Accountability After Citizens United – Cynthia Bauerly Keynote

Keynote: Hon. Cynthia L. Bauerly (Federal Election Commission)

FEC Chair Cynthia Bauerly: Good morning, everyone. Thank you, Michael, for that introduction. Some folks I dealt with when I had the honor of serving as Legislative Director for Senator Schumer and working with a lot of New Yorkers said that they were surprised when they learned I was from Minnesota, because that whole Minnesota "nice" reputation, they didn't think really applied to me. I took that as a compliment from New Yorkers, frankly. I'm so happy to be here with you today, to be a part of this effort to examine what I think is a very important question to our democracy: How do we ensure that our government remains accountable to those who elect it?

I've been asked to talk specifically about the role of Federal Election Commission with respect to promoting accountability in the wake of *Citizens United*. And I want to preface these remarks by saying, although I do serve as Chair of the Commission, a markedly difficult job as all of my predecessors would tell you, my remarks today are my own. They should be not imputed to the Commission or to many of my colleagues who, as you all know, will strongly disagree with some of the things that I'm about to tell you.

As you all know, the FEC's mission is to administer and enforce the law, the Federal Election Campaign Act. It's a rather limited role in the scheme of federal campaign finance law. We don't write the laws and we don't decide whether they're constitutional. Rather, we're told by Congress and the courts what our next steps are and what we should do. And let's face it; we regularly lose in court, either because our regulations weren't regulatory enough, or more recently because the statute and the regulations implementing it were found to infringe on someone's First Amendment rights.

We fairly could quote Lord Tennyson: "Ours is not to reason why; ours but to do and" – well, you know the rest. And some days, frankly, at the Commission, it does quite feel that way. That said, the Commission does play a substantial role in this process by administering and enforcing the Act. A good share of the Act is dedicated to disclosure, which is a main thrust behind accountability. Enforcement and disclosure both promote accountability in their own ways. Through the enforcement process we attempt to ensure compliance with the Act's requirements, including the limits and prohibitions on certain activities.

Given the current environment where many of the limits and prohibitions on activity, some of which have been around for a very long time, are now considered constitutionally infirm, disclosure takes on an even more significant role with respect to accountability. With many new speakers and new types of speakers becoming engaged in new ways, the public increasingly must rely on disclosure of the kind provided by the FEC to effectively respond to and participate in the process. Knowledge about the source of funding for political messages thus promotes accountability.

One of the resulting benefits of reporting is that it provides us an opportunity to take a snapshot in time; to aggregate data and really understand what was happening. And the 2010 elections were the first elections taking place in what we can call the post-*Citizens United* world. And one of the things that I'd like to do today is show you some of the results of some of this data.

There was a lot of discussion during the election about ads and who was paying for them – and who we didn't know was paying for them but who we suspected was paying for them. So I thought it would be interesting to take a look at what the data that was reported to the FEC shows. It's compiled by what I call our data gurus, who provide invaluable service to the agency and to the public.

So this chart takes a look at outside spending in Congressional races over the last few cycles. And we found some interesting results. You can see a couple of different shades. The blue at the top is electioneering communications over the past couple of cycles; the green, independent expenditures by parties over the last few cycles; and the gold, independent expenditures by PACs, groups and individuals. And I'll break that down just a little bit.

So independent expenditures by PACs, groups and individuals jumped from $43.6 million in 2008 to $204 million in the 2010 cycle. That's nearly five times more spending in that category. At the same time, we saw independent expenditures by parties drop from $183 million to $26.8 million in 2010. Electioneering communication stayed pretty steady at roughly $80 million after a noticeable uptick between the 2006 and 2008 cycles, likely as a result of the Supreme Court's *WRTL* decision. So there has been a shift in independent activity from parties to PACs, groups and individuals, something that Michael was talking about. Parties and candidates, whose entire purpose is, of course, focused on elections and getting their candidates elected, their role is diluted by some of this outside spending.

