



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF COMMISSIONER CYNTHIA L. BAUERLY
AND COMMISSIONER ELLEN L. WEINTRAUB
ON THE RELEASE OF DOCUMENTS SUBJECT TO A FREEDOM OF
INFORMATION ACT REQUEST**

The Campaign Legal Center, on March 13, 2009 filed a Freedom of Information Act ("FOIA") request seeking the release of several documents referenced in the certification of the Commission's actions in Matter Under Review ("MUR") 5937, which was closed by the Commission on January 28, 2009.

Pursuant to the Commission's historic practice of delegating the authority to make initial FOIA determinations, the Agency's FOIA Service Center issued a denial to the CLC.¹ On May 28, 2009, Campaign Legal Center appealed portions of that decision to the Commission. While awaiting the full documentation of and a recommendation from the OGC on the appeal, our colleagues wrote a Supplemental Statement of Reasons in MUR 5937 to be placed on the public record. Their statement mentioned the FOIA request and attached three of the documents subject to the FOIA appeal.

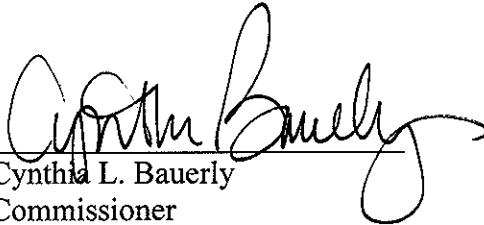
Despite our request to hold their statement until the full Commission could address the issues raised in the FOIA appeal, our colleagues released their statement before the Commission could act on the FOIA request. We strongly agree that Commissioners are entitled and indeed, are under an obligation to provide rationales for their decisions.² We are disappointed that our colleagues chose to move forward with their statement at this time, when a consensus decision to release the documents subject to the appeal was clearly possible in the near future. At a time when we have so many legitimate disagreements over the precise contours of the law, we had hoped this matter could have been resolved by the full Commission according to established procedures, rather than by a group of three Commissioners choosing to preempt those procedures.

¹ Over the years, the Commission has operated under various policies about what documents become part of the public file of a closed MUR. The denial by the FOIA office was based upon the Commission's current practice.

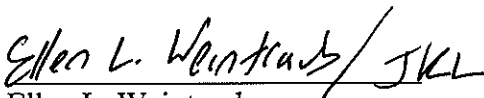
² However, because the three Commissioners that chose to vote against the recommendations of the Office of the General Counsel had already issued a Statement of Reasons explaining their rationale, the timing of this Supplemental Statement almost seems designed to preempt the full Commission's consideration of the FOIA appeal. *See* MUR 5937 Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn II, March 10, 2009.

Moreover, because our colleagues' statement includes a footnote regarding an unrelated case, we must note for the record our objection to the disclosure of such internal, attorney-client advice.³ We have consistently advocated for fuller disclosure with respect to many of the agency's actions, from its website to press releases. We cannot agree to, and do not believe that the interest of a well-functioning agency is served by, individual Commissioners releasing portions of documents that continue to be subject to attorney-client privilege in the absence of decision by the full Commission.

6/17/2009
Date


Cynthia L. Bauerly
Commissioner

6/17/2009
Date


Ellen L. Weintraub
Commissioner

³ See MUR 5937, Supplemental Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn II at 6, fn. 20.