



FEDERAL ELECTION COMMISSION  
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**Dozens of Individuals, Experts Testify Before Commission at *McCutcheon* Hearing:  
FEC Office of Communications, Information Division Report**

Washington – More than 60 witnesses testified at the Commission’s February 11 public hearing on potential rule changes following the Supreme Court’s decision in *McCutcheon, et al. v. FEC*. Those who spoke voiced many of the views expressed in the 32,000-plus written comments the Commission received in response to its Advance Notice of Proposed Rulemaking (ANPRM) on the subject. ([79 FR 62361, October 17, 2014](#))

Chair Ann M. Ravel opened the day-long hearing by thanking those who submitted comments. “I want to thank the over 32,000 people from all over the country who considered these important issues and provided written comments to the Commission.” Chair Ravel said she believes “that a public agency is obligated to hear from all members of the public. This is especially true for the FEC, whose mission is to protect the democratic process for all Americans.”

Vice Chairman Matthew S. Petersen also thanked participants in the hearing and noted that the *McCutcheon* decision was “the most recent instance in which the Supreme Court has held that a significant plank in the federal campaign finance legal architecture impermissibly encroaches upon the freedom of speech protected by the First Amendment. ... It is against this backdrop that the Commission must evaluate the comments and testimony presented as part of this proceeding.”

Those who spoke before the Commission included campaign finance law experts, political party and nonprofit organization representatives, and other members of the public. A complete listing of the witnesses can be found on the [hearing web page](#), along with archived audio and video recordings of the event.

The first panel of six witnesses focused on disclosure, dark money and the FEC’s jurisdiction.

**Karen Getman**, a campaign finance lawyer, spoke first about disclosure requirements for political advertisements.

“I know you usually have campaign lawyers up here telling you to slow down, be cautious, and not impose too many disclosure rules because you will stifle speech, but I'm here to suggest just the opposite,” she said. “Campaign activities” are “not going to stop simply because you let people know who is paying to produce the message that you are seeing on YouTube or Facebook or Instagram.”<sup>1</sup>

**Elisabeth MacNamara**, president of the League of Women Voters of the United States and chair of the League of Women Voters Education Fund, said the Commission should enact “new rules requiring full disclosure in our elections.”

“Super PACs raised and spent more than \$600 million in 2014 to elect or defeat candidates and they will continue to raise and spend unlimited amounts of money because they are supposedly independent from the candidates, when in reality, there are too many ways to coordinate,” she said. “You all can do something to stop the Super PACs and other outside groups from coordinating with candidates and the League urges you to do so.”<sup>2</sup>

**Michael J. Malbin**, executive director of the Campaign Finance Institute, critiqued the FEC’s website and emphasized that the agency should work harder to allow the public to access information.

“We all know [there is] disagreement within the Commission about regulatory policy, but here there should be a consensus,” he said. “The key purpose of disclosure is to inform citizens; the rest of us stakeholders should come second. ... Only you can put the citizens at the top where they should be.”<sup>3</sup>

**John R. Phillippe Jr.**, chief counsel for the Republican National Committee, spoke of the *McCutcheon* opinion itself, saying the Supreme Court was not suggesting “to the Commission that it should do further rulemaking.”

“Indeed this Commission has done a rulemaking post *McCutcheon*,” he said. “Your *McCutcheon*-related work is complete ... It was Congress, not the Commission, that the Court primarily addressed in its decision.”<sup>4</sup>

**Donald Simon**, counsel for Democracy 21, took a different tack by identifying large candidate-specific Super PACs and characterizing their non-coordinated independent expenditures as “legal fiction.”

“The Commission's announced enforcement policy is at war with the expressed language of its own regulation and certainly at war with the rationale of the *McCutcheon* opinion,” he said.<sup>5</sup>

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<sup>1</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- starting at 9:00 & 9:30

<sup>2</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 16:19 & 16:28

<sup>3</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 29:10

<sup>4</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 30:50

<sup>5</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 44:59

“These kinds of technical changes are important, but they pale in comparison to what the Commission should do first: Which is to fix its disclosure and coordination rules.”<sup>6</sup>

The final panelist to speak was former Commissioner and founder of the Center for Competitive Politics, **Bradley A. Smith**. He echoed Phillippe’s questions about the Commission adding to any disclosure regulations as a result of *McCutcheon*.