And drilling down just a little bit into some of this new spending, independent spending by PACs, groups and others – that large category of increase – breaks down as follows. About $65 million of the independent expenditures were made by each of these two classes of PACs – traditional PACs and then what we call independent expenditure only PACs or, as media reports sometime refer to them, "super PACs." I would probably prefer that we not call things "super." But I think Stephen Colbert has now latched onto this, so we are probably stuck with it as the new name for these PACs. And then about $73 million was spent by individuals, corporations, unions, 501(c)(4)'s, etc. So while it's very difficult to predict with any precision why any individual group of people make a particular decision to spend money in a particular way, in the aggregate I think we can probably assume that these numbers come as a result of *Citizens United*.

Our staff has also pulled together some maps that demonstrate the geographic representation of this shift. Basically, we've seen parties take a far more targeted approach, while other groups, PACs and individuals are far broader in their scope of where they spend their money. These are screenshots. We're still working on the presentation of this data, but I think it's very interesting. So this is where parties have been spending their money in the last Congressional race. This is independent spending by political parties by Congressional district. From lightest to darkest, the colors represent zero to $500,000, half a million to a million, $1 million to $3 million, and the darkest color is more than $3 million dollars. This slide, of the same area of the country, shows the same geographic area with additional independent activity by non-party committees, groups and individuals. So I'll go back. Here's the parties, and here it is with outside groups. And you can say that for the next slide, which is the Southeastern part of the country – first with independent spending by parties, and then with outside groups and individuals. So at least for this cycle we're seeing party committees take a more narrow focus with their independent spending, while outside groups are casting a somewhat wider net. That represents spending that's being reported to the FEC. Whether that reporting contains the right level of detail about the source of funds is another question. And that's one of the many questions that I hope will be discussed further as the day goes on.

There is a case to be made that although we are seeing a substantial increase in campaign spending by some, we are not seeing a corresponding increase in disclosure about that spending. Certainly not the kind of reporting the public might expect when it thinks of political spending and wanting to know who's behind it, and not even the kind of reporting that one would necessarily expect after looking at the statute. Just last week *The Los Angeles Times* issued a detailed report concluding that few of the nation's leading companies are disclosing their political spending. The focus of that article was on the fact that, despite complying with legal requirements like ours, that they report their own spending, many of these major companies are not reporting any of their contributions to other organizations who represent them to engage in political activity on their behalf.

A recent report by the Public Advocate for the City of New York tried to quantify the quality of reporting – I think a very difficult challenge – but their analysis was really very interesting. I encourage you to take a look at their report. The report was based on our data, but the analysis is theirs. It's a very useful addition to the discussion about political spending and accountability. It concludes that outside groups spent about $290 million dollars on independent expenditures in 2010. You'll note this number's a little bit higher than the one that I just presented from the FEC, but it may be that they were also including electioneering communications, which we keep in a separate category.

Among the report's conclusions is that tax-exempt non-profits reported spending more than $130 million on independent expenditures. That's about a little less than half of all outside spending by non-party committees. These groups, according to the report, are not reporting the source of the funds they are spending on independent expenditures, even though they are reporting the expenditures themselves. The report also suggests that there's a tendency for ads to be more negative when donors to the expenditure are not reported. That finding shouldn't be terribly surprising to any of us in the absence of disclosure which helps to foster accountability. There's

not much of a check on the quality or the tone of the discourse we see in the political marketplace.

Disclosure, whether through disclaimers or reporting, provides the public with vital information. And unlike other aspects of the FECA and BCRA after *Citizens United*, there is no uncertainty about the extent to which effective disclosure is both constitutionally valid and good public policy in the eyes of the Supreme Court. And it has been so since the beginning of the Supreme Court's modern jurisprudence. We all know that *Buckley v. Valeo* is relied upon to question campaign finance regulation at every opportunity. So much so that you could fill any pause in a conversation about contribution limits or coordination with a knee-jerk cite to *Buckley*'s admonition against restricting speech through expenditure limits, or a reference to footnote 52's examples of words of advocacy. And it happens on a daily basis where I work, I assure you.

Nonetheless, when discussing matters that relate to disclosure, we rarely hearken back to *Buckley*'s robust endorsement of recordkeeping, reporting and disclosure requirements. So in case anyone has forgotten, here's what the court had to say about disclosure nearly 40 years ago. First, disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate. In order to aid voters with evaluating those who seek federal office, it allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes, either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election favors that may be given in return. Third -- and not least significant -- recordkeeping, reporting and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limits described above.

