench, Moench. I apologize, sir.

6 DR. MOENCH: I can't pronounce it either.

7 CHAIR RAVEL: You can't pronounce it either?

8 Yeah. I never took German.

9 DR. MOENCH: It's supposed to be Malin  
10 Moench.

11 CHAIR RAVEL: Oh, boy, that was bad.

12 DR. MOENCH: I wasn't sure how many minutes  
13 I would have, so I might be able to cram this all in  
14 three.

15 CHAIR RAVEL: You're welcome to have six if  
16 you wish.

17 DR. MOENCH: Okay, good. I'm here  
18 representing myself primarily, but I also am the  
19 Washington representative of a group of about 300  
20 physicians in Utah called Utah Physicians for Healthy  
21 Environment. And what we have found when we tried to  
22 influence public decisionmakers about the health  
23 impacts of pollution and climate change, those two  
24 related facts, is that we've run into a brick wall

1 when it comes to competing.

2 And we're all aware of the Koch brothers and  
3 their vested interests in black energy and their  
4 determination to remove any obstacles to continuing to  
5 rely on that. And the reason that they have that kind  
6 of influence is because the playing field has been  
7 tilted so dramatically since Citizens United.

8 There are two basic interest groups in our  
9 society. One is labor, and the other is business.  
10 These are the two broadest interest groups that we  
11 have. But since Citizens United, the playing field  
12 has been tilted drastically against the common lower  
13 class, working class, middle class, in favor of the  
14 capitalist class, to the point where we're almost  
15 ready to turn our society into a plutocracy.

16 Citizens United stroke down the law  
17 prohibiting corporations and unions from spending  
18 money from their general funds to influence federal  
19 elections through independent expenditures or  
20 electioneering communications. The well from which  
21 corporations can now draw their political influence  
22 money is all corporate profits, profits which came to  
23 roughly 2.1 trillion in the last year. This is 100  
24 times greater than the roughly \$21 billion in total

1 revenue that unions receive per year, from which they  
2 could draw their political influence money.

3 Justice Anthony Kennedy's majority opinion  
4 assumes this new political spending would be  
5 transparent and accountable, writing, quote,  
6 "Disclosure permits citizens and shareholders to react  
7 to the speech of corporate entities in a proper way."

8 The opinion argues disclosure would be, quote, "more  
9 effective today because modern technology could make  
10 disclosure rapid and informative."

11 Secret political spending has increased  
12 exponentially since Citizens United, exactly the  
13 opposite of what the Court's majority assumed would  
14 happen to maintain the integrity of the political  
15 system. The Center for Responsive Politics found that  
16 just one year after Citizens United was decided, the  
17 percentage of spending coming from groups that do not  
18 disclose their donors rose from 1 percent to 47  
19 percent.

20 The game has changed, but clearly the rules  
21 have not kept up. Currently, there are elaborate  
22 rules that assign detailed public disclosure of all  
23 spending by unions that is designed to influence  
24 politics. Federal rules require unions to publicly

1 disclose all political spending and itemized payments  
2 over \$5,000 with the date, the name, the address of  
3 the recipient, and the purpose of the payment.  
4 Critically, this includes spending funneled through  
5 third parties.

6 Corporations, in contrast, do not have to  
7 disclose political funds they funnel through third-  
8 party groups, such as 501(c)(4), social welfare  
9 groups, or 501(c)(6), business associations. And  
10 these tax-exempt nonprofits are not required to  
11 disclose the source of their funds either.

12 Before Citizens United, these dark-money  
13 groups were not permitted to spend directly on federal  
14 elections, but now political spending by political  
15 nonprofits and business associations, the worst  
16 spending by 501(c)(5) unions, which do have to  
17 disclose. Without knowing the identities of the  
18 sources of the funds, it's impossible to know how much  
19 of the \$300 million in dark money spent in the 2012  
20 election cycle came from corporations, the newly  
21 politically active social welfare groups, let alone  
22 which corporations, are the source of those funds.

23 An example is the Chamber of Commerce, which  
24 in the 2010 and 2012 election cycle spent nearly \$70

1 million, all without identifying the source of any of  
2 those funds. Dark money will soon outstrip all other  
3 kinds of funding of political elections in the United  
4 States. The Koch brothers announced the intention to  
5 spend nearly 900 million in the next election cycle.