“Campaign finance generally remains more heavily regulated at the federal level than at any time prior to 1975 – and in many ways more heavily regulated than in any time prior to 2003,” he said.<sup>7</sup> “Federal laws and regulations governing campaign finance total over 376,000 words, not including advisory opinions, statements of policy, and the like. That’s about 75 percent longer than Plato’s *Republic* – generally considered the definitive philosophical treatise on all questions regarding government.”<sup>8</sup>

The hearing’s second panel consisted of seven people who testified on issues that included Super PACs, coordination and how rules are commonly evaded.

**Richard Briffault**, a professor at Columbia Law School, said that independent expenditures by single-candidate Super PACs should be considered coordinated expenditures and subject to candidate contribution limits.

“The rise of single-candidate Super PACs has given new urgency for the need for a more effective and realistic definition of coordination,” he said.<sup>9</sup> “This change would be no panacea, but it would safeguard a fundamental feature of the Federal Election Campaign Act that we often overlook – the requirement that candidates centralize their finances in a single authorized campaign committee.”<sup>10</sup>

Stanford University Professor **Bruce E. Cain** suggested that other branches of government should look for ways to deal with campaign finance issues.

“I believe it’s the responsibility of Congress, the Supreme Court, state legislatures to experiment with ways to deal with the constraint that the Court has given us and address the real problems of fairness and polarization,” he said.<sup>11</sup> “I have seen us go through the regulatory process with issue ads and what is a lobbyist and now on the issue of, you know, what's coordinated spending, and obviously there have to be some rules.”<sup>12</sup>

“The reality is that they are all evadable,” he said, “Put a clever person on the other side and they will find a way to evade it.”<sup>13</sup>

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<sup>6</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 45:19

<sup>7</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 46:19

<sup>8</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 46:45

<sup>9</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:09:35

<sup>10</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:12:28

<sup>11</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:19:28

<sup>12</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:19:38

<sup>13</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:19:54

By contrast, **Craig Holman**, government affairs lobbyist for Public Citizen, placed the responsibility for large undisclosed contributors on the shoulders of the Commission, and said it was up to the Commission to solve the problem.

“I want to begin by stating the obvious, the new dark money that is plaguing federal elections today is an invention of you,” he said referencing a 2007 FEC regulation that he said redefined disclosure as required under the Bipartisan Campaign Reform Act.<sup>14</sup> “So, this is a problem that the FEC created single handedly, and you can single handedly fix it.”<sup>15</sup>

Former Commissioner **Donald F. McGahn**, representing the Freedom Partners Chamber of Commerce and Freedom Partners Action Fund, said the Commission should limit any moves to further regulate following recent court cases.

For instance, he said much of the discussion during the hearing and comments about “joint fundraising activities” “is overhyped.”<sup>16</sup>

“Joint fundraising committees are merely ways to ensure compliance,” he said. “They are ways for committees to work together to do joint fundraising committees and ensure that there is not in kind contributions between the various committees. In other words, a way to police the base limits.”<sup>17</sup>

“One thing we do suggest, however, to the extent that one wants to revisits the regs, is not to make them more regulatory” so that “campaigns that are not raising a lot of money, have to employ a lawyer, treasurer, set up a separate bank account and worry about how many different bags of Doritos people brought to their event. You could have three committees exempted out from this, everyone brings their bag of Doritos and Coca-Cola. That’s not really corruption or its appearance.”<sup>18</sup>

**Mark Schmitt**, director of the program on political reform at the New America Foundation, said Commissioners “need a clear foundation for what we're trying to do with these regulations and with the law in general, and that focus should not be entirely corruption.”<sup>19</sup>

“Even in that broader conception,” he said, a regulation focused on corruption, “doesn't capture a lot of what we're really concerned about in the political process.”<sup>20</sup>

**Zephyr Teachout**, an associate professor of law at Fordham University, said the current campaign finance system has allowed wealthy individuals and corporations to replace

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<sup>14</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:24:20

<sup>15</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:25:37

<sup>16</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:37:50

<sup>17</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:37:55

<sup>18</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:38:20 to 1:38:58

<sup>19</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:42:24

<sup>20</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @ 1:42:38

monarchies in the current model of government in America -- something America's founders tried to avert.