So in sum, the court said disclosure requirements as a general matter directly serves substantial government interests. Accordingly, Ms. Torres-Spelliscy is on firm ground when she declares in a recent paper on *Transparent Elections After* Citizens United that disclosure of campaign spending is fully constitutional, and yet we know that challenges are raised fairly frequently.

Recently, those associated with California's Marriage Ban Proposition argued for anonymous speech rights by raising the concern that disclosure of their contributions to the referendum effort might result in economic harm to their businesses as a result of boycotts by those who disagreed with their political spending. In our country and around the world, businesses have been held accountable for their behavior, whether political or social, by consumers for quite some time, through the tried and true boycott. Certainly the Montgomery bus boycott was bad for business. That was sort of the point. And we know that boycotts have been used to register consumer opposition from everything from apartheid to selling baby formula in Africa.

And I'm dating myself when I remind you that, as a child of the 70's, some of us couldn't drink Nestle. It was a firm household in which I grew up, in Minnesota. And so it is in our political system too. Voters, like consumers, get to make their choices armed with knowledge of who is

speaking or paying for that speech. That information helps to eliminate distortions in the marketplace of ideas. Without it, the market may be unreliable. The fact that sometimes voters decide to use that same information to make economic choices doesn't change the value of the information to the very important interests behind disclosure.

Nonetheless, there are still efforts to characterize anonymous speech as necessary to all First Amendment expression. As recently as this week, an opinion column cited to the protection afforded by the Court in *NAACP v. Alabama* in support of an argument for anonymous speech in the context of political contributions. And in this day and age, I'll note that two of Brennan Center's own have already posted on this recent article. So I feel late to the game. But in that case, *NAACP*, the court found that the State interest in determining whether an organization needed to register as doing business in the state was insufficient to obtain the organization's membership list.

In stark contrast, the Supreme Court has repeatedly held that the interest in disclosure of political contributions is sufficient. And in 2009, the U.S. Court of Appeals for the D.C. Circuit confronted *NAACP* and *Buckley*, any tension between those two cases, in the context of the Honest Leadership and Open Government Act. That case, *National Association of Manufacturers v. Taylor*, challenged the Lobbying Disclosure Rules in part because, in the words of NAM's general counsel, "taking policy positions that are unpopular with some groups may lead to boycotts, shareholder suits, demands for political contributions or support, and other forms of harassment."

The D.C. Circuit rejected that argument, holding that "the risks that NAM claims its members would suffer for their participation in controversial lobbying are no different from those suffered by any organization that employs or hires lobbyists, or little different from those suffered by any individual who makes contributions to a candidate or political party." The panel went on to note that this argument is inconsistent with *Buckley*'s statement that certainly in most applications, disclosure laws will survive exacting scrutiny. Less than six months after the NAM case, the Supreme Court reaffirmed its support for broad disclosure as it applies to independent speech in *Citizens United*.

Again, I think there are some good aspects of *Citizens United*. Just as with *Buckley*, we seem to forget that there the court made some very strong statements about disclosure. And we should, to the extent possible, employ those whenever the challenges are made to our existing disclosure regime. "The First Amendment protects political speech, and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to such speakers and messages."

So the court made a very strong statement, I believe, about the impact that disclosure can have on the recipients of the messages, whether they're made by political parties who of course report everything they do to the FEC, or those who are engaging in independent expenditures or electioneering communications who might only report that particular spending. Not long after *Citizens United*, in *Doe v. Reed*, the court held the disclosure of support for the referendum petitions on the Marriage Ban I mentioned earlier does not violate the First Amendment.

I note *Doe* in part because it continues the long line of cases rejecting the idea that anonymous political speech requires blanket protection. But I also note it because of the particularly strong concurrence by Justice Scalia. Scalia concurred in the result, but thought that the referendum petitions were more akin to legislating and probably not protected by the First Amendment at all. Even if they were protected by the First Amendment, he argued that history suggests that protection doesn't include anonymity.