6 CHAIR RAVEL: You have one minute, sir.

7 DR. MOENCH: That is nearly as much as both  
8 major political parties. They have resisted public  
9 disclosure of how, where, and for whom they spend  
10 their political influence money, and there are many  
11 other plutocrats waiting to follow their example.

12 I won't go through the details because of  
13 the one minute remaining on union disclosure, except  
14 to point out that they have to tell the Department of  
15 Labor all the money that they spend on every political  
16 level, federal, state, local, including judicial  
17 races, referenda, get-out-the-vote campaigns,  
18 fundraising, and any politically-related litigation.

19 Crucially, any donations to 501(c)(4) groups  
20 must be disclosed on the schedule 17 form.

21 Corporations in contrast can donate to 501(c)(4)  
22 groups in any amount they wish without reporting the  
23 source of any of it.

24 CHAIR RAVEL: Okay. Your time is up, sir.

1 DR. MOENCH: Okay.

2 CHAIR RAVEL: I'm sorry. Thank you very  
3 much.

4 With regard to the previous individuals who  
5 spoke and only had three minutes -- is Linda McGregor  
6 still available? Is she still in the room? Would you  
7 like to come forward? I cut you off. You came all  
8 the way from New York.

9 MS. MCGREGOR: That's all right. I  
10 understand. I went over the limit.

11 CHAIR RAVEL: Yeah. But exactly three  
12 minutes.

13 MS. MCGREGOR: Okay. I guess I'll just  
14 finish what I was saying about earmarks. Public  
15 funding -- well, I can just relate my personal  
16 experience and knowledge. Where I live, in Suffolk  
17 County, not-for-profits are publicly funded. They  
18 receive county taxpayer funding to be used for a  
19 public purpose. I have nothing against that.

20 But the end result of the taxpayer funding  
21 is sole credit for the county legislator, the  
22 nonprofit, the definition of an earmark, the  
23 definition of a member item. The Suffolk County  
24 legislature went on record, verbally and in writing,

1 that member items ended in 2011. That was a lie.  
2 Fund 192 in the Department of Economic Development in  
3 the county operation budget is doling out close to a  
4 million dollar in taxpayer funds to Chambers of  
5 Commerce, civic associations, museums, to be used for  
6 a public purpose, and there is public disclosure of  
7 the funding, but there is no public disclosure that  
8 the legislators are taking the credit individually,  
9 and the county executive.

10 And New York state law has a law in the book  
11 that it is a law they have to disclose their member  
12 items because it has been acknowledged that when you  
13 stand in front of a Chamber of Commerce or a civic  
14 association, and the head of the civic -- I witnessed  
15 it with my own eyes and ears. It's in plain sight,  
16 and these people are not being held accountable, while  
17 they use the budget deficit as an excuse to circumvent  
18 the RFP law of New York State, and they're conducting  
19 a fire sale to preselected buyers to sell off  
20 taxpayer-owned assets and property and lay off public  
21 employees.

22 I attended a civic association meeting last  
23 year. The president of the civic association meeting  
24 asked everybody in the room present to take the -- to



1     thank the legislator present for, quote, "his \$10,000  
2     grant." I immediately recognized the \$10,000 member  
3     item, called him on it, and he couldn't answer for why  
4     he didn't disclose it. And he's still in office.

5             CHAIR RAVEL: You have one minute, exactly.

6             MS. MCGREGOR: So earmarks, you know, again  
7     I have nothing against public helping organizations  
8     that are doing something for the community. But when  
9     you're saying we can't afford to keep employees, and  
10    we have to decrease public services, lay off public  
11    employees, and conduct fire sales of taxpayer-owned  
12    assets and property, you shouldn't be enjoying member  
13    items and lying about it to the public. Public  
14    funding to not-for-profits should end during budget  
15    deficits. And when the budget is good, hey, share the  
16    wealth.

17            But the budget deficit is being borne on the  
18    lower and middle and working class of America. They  
19    are the only ones that are paying for the budget  
20    deficit. Thank you.

21            CHAIR RAVEL: Thank you very much. All  
22    right. As to the people remaining in the audience and  
23    those who spoke previously today -- I know there is  
24    two of you here. Is there anybody else that would

1 like an additional three minutes?