"They called this at the time 'the problem of place men,'" she said describing how some members in British Parliament were placed in their positions due to the power of the king.<sup>21</sup> "Our current democracy is threatened by a variation of this kind of political arrangement," she said. "The current risk of placemen politics does not exist with a king, but exists where individuals, wealthy individuals, wealthy companies or groups effectively sponsor individual politicians."<sup>22</sup>

**Robert Bauer**, an attorney for Perkins Coie, said contrasting viewpoints on the Commission could limit any new major steps in regulation.

"My point is not that the hearing that you are having today is, you know, pointless in any way whatsoever," he said. "I think it is good that the Commission is having the hearing, is airing the issues, and is hearing from distinguished panelists."<sup>23</sup>

"But the loud, persistent disagreements about the complex questions that we are dealing with and complex constitutional questions -- it seems to me are ones that would be very difficult for this agency to tackle when there are so many other tasks which I think are practical, constructive, prudent, that it could attend to."<sup>24</sup>

Following the second panel, the Commission offered the general public an opportunity to testify.

The first speaker was **Perianne M. Boring**, the founder and president of the Chamber of Digital Commerce, who spoke in favor of digital currencies.

These forms of currency could "dramatically enhance and expand voter participation in the political process," she said.<sup>25</sup> "As best stated by the FEC, there has been a great effect on the political process and led to increased participation in that process."<sup>26</sup>

**Rachel Brewer**, a student at George Mason University and an organizer for Represent.Us said, "there is one issue that unites the political right and left like no other: Campaign finance reform."<sup>27</sup>

"To have 80 percent of Americans to agree on anything is nothing short of incredible," she said, "and what we have done is get them to do more than agree."<sup>28</sup>

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<sup>21</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @1:51:02  
<sup>22</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @1:51:20  
<sup>23</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:00:31  
<sup>24</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:01:18  
<sup>25</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:23:30  
<sup>26</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:23:35  
<sup>27</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:27:15  
<sup>28</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:27:20

**Glenn Conway**, a citizen from North Carolina, discussed the large expenditures by outside groups in the state’s 2014 U.S. Senate race.

“Two-thirds came from outside organizations and PACs,” he said.<sup>29</sup> “For three months, we were carpet-bombed with negative ads by PAC after PAC. These PACs often provided erroneous and fraudulent information to voters, which was designed to confuse and mislead them<sup>30</sup> ... [Require] disclosure across all contributions across all PACs, across all Super PACs and so on, close any loophole that allows significant funding of any type without full and clear disclosure.”<sup>31</sup>

**Susan Grogan**, a professor of political science from St. Mary's College of Maryland and treasurer of the 18-24 Super PAC said that the *McCutcheon* case may have had some unrecognized consequences.

“One is that it *de facto* mandates disclosure as much as it mandates the removal of the aggregate limits,” she said, pointing out that there may have been many reasons beyond opposition that caused the Senate to fall short of the 60 votes necessary to invoke cloture on the DISCLOSE Act bill.<sup>32</sup> “It is simply wrong to infer that the failure to enact some sort of DISCLOSE-type of legislation means Congress did not want the Commission to impose additional reporting requirements.”<sup>33</sup>

**Jonathan Holtzman**, a student from St. Mary's College of Maryland, said he was “scared for the integrity of our electoral process.”<sup>34</sup>

“We now live in a time in which a single person is freely able to donate to each and every campaign in Congress and their connected PACs,” he said.<sup>35</sup> “If said person is particularly well heeled, then he or she alone can contribute a cool \$4,088,000.”<sup>36</sup>

**Terrence Threweatt Jr.**, a student from St. Mary's College of Maryland, said the *McCutcheon* decision, “states that one's right to the individual freedom to choose should be outweighed by another's individual freedom to spend, and choose the candidates that will, ultimately, come before the public for selection.”<sup>37</sup>

“This is a violation of the other basic principle that America was founded on, the principle of justice,” he said.<sup>38</sup> “In Latin, the word ‘justice’ translates to *Equitas*, which means equality and fairness. Better rules concerning affiliation, joint fundraising and disclosure of donations under different variations of the same person's flame should be passed to protect the votes of the middle and lower class.”<sup>39</sup>