He concluded his concurrence with this: "There are laws against threats and intimidation, and harsh criticism short of unlawful action is a price our people have traditionally been willing to pay for self governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed." You won't find me quoting Justice Scalia a lot. But there is something particularly powerful about the way he ties transparency and disclosure to our tradition of self governance and what he calls "civic courage." Despite repeated and recent declarations by the Supreme Court upholding disclosure and expounding upon its merits, I expect that as pressure for disclosure mounts in a variety of arenas that we'll just talk about today, including shareholder voting on corporate spending, we'll hear more of these arguments.

Turning back for just a few minutes to the corporate expenditure ban, which of course was the heart of *Citizens United*, although it was a landmark decision it didn't come out of the blue. It followed a series of cases, including *Wisconsin Right to Life* and *Massachusetts Citizens for Life* that had previously chipped away at the statutory prohibition on corporate expenditures.

So while *WRTL* and *MCFL* indicated that there were some Constitutional problems with uniform application of the corporate expenditure ban, it was *Citizens United* that finally brought this line of reasoning full circle and, in doing so, overturned *Austin*, as we know. At the end of the day, *Citizens United* has some pretty clear implications for us at the FEC. Corporations and labor unions are no longer prohibited from making independent expenditures or electioneering communications. There is no longer any need to apply the *WRTL* "no reasonable interpretation test" to determine whether an electioneering communication is prohibited or not.

As I've noted, the Court also rejected the argument that the Act's disclosure requirements must be limited to speech that is the functional equivalent of expressed advocacy, and instead offered a full-throated defense of disclosure. In response to the decision, the Commission declared that it will no longer enforce the statutory prohibitions or its regulations prohibiting corporations and unions from making independent expenditures in electioneering communications. As an administrative agency, that was of course what we needed to do in response to a Supreme Court decision. Remember, ours is not to question why. And as those of you who are close observers of the Commission know, getting a declaration about not enforcing our regulations is not exactly a hard lift these days.

So that went all very smoothly. The statement did not, however, provide much in the way of useful guidance to those who are trying to comply with our existing regulations, somewhat of a patchwork now after *Citizens United*, especially with respect to reporting electioneering communications and independent expenditures. In my view, one of the most important duties we

have as a Commission is to provide clear guidance to those who must follow the statute and regulations, and I think we should be in the business of doing some more of that.

While *Citizens United* certainly and appropriately got a lot of attention last year, the D.C. Circuit *en banc* decision in *SpeechNow* also shifted the landscape. As Michael noted, the FEC gets sued a lot. And this was another very important decision that, coupled with *Citizens United*, has a big impact on the current landscape. In that decision the court held that contribution limits are unconstitutional as applied to individuals who desired to make unlimited contributions to *SpeechNow*, an organization that would make only independent expenditures. Relying on the majority opinion of *Citizens United*, the court concluded that independent spending poses an insufficient risk of corruption to justify limiting contributions to those types of groups.

By analogy, the court could not find a constitutional justification for prohibiting groups of individuals who wanted to engage in independent speech to do the same. Both *Citizens United* and *SpeechNow* did uphold the requirements related to disclosure reporting and organization, essentially concluding that once we are no longer talking about prohibitions on expenditures or limits on contributions, we're no longer talking about substantial impediments to the exercise of First Amendment rights, but rather reasonable and important opportunities for the public to be informed with respect to their democratic decision-making.

As is frequently the case in areas where the law is developing rapidly, advisory opinions are presented for the Commission's consideration. The Commission considered a couple of requests last year that dealt with *Citizens United* and *SpeechNow* and a case, also from the D.C. Circuit, *EMILY's List*. And these I think highlight some of the ways that the Commission is trying to respond to this new landscape after *Citizens United*.

First, Club for Growth. Club for Growth is a 501c4 corporation. You've probably heard of them. They've been very active for a number of years. It maintains a separate segregated fund that makes contributions and expenditures to candidates. Club for Growth sought to establish an independent expenditure only committee, what we're calling at the FEC an IEOPC because we don't have enough acronyms already in the federal government.