2 Okay. Ma'am, why don't you come forward,  
3 and perhaps all three of you should -- could come to  
4 the front so that we can just come right -- yeah, come  
5 on down. You don't need to -- oh, I am sorry, sir.  
6 Have a seat.

7 MS. BRIDGES: Oh, we can have a seat?

8 CHAIR RAVEL: You can certainly sit down,  
9 but -- no, no, no. Or, yeah. You can sit in front  
10 there if you want, either place, wherever it is most  
11 comfortable. Okay. Go ahead.

12 MS. BRIDGES: I'm good.

13 CHAIR RAVEL: Thank you.

14 MS. BRIDGES: I appreciate --

15 MS. BRIDGES: You have three minutes.

16 MS. BRIDGES: Thank you. I appreciate the  
17 opportunity of you guys letting me speak again. As a  
18 widow, I do want to apologize if I got a little too  
19 emotional in my feelings. I lost my beloved fiancée  
20 in 30 days when his doctor gave him a 30-day sample of  
21 Abilify, and he died a horrific death, and it was very  
22 quick, and it was very sudden. And I've dedicated my  
23 life to making sure that people know about these drugs  
24 that are going out here that are advertised on TV, how

1 quickly they can kill.

2           What I find even more disturbing is that  
3 these schizophrenic drugs, these SSRIs, just as the  
4 doctor said, all the politician has to do is get money  
5 from a lobbyist. We have lobbyists writing our laws.

6       We don't have legislators doing this. And if these  
7 legislators are going to sign off on these lobbyist  
8 laws, then they need to be held accountable for that.

9       They sign their name down on there, if Americans die  
10 because of a law that they pushed through, then they  
11 need to be held accountable for that.

12           They need to join Jesse Jackson, Jr. in jail  
13 with no benefits. They need to get any money that  
14 they have taken away from them and paid back to the  
15 victims. Right now all a politician has to do is get  
16 some money from a donor. They don't have to disclose  
17 anything.

18           The public, we the people, are the people  
19 who are suffering from these poison policies. We're  
20 the people who are dying. Over 200,000 Americans die  
21 each year from taking pharmaceutical drugs correctly.

22       Two million people suffer permanent side effects  
23 after taking a drug that was approved by the FDA.  
24       Seven hundred and fifty thousands Americans attempt

1 suicide after taking an antidepressant drug that has  
2 been advertised on TV. Thirty thousand are successful  
3 in taking their own life.

4 The DEA updated the CDC's report, which  
5 stated that 17,000 Americans end up over-D'ing over  
6 prescription drug painkillers. We have a problem in  
7 this country right now where any time that our elected  
8 officials can be bought and sold like common  
9 streetwalkers, there is a problem.

10 My question is what are they doing for that  
11 money?

12 CHAIR RAVEL: You have a minute.

13 MS. BRIDGES: What are they doing for that  
14 money? What are you getting for that donation? How  
15 many people have to die in order for you to get  
16 reelected? And if people die from those poison  
17 policies that were pushed through for profit, they  
18 need to be held accountable. We should not -- we are  
19 the greatest country in America. We cannot allow  
20 tyrants to come here and just use money to pretty much  
21 buy and sell our democracy.

22 This is the greatest country in the world.  
23 We cannot allow that, and we cannot allow innocent  
24 Americans to die just so a few people can make some

1 money, and so some people can stay in office.

2 Thank you for your time.

3 CHAIR RAVEL: Thank you very much.

4 Okay, ma'am.

5 MS. YOUNG: Yeah. My name is Lih Young  
6 again. Thank you for the Commission effort on  
7 Citizens United and on McCutcheon. And I think it's  
8 very important that we understand the responsibility  
9 of the citizen who now is a global citizen or world  
10 citizen. And I've been in this fighting situation  
11 myself for several decades. And from early 1980s, for  
12 constructively charged, and now I still don't have  
13 compensation or remedies. And that's why I say  
14 democracy is fake in America, and freedom is fake  
15 because you can see all this money can speak, but how  
16 come citizen cannot speak?