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<sup>29</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:28:35

<sup>30</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:28:40

<sup>31</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:30:50

<sup>32</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:31:30

<sup>33</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:32:40

<sup>34</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:34:30

<sup>35</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:35:55

<sup>36</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:36:05

<sup>37</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:38:35

<sup>38</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:38:35

<sup>39</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:38:40

**Matthew Walchuck**, a student from St. Mary's College of Maryland, said to answer the question of how the “FEC can further improve its collection and presentation of campaign finance data, the solution lies not within a new and innovative medium of communication, but rather, a more stringent concentration of resources in obtaining a data set.”<sup>40</sup>

“It is a necessity that the FEC mandate disclosure rules on all organizations that make significant expenditures and donations in order to prevent corruption and the deterioration of the people's First Amendment rights,” he said.<sup>41</sup>

**Sai**, the founder, president, treasurer and director of Make Your Laws PAC, spoke in favor of greater disclosure.

“There are laws currently on the books ... all clearly say that any donor to an independent expenditure, a PAC, a candidate must be disclosed,” he said.<sup>42</sup> “However, right now, a (c)(4) can quite legally launder the identity of 49 percent of its donors, give that to a Super PAC, which then says, yeah, we got a million dollars from the (c)(4), and the (c)(4) tells you” that they are not going to disclose their contributors “if you ask them where that money came from.”<sup>43</sup>

**Michael Malilo** spoke against any increased FEC regulation of the Internet.

“The Internet has been the most vibrant source for innovation and economic expansion that we have ever seen,” he said.<sup>44</sup> “The primary reason for that is that the federal government has decided to stay out of the way,” he said.<sup>45</sup> “If you go and post something on Facebook or put a video up on YouTube, when you know it's going to be regulated, it's, obviously, going to inhibit participation.”<sup>46</sup>

**Ron Wilcox**, a political organizer in northern Virginia, said he believed current laws go too far in regulating contributions.

“I am telling you that the regulatory regime that is in place in the United States is absolutely chilling to the grassroots,” he said.<sup>47</sup> “I find a federal worker, and they tell me I'd love to be involved in Conservative or Republican politics. I simply cannot because if my name gets out as a donor, even at a small level, [there] will repercussions at work.”<sup>48</sup>

**Rick Buchanan** from Warrenton, Virginia, said he was worried about any additional regulations as a member of a local party organization.<sup>49</sup>

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<sup>40</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:41:05

<sup>41</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:42:35

<sup>42</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:43:45

<sup>43</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:44:30

<sup>44</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:46:55

<sup>45</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:47:01

<sup>46</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:47:05

<sup>47</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:49:35

<sup>48</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:49:50

<sup>49</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:52:05

“The rule you are considering is only intended for professionally produced political videos, but opening the door to regulating speech on the Internet is a slippery slope,” he said.<sup>50</sup> “For the FEC to expand its regulatory powers to the Internet is clear overreach with dangerous implications for the future.”<sup>51</sup>

**Daisy Belden**, a student at the University of Michigan, said the “current regulations that the FEC has in place to prevent the circumvention of the base contributions limits are sufficient.”<sup>52</sup> And the ruling in *McCutcheon* found the regulatory scheme did not allow for circumvention, and that the regulations that are in place are enough.”<sup>53</sup>

**James Campbell** spoke against new Internet regulations, “because right now, we already have regulations in place to stop paid advertising against PACs, political parties and etcetera, so they already have to report.”<sup>54</sup>

**Zachary Nickerson**, a voter from Pennsylvania and intern for Campaign for Liberty, said, “the FEC should not impose any new regulations making it harder for ordinary people to participate in the political process.”<sup>55</sup>

“Such regulations only benefit incumbent politicians”<sup>56</sup>

Disclosure was **Jacqueline Coolidge’s** primary concern. “I think that if we are going to salvage our democracy,” she said, “we really need to have -- at a minimum -- the disclosure of all kinds of contributions -- direct and indirect -- over the threshold of the so-called bike club.”<sup>57</sup>

**Lee Yun**, an economics PhD, said she was speaking to “protect our democracy ... against unjust influence of corporations.”<sup>58</sup>