The IEOPC – the Independent Expenditure Only Political Committee – like the SSF would be a component of the Club's overall corporate structure but would be a separate committee. It wanted to pay for the establishment, administrative and the solicitation expenses of the new IEOPC as it did for its SSF. In essence, the Club for Growth wanted to apply the same approach a corporation takes with an SSF to this new IEOPC. The Commission decided that it may establish this new entity and pay for its solicitation and administration expenses. The Commission did note that this arrangement could potentially raise concerns about coordination if this entity that was making contributions and working directly with candidates passed information along to the independent spending organization. So we noted in the opinion that while not required, implementing a firewall consistent with the one outlined in the Commission's coordination safe harbor might be a way to address the potential concerns with respect to the conduct standards of the coordination rule.

The Club for Growth advisory opinion, along with one requested by a group called Commonsense Ten (which asks whether corporations and labor organizations could give to these new independent expenditure-only political committees), provided a template letter that committees could submit to the Commission to signal an intention to accept unlimited contributions because they would be making independent expenditures. So designating a committee would allow the public and the Commission to know that what would otherwise look like excessive contributions would not technically be excessive because they're only going to be making independent expenditures. So it helps us internally at the Commission to know that we don't have to follow up with those committees for something that looks excessive. And I think it provides a good service to reporters or voters or anyone who's looking at reports to know that this committee, because they're making independent expenditures, is not violating the law with respect to contribution limits otherwise.

The other significant advisory opinion request submitted was submitted by the National Defense PAC. The National Defense PAC is a non-connected committee that makes contributions to candidates. In its advisory opinion request, it sought to create a separate independent spending account within the organization. So instead of creating a new political committee that was connected to it, it wanted just to create a separate account within the organization. The Commission considered alternative approaches but could not reach consensus and did not issue an opinion.

At the core of the Commission's disagreements were the application of *EMILY's List* and *Speech Now*, as well as the previous Supreme Court case, *CalMed*, and whether a rulemaking would be necessary even if the Commission was inclined to adopt the two account approach proposed by NDPAC. And although the subject matter of that request continues to be one of the issues the Commission hopes to address in rulemaking, we may get an assist by the courts. In a recent lawsuit, NDPAC sued us in the U.S. District Court for the District of Columbia, challenging the Commission's failure to issue this advisory opinion. And while we're in the very early stages of this litigation, the complaint argues that NDPAC is entitled to accept unlimited contributions to its independent spending account while also maintaining a federal hard money account. This lawsuit is not really about what organizations like NDPAC are permitted to do, but rather, how do they do it? What is the structure that they must have in order to do it? It also raises questions of recordkeeping, reporting and disclosure.

And as if to make the point that the Commission is sued for both being too lenient as well as too regulatory, a little more than a week ago we were sued over the Commission's electioneering communications reporting regulations by Congressman Van Hollen. That lawsuit challenges our existing rules for the reporting of electioneering communications by corporations and labor unions as being inconsistent with the statute. And quoting the complaint – this is obviously is not my position, the Commission is defending a duly enacted regulation – the complaint says, by allowing corporations including non-profit corporations and labor organizations to keep secret the sources of donations they receive and use to make electioneering communications. I'm sure this suit will be watched by many, because it touches on one of the major topics of interest in the wake of *Citizens United* about what kind of disclosure is appropriate.

As I said at the outset, the FEC's role extends to the outer reaches of the statute. As it stands, for some organizations, particularly those which are not political committees, they may not be doing much that falls within our jurisdiction. These organizations may be engaging in political activities but may not be reporting much, if any of their contributions or donations and spending. And that is entirely consistent with the reach of the statute and the rules. In many cases these organizations raise questions to which the Commission will not be of assistance, because we are applying a limited statute that has been subsequently narrowed by the courts.

For those organizations who do register with us or who make independent expenditures and electioneering communications, I believe the Commission should, at a minimum, take steps to shed some light on our disclosure rules which currently cross reference sections of the regulations rendered meaningless by *Citizens United*. More generally, the Commission should seriously consider whether past interpretations of our reporting rules are adequate in a post-*Citizens United* world, particularly in light of the court's holding on the statutes, disclosure and reporting requirements.