17 You see, I have been obstructed to speak in  
18 Rockville city council, mayors -- I've been obstructed  
19 in Montgomery County council objective meetings. And  
20 I have been obstructed in Maryland state, in their  
21 assembly. And, of course, you know I've been  
22 obstructed in other agencies, public hearings. And  
23 this additional three minutes allow me to speak a  
24 little bit more about all this four decades or five

1 decades of fighting for citizens to speak. This is so  
2 critical and important for us, and this is why I  
3 appreciate it.

4 So you have my written testimony. I think  
5 it is on there, a brief summary of my life as fighting  
6 for freedom and democracy and social justice. And  
7 since it's so brief, you might as well read every word  
8 of it. It's so critical. And I just want to mention  
9 not only what I just mentioned, those -- how I fight,  
10 how I labeled the murder --

11 CHAIR RAVEL: You have one minute.

12 MS. YOUNG: You put hyphen together, murder  
13 for all crime in this network. So I was taken away,  
14 my voting right. I was taken away, my candidacy. And  
15 they have all kind of abuse and obstruction and  
16 misleading, and then changing all context, or fire, or  
17 complain on some kind of abuse or legal right or power  
18 attorney or guardianship. And my husband was  
19 murdered, and I was almost murdered when I sat in the  
20 printing shop to produce the briefing or the campaign  
21 literatures.

22 So I hope you understand all those, and why  
23 they don't deal with the three branches of government,  
24 from local to federal, and especially in this campaign

1 literature, and as supposed to the original paragraph  
2 in the beginning. That's my alert to the people.  
3 It's power to the people. You will see how -- okay.

4 CHAIR RAVEL: Thank you very much. We have  
5 your materials. We really appreciate it.

6 MS. YOUNG: You will see how this so  
7 important, how officials are misleading all the  
8 legislation. So if you read it what I say is that the  
9 proposal is meaningless.

10 CHAIR RAVEL: Thank you.

11 MS. YOUNG: Thank you very much.

12 CHAIR RAVEL: Everybody on the Commission  
13 will get a copy of the materials that have been  
14 submitted.

15 MS. YOUNG: Yeah. Thank you very much.

16 CHAIR RAVEL: Thank you so much.

17 Yes, sir?

18 MR. SAI: Thank you, Chair Ravel, for the  
19 additional time. And I will watch my lights. I would  
20 like to go over a couple of things that I didn't have  
21 the time to address in three minutes, which are fairly  
22 straightforward. One is not quite as, I suppose,  
23 contentious or impressive as some of the other issues  
24 raised today, but as discussed in this Commission's

1 technical web site improvement forum, we have one  
2 proposal, which is on page 2 of our comments, which is  
3 that the Commission simply standardize the contributor  
4 information so that the same contributor can be  
5 recognized if they submit with a middle initial or a  
6 middle name. That should just get standardized so  
7 that there is no question of who the same person is.

8 Secondly, on 501(c)(4) identity laundering,  
9 this Commission reached a stipulated consent agreement  
10 with National Defense PAC in Carey, represented by Dan  
11 Backer, hardly a wilting willow. And they agreed that  
12 maintaining a Carey account for independent  
13 expenditures was hardly a burden. And I would suggest  
14 to the Commission that this is the natural approach  
15 for a (c)(4). If a (c)(4) wishes to expend and is  
16 permitted by law, though I don't think they are, but  
17 if they are, if they wish to expend 49 percent of the  
18 money for election communications or a combination to  
19 a super PAC, they can maintain a Carey account.

20 It's not that much of a burden. Only  
21 contributions to the Carey account would need to have  
22 disclosed donors and so forth. They'd be allowed to  
23 do whatever speech they wish, and it simply needs to  
24 be disclosed.



1           Chair Ravel, you raised the question of who  
2           is pushing this issue of, you know, the Internet  
3           restrictions. I would point the Commission to  
4           Conservative Action Fund's comments, which portray  
5           exactly as has been described.

6           And, Commissioner Goodman, with all respect,  
7           I believe that your comments in the MUR were to that  
8           effect. I would obviously agree that small donors,  
9           low- or no-cost expenditures should not be regulated  
10          by this Commission. And I would urge the Commission  
11          to consider what it did with our bitcoin AOR. You  
12          previously deadlocked. With our AOR, you gave a  
13          unanimous approval. And I believe that this  
14          Commission can work together and reach consensus  
15          agreements on matters like Carey accounts.