**Stacy Bridges** offered, “Bottom line: if we are going to keep money in politics, do it; but hold them accountable.”<sup>59</sup>

**Michael Burkes**, a DC lawyer, said “our democracy is at risk” from the effects of large contributors.

He added, “All campaign contributors should be disclosed before the Supreme Court comes to its senses and reverses *Citizens United*, which is a disgrace, and it will go down in history as one of the worst decisions in this country.”<sup>60</sup>

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<sup>50</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:52:25

<sup>51</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:52:45

<sup>52</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:53:35

<sup>53</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:53:45

<sup>54</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:55:10

<sup>55</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:56:15

<sup>56</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @2:57:50

<sup>57</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:00:05

<sup>58</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:02:33

<sup>59</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:06:15

<sup>60</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:07:40

Former Rep. **Ernest James Istook Jr.**, R-OK, representing the Tea Party Patriots, said his organization opposes “any effort by the FEC to expand its regulation of speech.”<sup>61</sup>

“The current regulations cause enough problems, expense and infringements on liberty; please do not make things worse,” he said.<sup>62</sup> “Whether you label that activity as electioneering, dark money or anything else, the First Amendment protects not only our speech, but also our freedom of association, which is part of the right to peaceably assemble.”<sup>63</sup>

Following these individual witnesses, the Commission convened the third panel, consisting of seven people.

After thanking the Commission for “conforming its regulations with the holdings of *Citizens United* and *McCutcheon*,” attorney **James Bopp, Jr.**, of the James Madison Center for Free Speech, said he was concerned about how increased disclosure could lead to potential harassment of contributors by those who misuse the information.

“Public disclosure of supporters, of various causes, and their political activity, will chill their participation, and that that should be done only in the most compelling circumstances.”<sup>64</sup>

**Jay Costa**, representing CounterPAC, said, “Elections are the backbone of American democracy.”

In *Citizens United*, “eight of the Court's nine justices concurred that transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages. The Court reiterated this view in its *McCutcheon* decision stating that disclosure can serve to deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures through the light of publicity.”<sup>65</sup>

Former Commissioner **David Mason** began his testimony by quoting “The Spider and the Fly,” a 19<sup>th</sup> century children’s poem by Mary Howitt, as a metaphor to describe the interaction between regulators and those they regulate.

“Will you walk into my parlor, said the spider to the fly. It is the prettiest parlor that ever you did spy,” he began.<sup>66</sup> “Now, many of you may know this fable ends very badly for the fly, who eventually succumbs to flattery, goes up the winding stair, and indeed is ne’er seen again.”<sup>67</sup>

“This cautionary tale applies when a regulator invites parties who might be subject to regulation into a conversation,” he said. “Of course, regulators don’t actually eat their prey, but once ensnared in the web of regulation, few ever escape.”<sup>68</sup>

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<sup>61</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:08:20

<sup>62</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:08:45

<sup>63</sup> <http://www.fec.gov/audio/2015/20150211AM.mp3> -- @3:09:05

<sup>64</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:10:35 & @0:11:26

<sup>65</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:14:11

<sup>66</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:20:45

<sup>67</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:21:08

Former Commissioner **Hans A. von Spakovsky**, now with the Heritage Foundation, took issue with any attempts by the Commission to “revise the regulations on earmarking of contributions, affiliation factors, joint fundraising committees, and disclosure requirements in light of the Supreme Court's decision in *McCutcheon*.”<sup>69</sup>

He also opposed regulating online activity, saying, “The FEC has no authority to regulate this area simply because, ‘it's a growing force in the political arena.’” He argued, “A proposal that would implicate the First Amendment so profoundly, and greatly expand regulation into an area that the FEC has only lightly regulated should come from Congress, not the FEC.”<sup>70</sup>

**Paul S. Ryan**, director of FEC Programs for the Campaign Legal Center, said that the Commission should restrict single-candidate Super PACs from collecting unlimited funds by enforcing the existing requirement for multicandidate committees to support a minimum of five candidates.

