

James Madison

JAMES MADISON CENTER FOR FREE SPEECH

GENERAL COUNSEL
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January 26, 2010

The Federal Election Commission
c/o Amy Rothstein, Assistant General Counsel
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Washington, D. C. 20463
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Ladies and Gentlemen:

Enclosed please find a petition for rulemaking from the James Madison Center for Free Speech following *Citizens United v. FEC*, 558 U.S. ____, 130 S.Ct. ____ (2010).

Thank you for your consideration.

Respectfully submitted,

JAMES MADISON CENTER
FOR FREE SPEECH

James Bopp

James Bopp, Jr., General Counsel
Randy Elf, Counsel

Copies to commissioners' offices

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Before the Federal Election Commission

Petition for Rulemaking Following *Citizens United v. FEC* Regarding 11 C.F.R. §§ 114.2, 114.4, 114.9, 114.10, 114.14, and 114.15

The James Madison Center for Free Speech respectfully submits this rulemaking petition following *Citizens United v. FEC*, 558 U.S. ____, 130 S.Ct. ____ (2010), and requests that the Federal Election Commission adopt temporary and permanent regulations (1) stating that it will not enforce 2 U.S.C. § 441b against any independent spending for political speech, including independent expenditures, *see generally Buckley v. Valeo*, 424 U.S. 1, 44 & n.52, 80 (1976), and electioneering communications, *see generally 2 U.S.C. § 434.f.3.A.i* (2002), and (2) conforming FEC regulations to *Citizens United*. *See* 11 C.F.R. § 200.2.a.1 (1992). The James Madison Center submits that such conformance should include:

Repealing 11 C.F.R. §§ 114.2 (2007) and 114.14 (2007) insofar as they implement the Section 441b bans *Citizens United* struck down.

Acknowledging that Section 441b no longer bans corporations, unions, or membership organizations from engaging in independent spending for political speech beyond their restricted classes, *see generally 2 U.S.C. § 431.9.B.iii* (2002); 11 C.F.R. 114.3 (2002), and repealing 11 C.F.R. § 114.4 (2007) insofar as it implements Section 441b and bans such speech.

Repealing 11 C.F.R. § 114.9 (2006) insofar as it implements Section 441b and bans independent spending for political speech.

Repealing 11 C.F.R. § 114.10 (2002), because the *MCFL*-corporation analysis is an exception to the Section 441b ban on corporate independent expenditures and electioneering communications, yet *Citizens United* renders the *MCFL*-corporation analysis unnecessary, compare *McConnell v. FEC*, 540 U.S. 93, 209-11 (2003), and *FEC v. Massachusetts Citizens for Life, Inc.* 479 U.S. 238, 256-65 (1986) (“*MCFL*”), with *Citizens United*, slip op. at 10-12, 20-50,¹ and

Repealing 11 C.F.R. § 114.15 (2007), the FEC’s version of the appeal-to-vote test. Compare *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 457, 469-70, 474 n.7 (2007) (“*WRTL I*”), with *Citizens United*, slip op. at 18-20. The test applies only to electioneering communications as defined in FECA. *WRTL II*, 551 U.S. at 474 n.7. However, under *Citizens United*, the Section 441b ban on electioneering communications is unconstitutional regardless of whether their only reasonable interpretation is as an appeal to vote for or against a clearly identified candidate or candidates in the jurisdiction. Compare *WRTL II*, 551 U.S. at 469-70, with *Citizens United*, slip op. at 7-8, 20-50.

The James Madison Center requests that the FEC adopt these regulations quickly, because 2010 is an election year, and speakers will want

¹ Available at <http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>.

to exercise – without fear of enforcement or prosecution – the First Amendment rights to political speech *Citizens United* recognizes.

Respectfully submitted,



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