16          And finally, I suppose I'd like to thank you  
17          for having me, and I'll see you tomorrow.

18          CHAIR RAVEL: Yes. Thank you. It's a  
19          double header. All right. I think that is all the  
20          individuals who have asked to speak. So if there is  
21          any further -- Commissioner Weintraub.

22          COMMISSIONER WEINTRAUB: Thank you, Madame  
23          Chair. First of all, I want to thank the staff, who  
24          sorted through 32,000 comments and read them and

1 organized them and made copies for us and analyzed  
2 them for us. Ms. Stevenson, Mr. Noti, Mr. Lutz. Ms.  
3 Gyory was here before. I think Ms. Rothstein. Do I  
4 have the right team? And I'm sure many others in our  
5 Office of General Counsel. I really want to thank you  
6 for all the hard work you've put on this issue.

7 And I also want to thank you, Madame Chair,  
8 for convening this hearing and for -- particular for  
9 insisting and sticking to your guns that we hear from  
10 people who don't have lawyers, and don't read the  
11 *Federal Register* and just wanted to come in and talk  
12 to us. And this was very innovative, and I found it  
13 illuminating.

14 Some of our colleagues were a little bit  
15 terrified at the thought of people who hadn't signed  
16 up in advance and submitted written comments actually  
17 just walking in the door and talking to us. And there  
18 was a surprising amount of debate that went on beyond  
19 the scenes over whether we could actually do this or  
20 not. And I thank you for sticking to your guns and  
21 insisting that we do this. I think it was a great  
22 idea and ultimately not all that scary after all.

23 I also appreciate all of the commenters, all  
24 of the many commenters. Again, some of our colleagues

1 would have preferred to have a much narrower hearing  
2 and to have a much narrower range of comments. Some  
3 of them took exception that members of the public had  
4 the temerity to actually not limit themselves to the  
5 narrow range of issues that might have been presented  
6 by the McCutcheon decision, but actually took the  
7 opportunity to share with us their passions and their  
8 concerns about money and politics. And we heard from  
9 people with a wide range of views on -- I can't even  
10 say on both sides of the issues because there were  
11 more than two. And I think that was great that we had  
12 that opportunity.

13 So I thank all of the folks who took the  
14 trouble to travel, in some cases long distance, and to  
15 sit down and write us comments. I believe that we --  
16 this should not be the end of this process. An  
17 advanced notice of proposed rulemaking is merely a  
18 question to the public as to whether, whether we  
19 should actually engage in a rulemaking process,  
20 whether we should put together specific proposals and  
21 seek further public comment and consider whether to  
22 adopt new rules.

23 Putting out a notice of proposed rulemaking  
24 is not a very scary thing to do, although it has

1 become increasingly difficult around here to put out  
2 proposals that, you know, not everybody necessarily  
3 agrees with going out the door.

4           But I think that given the wide range of  
5 comments that we've received, and given the  
6 overwhelming support in those comments -- as I said,  
7 our staff analyzed them, said 75 percent of the  
8 comments supported further regulation of money in  
9 politics, supported in particular further action to  
10 ensure better disclosure of money in politics. And as  
11 a result of all of that feedback, I believe we should  
12 go further.

13           And if the Chair will permit me, I would  
14 like to make a motion that in light of the extensive  
15 public comments and testimony received by the  
16 Commission in response to the October 17th, 2014,  
17 advanced notice of proposed rulemaking, and in light  
18 of the clear public mandate created by requests from  
19 tens of thousands of Americans, that we revise our  
20 regulations to increase disclosure of political  
21 spending and limit the influence of money in our  
22 elections.

23           I move that the Commission open a  
24 rulemaking, not come to any conclusions today, just

1 open a rulemaking, and that we direct the Office of  
2 General Counsel to draft specific proposals to reflect  
3 the comments submitted by the public and the testimony  
4 we heard today.

5 CHAIR RAVEL: Commissioner Walther.

6 COMMISSIONER WALTHER: Thanks, yes. I do  
7 want to congratulate the Chair. I think this was a  
8 gutsy thing to do, and to innovate any time there are  
9 strong political views on both sides is always chancy  
10 at best, and it turned out really very, very well, I  
11 think, and I'm proud of everybody for the way it  
12 occurred.