“The *McCutcheon* Court suggested that the Commission might strengthen section 110.1(h), by defining how many candidates a PAC must support under the aggregation rule,” he said.<sup>71</sup> “Yes, this would restrict single-candidate Super PACs and yes, this interpretation is required by a plain reading of the existing regulations, cited approvingly by the Supreme Court in *McCutcheon*.”<sup>72</sup>

**Daniel I. Weiner**, counsel for the Brennan Center's Democracy Program, said his organization believes the “Commission needs to step up enforcement”<sup>73</sup> of “earmarking affiliation rules and other measures designed to protect against circumvention of the base contribution limits.”

“[U]nfortunately, alleged violations are rarely even investigated,” he said.<sup>74</sup> “Unenforced campaign finance rules, in our view, are, in some respects, worse than no rules at all. They breed contempt for the law and foster a system weighted in favor of insiders and special interests who know how to play the game.”<sup>75</sup>

The fourth panel comprised five speakers.

**Lisa Gilbert**, director of Public Citizen's Congress Watch division, said there was an “extreme need for changes to our disclosure regime.”<sup>76</sup>

“The FEC should strengthen the coordination and earmarking rules to prevent circumvention of the base contribution limits by such entities as Super PACs,” she said.<sup>77</sup> The agency should also “place reasonable limits on joint fundraising committees.”<sup>78</sup>

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<sup>68</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:21:22

<sup>69</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:26:55

<sup>70</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:29:20

<sup>71</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:37:35

<sup>72</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:38:10

<sup>73</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:49:05

<sup>74</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:49:30

<sup>75</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:49:47

<sup>76</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:59:25

**Shaun McCutcheon**, the winning plaintiff in the Supreme Court case that bears his name, said “striking down of aggregate limits speaks directly to our First Amendment rights.”<sup>79</sup>

McCutcheon, who works for the Coolidge-Reagan Foundation, spoke against additional rules on joint fundraising committees saying, “Any further regulatory restrictions would just simply make it more difficult for individuals to make multiple campaign contributions that the Supreme Court in *McCutcheon* gave us the power to make.”<sup>80</sup>

“In other words, JFC's just simply allow us to write one check, but they're still subject to the base limits. As to disclosure, any special treatment of Internet contributions can only have a chilling effect in the exercise of first amendment rights.”<sup>81</sup>

**Stephen Spaulding**, counsel on policy for Common Cause, said the Commission is not fulfilling the goals of disclosure put forth on the sign displayed in the agency’s front window.<sup>82</sup>

“The Commission has not informed the public about all money raised and spent in federal elections,” he said.<sup>83</sup> “Its 3-3 split votes have failed to enforce campaign financial laws and has actually reduced the ability of the citizenry to make informed decisions at the ballot box, and it has failed to update its regulations to keep pace with the Court’s decisions and keep the sunlight shining on political actors funneling the hundreds of millions through secretive organizations.”<sup>84</sup>

**Dan Backer**, representing the Conservative Action Fund, said, “the proposed rules related to earmarking, affiliation, joint fundraising, and any increased burdens on Internet speech are largely outside of the Commission's authority to implement and are simply not called for by the holding in *McCutcheon*.”<sup>85</sup>

“In the five years since *Citizens United*, the sky hasn't fallen. The Republic still stands,” he said.<sup>86</sup> “Democrats keep getting elected besides premonitions to the contrary and somewhat to my regret. Elections today are more competitive at both the primary and general election level.”<sup>87</sup>

**Brian G. Svoboda**, a lawyer for Perkins Coie, said the “lack of disclosure that you are seeing in the system is a function of the fact that you have corporations making independent expenditures,

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<sup>77</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:58:55

<sup>78</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @0:59:10

<sup>79</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:04:05

<sup>80</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:06:50

<sup>81</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:07:50

<sup>82</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:09:30

<sup>83</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:10:15

<sup>84</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:10:12

<sup>85</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:14:15

<sup>86</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:16:26

<sup>87</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:16:30

nonprofit corporations and other entities that aren't registering as political committees with the Commission.”<sup>88</sup>

“If it is really the Wild West out there,” he said, “then maybe at some point you want to look at what the code requirements are for the sod houses. But it might not want to be the first thing that the Commission wants to do. It may want to look at what is really driving a lot of what you have heard about today.”<sup>89</sup>

The fifth and final panel consisted of six panelists.