To be clear, I am not talking here about types of fundamental and broad reform that have been proposed in legislation like the DISCLOSE Act. I am talking about simply updating our reporting rules and forms to reflect, for example, that corporations may now make electioneering communications without restriction. I'm talking about providing useful guidance to entities that are trying to comply with this new landscape. I would even consider addressing a very basic question and seeking public comment on whether our reporting rules work now that we have a new class of entities able to make electioneering communications and independent expenditures.

As you may know, in January the Commission was unable to issue a Notice of Proposed Rulemaking with respect to *Citizens United* because the Commission was deadlocked over the scope of that rulemaking. At that point in time we didn't have four votes to even ask the public whether we should update our reporting rules to reflect the new reality or ask questions about the role of foreign nationals and any control that group might have over those who could now make IEs or ECs. Until we are able to find a way forward to ask such questions, gather comments and consider updates to our regulations and forms, it's too optimistic to expect the FEC will lead the way on increased accountability. In reality, many corporations and labor organizations will be struggling to comply with the rules that are now out of date, doing the best that they can to live up to the basic expectations with respect to reporting.

As of January, there were not four votes at the Commission to begin the process of providing further guidance or creating clear rules, and that's extremely disappointing to me. And I'm hoping that we may be able to do so in the future. Although the Commission is not doing as much as I would like, the FEC does promote accountability through its existing efforts to provide the public with a clear, accurate record of who is spending what in federal elections. Recall that any candidate committee, every party committee and anyone who's a political committee under our definition must register and report. And anyone who makes an electioneering communication or an independent expenditure, again defined terms under the statute and the regs, must report that to us. And the Commission and its dedicated staff will be making sure that that data, that information, is available swiftly and easily accessible on our website. For most committees that means the data is available within hours of its being filed with us, and our analysts will be

reviewing all of those reports, and where there appears to be a problem or a lack of adequate information, they will be contacting committees to request further information and clarification to ensure that the public record is as accurate as it can be. And many of you may be familiar with our data disclosure blog, where we do a pretty impressive job, I think, of working with those consumers who are interested in our bulk data, to make sure it's as usable as possible. For others – the general public, voters, reporters – interested in knowing more about those who are participating in the political process, our website is the primary source of that information. I know that data is not as robust as some, including we, would like, but it is important and I know this because I read an article the other day in which Sheila Krumholz, the Executive Director for the Center of Responsive Politics, said, in referring to their website, Open Secrets, "if everybody hates us we must be doing something right, as long as they keep using our data." I thought that quote could come from the FEC… pretty much the same, if everyone hates us, we must be doing something right. She of course was referring to the presentation of the data on their website, Open Secrets. Open Secrets actually uses the FEC's data, we provide it to them in a bulk way and they analyze as they will. But if it's good enough for the Center of Responsive Politics to take credit for it, it must not be that bad. I'm giving Open Secrets a hard time here, they do serve an important interest, but it illustrates my point about the good work the agency is doing on a daily basis, within the existing constraints. And so I recognize this is going to sound self-serving, but I think those calls to defund the agency are probably not all that well thought out. While it is true the Commission deadlocks on many, possibly most of the hard questions, if the agency were to disappear, our data would disappear. No one would know anything about what is going on in campaign spending and I think that would have a devastating effect on accountability across the spectrum. Accountability requires knowledge about where money is coming from and in the absence of meaningful disclosure, there's little check on the types and quality of discourse we see in the political marketplace. I'm looking forward to today's discussion about the role of accountability among academic and practitioner experts gathered here. Because whether we are talking about corporate accountability of shareholders, or political committees' accountability to its contributors, in my view, access to meaningful information about the sources and types of spending is the very foundation of empowered citizen decision-making. Thank you.

I am happy to take your questions. I'll be even happier if I can answer any of them.

Michael Waldman: And we have microphones set up in both aisles so the webcast can hear your questions as well. May I ask the first one?

FEC Chair Cynthia Bauerly: Please.

Michael Waldman: Given your experience supervising the FEC in Congress and now serving on the FEC, what reforms would you suggest to make the FEC work better, either to break the partisan gridlock that has plagued it for decades or to empower the staff to continue doing the work you've just described that plays such an important role?