13 And I do -- on the motion thing, I think  
14 this isn't the place for it. This is a hearing for  
15 the people, and we're not here to try and conduct  
16 business and debate that. That's not on our agenda.  
17 So I -- you know, I suggest we pick that up and, you  
18 know, put it on the agenda whenever it's appropriate  
19 to do that, but not today.

20 But again, I think what maybe I hope the  
21 public will walk away with is that this Commission has  
22 to struggle with their diverse views on ideology and  
23 try to do the best we can. This is always good  
24 insight for all of us every time we hear from

1 somebody, and it gives us a little better look at how  
2 people are seeing it from the other part of the world.

3 So again, thanks, and all my colleagues -

4 CHAIR RAVEL: Thank you.

5 COMMISSIONER WALTHER: -- I think are  
6 probably -- I think we're a step ahead today because  
7 of this.

8 CHAIR RAVEL: Commissioner Hunter.

9 COMMISSIONER HUNTER: I too want to thank  
10 the Chair for holding the hearing today. But I'd take  
11 exception to what Commissioner Weintraub said about  
12 people being afraid to listen to the public. That's  
13 absolutely not true. We've all encouraged public  
14 comment in the years that we've been here. There is  
15 no evidence that we haven't done so. And the only  
16 thing that we did raise, yes, behind the scenes was  
17 some of us were concerned that the public may not know  
18 about the ability to come here today because the ANPRM  
19 that we agreed to and that was published in the  
20 *Federal Register* says very specifically anyone wishing  
21 to testify at the hearing must file written comments  
22 by the due date, and must include a request to testify  
23 in the written comments.

24 And so therefore anybody who didn't submit a

1 comment by January 15th, if they were going by what  
2 was on the *Federal Register*, they literally had no  
3 notice, no proper notice, that they were able to be  
4 here today. And so we were concerned that it might  
5 not be fair to the general public, who weren't told  
6 that they could come in today.

7 The Chair said it was very important to her  
8 to not abide by the language that we agreed to, and I  
9 -- I'll just speak for myself. I said that was fine  
10 with me. I knew it was very important to her. And I  
11 said as long as we say without objection so that the  
12 Commissioners had the ability to object if they wanted  
13 to -- you notice that she honored that request and  
14 said at the beginning of the hear, and no  
15 Commissioners objected to that.

16 So that was the behind-the-scenes that  
17 Commissioner Weintraub was referring to. And again,  
18 nobody is afraid of public comment, and our record  
19 demonstrates that. Thank you, Madame Chair.

20 CHAIR RAVEL: Thank you. Commissioner  
21 Petersen.

22 VICE CHAIR PETERSEN: Yes. Since we were --

23 CHAIR RAVEL: Vice Chair, excuse me. I  
24 demoted you.

1                   VICE CHAIR PETERSEN: Thank you, Madame  
2 Chair. I'm glad to be restated to my current title.  
3 Since we gave some thank yous to people in the  
4 building, I just also want to thank -- carrying out  
5 this required a lot of logistical preparation, and  
6 there were -- and I will do a poor job at naming  
7 everybody, but Ed Holder, India Robinson, Greg Scott,  
8 and the staffs under them have done a tremendous job  
9 ensuring that this was an orderly process.

10                   There are a lot of people behind the scenes  
11 from the signup sheets to making sure people got in  
12 the building, signed in, up to this room, in and out.

13 I think that their efforts today in making sure that  
14 this hearing went smoothly, and I think was -- and  
15 productively. I think that their efforts should be  
16 acknowledged as well.

17                   CHAIR RAVEL: Thank you. I absolutely -- I  
18 concur with both of those comments. And for sort of a  
19 quiet, little agency, as we have been, it was a major  
20 undertaking. So I appreciate from all the staff. All  
21 the staff did an amazing job.

22                   Let me just sort of characterize -- not that  
23 I didn't want to follow the *Federal Register*, but what  
24 I care about deeply is hearing from the public



1 because, as I said at the beginning, this is a  
2 Commission that does work that is essential to the  
3 American public. We -- and all the people who came  
4 forward to testify and talk about how they feel about  
5 campaign finance issues demonstrated that. And the  
6 32,000-plus who commented demonstrated that. And for  
7 that reason, I think it is incumbent on us to always  
8 listen to the public. This kind of issue is so  
9 crucial to everybody's life, and would there -- as  
10 many of you have said from your personal stories.