**Heidi Abegg** of Our Generation said, “Regulating the Internet will most certainly not encourage greater citizen participation, but it will chill and discourage participation.”<sup>90</sup>

“The Internet is today's public square,” she said. “If you have a computer or a phone, you have equal access to your fellow citizens, even if you don't have \$123,000 (the former aggregate limit stuck down in *McCutcheon*).”<sup>91</sup>

**Norm Singleton**, the vice president of policy at Campaign for Liberty, urged the Commission “to reject any proposal to increase regulations on 501(c)(3) organizations, such as Campaign for Liberty.”<sup>92</sup>

Mr. Singleton said he was particularly concerned about “regulations that would in any way limit our ability to effectively use the Internet to communicate with and mobilize our members, or regulations that would increase disclosure requirements of the names of our donors and our activists.”<sup>93</sup>

**Andrew Langer**, president of the Institute for Liberty, said that past disclosure was a “ruse” by those “knowing that once the donors became public, [contributors] would be harassed.”<sup>94</sup>

“Such has been the case in recent memory,” he continued.<sup>95</sup> “Donors to the aforementioned American Legislative Exchange Council were harassed by the public and members of Congress when donor information was leaked; donors to organizations supporting California's Prop 8 were harassed.

The message this sends to people is simple: don't participate.”<sup>96</sup>

**Jeremiah Morgan**, a lawyer representing the Free Speech Coalition, said Congress and not the Commission should act, if necessary.

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<sup>88</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:22:18

<sup>89</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:23:15

<sup>90</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:48:25

<sup>91</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:48:35

<sup>92</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:48:35

<sup>93</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:59:00

<sup>94</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @1:59:10

<sup>95</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:02:40

<sup>96</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:02:45

“The Supreme Court did make certain suggestions about possible legislation which Congress may consider to better detect or deter circumvention of the base limits, if that problem even existed,” he said.<sup>97</sup> “However, the Court's so-called suggestions were not directed to the FEC but to Congress, and in fact, existing enforcement mechanisms of the base contribution limits appear to be working.”<sup>98</sup>

“Hopefully the Commission will terminate this proceeding and leave to Congress the job of considering debating and enacting laws,” he concluded.<sup>99</sup>

**Daniel Smith**, the democracy campaign director for the U.S. Public Interest Research Group, said that large groups running advertisements--including Super PACs--are making “the voices of ordinary Americans less and less relevant.”<sup>100</sup>

“The Commission should revisit its treatment of single- or few-candidate Super PACs to ensure that they provide more than a fig leaf of reassurance that a particular contribution is not necessarily going to a particular candidate,” he said.<sup>101</sup> “This could involve setting bright lines for the number of candidates, that Super PACs support, as well as” identifying “Super PACs' officers or staff.”<sup>102</sup>

**David Williams**, the president of the Taxpayers Protection Alliance, said his organization had “deep concerns, and opposition to the Advance Notice of Proposed Rulemaking.”<sup>103</sup>

“This new rule would severely undermine and limit the ability of groups to participate in online political and policy debates,”<sup>104</sup> he said, and, “severely restrict the sharing and usage of social media platforms like YouTube, Facebook and Twitter.”<sup>105</sup>

Following the fifth panel, the Commission again invited the general public to testify.

**Linda McGregor**, a registered nurse, who lives and works in Suffolk County, New York, spoke against the Court's *Citizens United* decision saying that it “legalized bribery.”<sup>106</sup>

“Many politicians are selling their votes to the people and artificial entities with the largest bribe, a.k.a. highest bid, a.k.a. highest campaign contributions and highest independent expenditures,” she said. “The majority of Americans are not being represented by the broad politicians, only the ones doing the bribing are benefit. President Barack Obama, Republicans and Democrats have been successfully bribed by Wall Street.”<sup>107</sup>

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<sup>97</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:07:12

<sup>98</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:07:22

<sup>99</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:09:41

<sup>100</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:13:35

<sup>101</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:13:51

<sup>102</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:14:05

<sup>103</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:15:40

<sup>104</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:15:50

<sup>105</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:17:13

<sup>106</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:38:13

<sup>107</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:38:13

**Dr. Janet Parker**, executive director of Medical Whistleblower’s Advocacy Network, said the Commission should consider more regulation.