FEC Chair Cynthia Bauerly: I hope you'll understand the position as Chair of the agency. While these are my own remarks, we are frequently asked by Congress for our views on legislation. Generally, my view is Congress gets to make those decisions and we implement them. We will do so. For example, there's a bill floating out there to move some of the EAC's

responsibilities over to the FEC, and should that happen we're happy to take on additional responsibilities and additional resources to do those. So I'm going to pass on what the particular forms were. But I take your point about the long-standing challenges to the way the commission is structured. It's an even number commission which is rare. Basically there are two sets of us, and the other is the EAC of course, with a requirement and a statute to have four votes to do anything. So, it sets up a requirement, someone described it as a requirement for bi-partisanship, because of course if no more than three can be from one political party you must get someone from another party to agree with you to adopt any action. I think it is interesting, obviously I wasn't working in Congress when they set this up. I think it's interesting to go back and look at the legislative history. I don't think they planned on "partisan gridlock," or maybe they did, I don't know. Perhaps other industries, if they were to choose their regulator might choose a similar format. You know, the folks who have to answer to the FCC know that there is a majority with a strong chair, it's an organization that has the ability to set much more of an agenda then we do at the FEC. We're a little bit more responsive by nature, so that's what I'll end on.

Michael Waldman: Well thank you. We can say, I can say, not all consequences are unintended in this field. But then we need more questions. Please?

Audience Member #1: Hi, what do you see as the shortcomings of this DISCLOSE Act with respect to unions and corporations and how would you propose overcoming the objections that have been raised, especially by the unions?

FEC Chair Cynthia Bauerly: Again, I guess I'm not going to be happy to answer any of your questions. I apologize for that. I'm not going to get into the elements of the DISCLOSE Act. Frankly it's not before us, it's something that's before Congress. It's well outside of our jurisdiction, so I hope you'll understand that in my role I'm not going to be able to expound on that.

Audience Member #1: Well I thought maybe you would just, on a personal opinion basis and experience as a legislative director for Senator Schumer, be willing to dive in there, but that's okay, I appreciate it.

FEC Chair Cynthia Bauerly: Thank you for your indulgence.

Audience Member #2: I have another question which may not be answerable given your current role. The Internal Revenue Service runs a disclosure regime for 527 organizations that are not political committees. It also has some data now on its new form 990 about the contributors to the political activities of the organizations that do not have to disclose to the public. I'm wondering about the working relationship if any between the FEC and the IRS to try to craft approaches to administration or disclosure and I would be grateful for anything you could say about that relationship.

FEC Chair Cynthia Bauerly: I would say we have a good working relationship. We invite the IRS to many of our conferences, to help explain some of the differences. The reality is their standard is different than our standard and that is I think perplexing to everyone who has to try to deal with it. I had an opportunity to speak in my law school in the fall and my former tax

professor, I felt like I was back in class again, was grilling me about why these two standards are different and what good could that possibly do and I had no good answer for him on that one either. As separate regulators, we don't engage in joint rulemaking, we're not doing anything in collaboration with them, although I do hear the concern that especially now it seems there's a desire for more disclosure and it can be very confusing to the public because we do use two different standards. So that is a concern.

Audience Member #2: Thank you.

Audience Member #3: Hi, I'm very interested in different geographical patterns of spending that you showed between political parties and outsiders and I'm wondering how much of that reflects spending in general as opposed to primary elections? Because from the map of the Southeast that you showed it looked like the parties were mostly spending in close general elections or that could explain it, which makes a lot of sense. But if it's much more proportionately the outside spending is directed to the primaries, that suggests a very interesting phenomenon which is these outsiders are now becoming the enforcers of certain visions of party orthodoxy rather than the parties themselves.

FEC Chair Cynthia Bauerly: Right, the numbers that I presented, the math that I showed you is an aggregate. We have not yet broken it down by primary versus general spending, but that seems to me an interesting exercise, because I think your premise is right that parties were probably not getting involved until the general, I'm not sure that that's the case for some of those other outside groups, we'd have to take a closer look at that but I think that would be an interesting exercise.

Audience Member #3: Thank you.

Ciara Torres-Spelliscy: Okay, could everyone join me in thanking Chair Bauerly for joining us today.