11 So it is not about trying to contravene  
12 something that's in the *Federal Register*. It's about  
13 trying to make sure that the public has a voice in  
14 this Commission as well as in our political system.

15 So with that, there is a motion. And I know  
16 you spoke to this. I don't know if anybody else  
17 wishes to speak to the motion.

18 VICE CHAIR PETERSEN: I'll just add that I  
19 guess I have some questions to the extent it's even in  
20 order to entertain a motion in this meeting. But I  
21 think it's premature at this time. I think that, you  
22 know, we've got this binder of -- and these are just  
23 some of the witnesses. This isn't even -- this is  
24 just a subsection of the comments that we're still in

1 the process of digesting. And obviously we've been  
2 here since the wee hours of this morning listening to  
3 testimony, pretty much nonstop.

4 I think there is a lot that needs to be  
5 digested and considered. And so if the motion is  
6 considered in order, I will be abstaining from voting  
7 because I don't want to -- I don't want a vote to be  
8 interpreted as saying, you know, that I -- I don't  
9 want anything that I would do to indicate that I think  
10 that what has been proposed here or been put on the  
11 table was not worthy of further consideration. I  
12 think that it needs more time to sink in and more time  
13 to study before I'd be prepared to make that sort of a  
14 vote.

15 So if we do go to a vote, I'll be  
16 abstaining.

17 COMMISSIONER GOODMAN: Must have a  
18 parliamentary inquiry.

19 CHAIR RAVEL: Yes. I was going to ask --

20 COMMISSIONER GOODMAN: Leading up to this  
21 meeting --

22 CHAIR RAVEL: I was going to ask that same  
23 question.

24 COMMISSIONER GOODMAN: To some

1       consternation, we were told that this was not a  
2       deliberative session.

3               CHAIR RAVEL: Right. I appreciate that.

4               COMMISSIONER GOODMAN: And that *Robert's*  
5       Rules would not even apply. And so now I'm confused  
6       about whether this is a deliberative session or not.  
7       And it certainly was not noticed or conducted as such.

8               CHAIR RAVEL: And thank you for raising  
9       that. I was going to turn to counsel for her advice  
10       with regard to this.

11              MS. STEVENSON: I would have to defer to my  
12       parliamentarian expert on that question.

13              CHAIR RAVEL: Thank you, Mr. Calvert.

14              (Pause)

15              COMMISSIONER WEINTRAUB: Madame Chair,  
16       Madame Chair, if I may. I don't want to put our  
17       lawyers on the spot. I didn't mean to start a  
18       controversy over whether the motion was in order. I  
19       assumed we're meeting, a motion is in order. But I am  
20       heartened by the comment of at least one of my  
21       colleagues that he's willing to consider starting a  
22       rulemaking in response to all the public comments. In  
23       order to avoid -- I mean, unless you want to weigh in.  
24       No? Counsel would really rather not.

1           And I'm sorry for putting you on the spot.  
2           I will withdraw my motion, but I will not -- but I'm  
3           not withdrawing permanently. It will come back. I  
4           believe that the public has really spoken very  
5           persuasively on the need for action, and I will note  
6           that I wasn't proposing anything very specific, just  
7           that we ask our lawyers to start working on a notice  
8           and to draft something for us.

9           I'm sorry that people are not willing to  
10          take even that preliminary step, but as I said, we'll  
11          -- this issue is not going to go away, and we'll come  
12          back to it again. So I will temporarily withdraw my  
13          motion.

14                 CHAIR RAVEL: All right. Thank you very  
15          much, Commissioner Weintraub.

16                 Is there any other comment, anything for the  
17          good of the order? If not, this hearing is adjourned.

18          Thank you all for coming.

19                 (Whereupon, at 4:51 p.m., the public hearing  
20          in the above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Public Hearing on the McCutcheon v.  
FEC Advance Notice of Proposed  
Rulemaking

HEARING DATE: February 11, 2015

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Election Commission.

Date: 2/11/15

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