“I am here to express our concern that the Supreme Court decisions like *Citizens United* have allowed many political spenders, such as the pharmaceutical industry, to effectively hide their true identities and greatly influence legislation and administrative policies,” she said.<sup>108</sup> “We request that you update and strengthen the FEC disclosure rules to protect our democracy.”<sup>109</sup>

**Megan Stiles** said she works with a small 501(c)(4) nonprofit organization “that one of the previous panels referred to as a ‘dark money organization.’”

“Any regulations further burdening these groups by forcing them to spend more resources on compliance and less on actual legislative process, would lessen the ability for ordinary Americans to be involved in the legislative process,” she said.<sup>110</sup> “The First Amendment protects all voices, not just popular ones, and this Commission should be promoting more speech and not less.”<sup>111</sup>

**Alan Robert** said the Commission should consider how rules would be interpreted by future Commissioners.

“The Internet is a wonderful invention,” he said.<sup>112</sup> “Being able to go online and read different debates and discussions from left wing, right wing, anarchists, socialists--it is enlightening ... I think when the FEC decides we are going to start regulating the Internet, whatever it is, as light or broad as it might be, it is just a slippery slope.”<sup>113</sup>

“There is too much money in politics and it’s getting out of control,” said **Rio Tazewell**, who works for People for the American Way, an advocacy organization working on free speech issues, First Amendment rights and money in politics.<sup>114</sup>

This money is “affecting income equality, issues like climate change, affecting students and their ability to get affordable loans for college. And there is a whole spectrum of issues that are just made worse by the influence of special interests.”<sup>115</sup>

He advocates for “disclosure, transparency, public financing of elections and ultimately a constitutional amendment to overturn Supreme Court cases like *McCutcheon*, like *Citizens United*.”

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<sup>108</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:44:22

<sup>109</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:46:45

<sup>110</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:47:50

<sup>111</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:48:22

<sup>112</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:49:15

<sup>113</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:49:25

<sup>114</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:50:55

<sup>115</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @2:51:00

**Jessica Newman**, who works for Communication Workers of America, criticized “the Supreme Court’s misguided decisions in *Citizens United*, *McCutcheon* and *Buckley v. Valeo*,” which “opened the flood gates to unlimited spending in our elections.”<sup>116</sup>

“The Court’s 5-4 decision struck down aggregate contribution limits so that one super wealthy donor can inject over \$3.6 million into our politics,” she said, “and actually as much as \$1.6 million more per election cycle, after last year’s CR Omnibus vote.”<sup>117</sup>

**Sean Trembley**, identifying himself as a concerned citizen and activist, spoke in favor of greater regulation.

“Americans have every right to know who is trying to influence their vote and the direction of this,” he said.<sup>118</sup> “I implore you, make contributions public, restore credibility to the electoral process and put a stop to dark money in our electoral system.”

**Malin Moench** spoke on behalf of himself as well as the Utah Physicians for a Healthy Environment.

“Before *Citizens United* these dark money groups were not permitted to spend directly on federal elections,” he said.<sup>119</sup> “But now, political spending by political nonprofits and business associations dwarfs spending by 501(c)(5) unions, which do have to disclose. Without knowing the identity of the sources of funds, it is impossible to know how much of the \$300 million in dark money spent in the 2012 election cycle came from corporations.”

In addition to the audio and video recordings of the hearing referenced above, all of the [written comments received in response to the ANPRM](#) are available for review on the FEC’s website

Chair Ravel concluded the hearing by thanking the public for attending, the speakers for their testimony and agency staff for their work. “What I care about deeply is hearing from the public because, as I said at the beginning, this is a Commission that does work that is essential to the American public.”<sup>120</sup> “All of the people who came forward to testify and talk about how they feel about campaign finance issues demonstrated that, and the 32,000 plus who commented demonstrated that. And for that reason, I think it is incumbent on us to always listen to the public.”<sup>121</sup>

--Alex Knott

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<sup>116</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @3:00:50

<sup>117</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @3:01:15

<sup>118</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @3:03:18

<sup>119</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @3:07:55

<sup>120</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @3:31:45

<sup>121</sup> <http://www.fec.gov/audio/2015/20150211PM.mp3> -- @3:32:05